

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on October 31, 2013

Judgment Delivered on December 06, 2013

+ W.P.(C) 7692/2012

DELHI TRANSPORT CORPORATION Petitioner
Represented by: Mr.Anand Nandan, Adv.

versus

MAM CHAND Respondent
Represented by: Mr.Anil Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition by the Delhi Transport Corporation (DTC) is to the order dated August 14, 2012 in O.A.No.3676/2011 whereby the Tribunal has allowed the O.A. filed by the respondent herein by quashing the orders of the disciplinary authority as well as Appellate Authority and remanded the matter to the disciplinary authority to pass appropriate orders with respect to penalty holding the penalty of removal to be disproportionate; pending that the respondent was directed to be reinstated in service with all consequential benefits except back wages.

2. The respondent joined DTC as a Fitter in the year 1981. A charge sheet was issued on May 15, 2007 on the ground that the respondent remained unauthorisedly absent from duty for 51 days

from July 01, 2006 to March 31, 2007. The charge sheet also mentions that his past record will be taken into consideration at the time of passing of the final orders or giving recommendation in the case. The respondent did not submit any reply to the charge sheet. The Inquiry Officer held the proceedings on October 11, 2007. During the proceedings the respondent was asked whether he would conduct his own inquiry or he needs the assistance of a colleague. The answer was he wants to conduct the inquiry himself and he did not want any document. The Inquiry Officer read out the charges to the respondent and asked whether he admits those charges, at which the respondent admitted the charges and stated that he remained absent on account of his family problems and he will be careful in future.

3. Before the Disciplinary Authority could pass a final order, the respondent in response to the show cause notice vide letter dated December 07, 2007, addressed to the Disciplinary Authority i.e. Depot Manager stated the following :-

“I was passing through lot of family problems. After the death of my father the condition of my family deteriorated. My younger brother attempted suicide after few months. We had to sell our house where our family was living. My problem increased due to my being head of the family and I had to purchase another house with the help of my relatives for my residence. In future, I will not give you any chance to complain. I request you to kindly release me from this case for which I shall be obliged.”

4. The Disciplinary Authority after considering the inquiry report imposed a penalty of removal from service. The respondent submitted an appeal on September 29, 2008 against the order of the

Disciplinary Authority dated August 27, 2008. The appeal was rejected by the Appellate Authority by an unreasoned order dated February 05, 2009.

5. The respondent approached the Tribunal by way of an O.A. No.640/2010. The said O.A. was disposed of by the Tribunal vide its order dated July 09, 2010 by remanding the case back to the Appellate Authority directing him to pass a reasoned and speaking order in accordance with law.

6. In deference to the order of the Tribunal the Appellate Authority passed an order dated September 07, 2010 whereby the Appellate Authority considering the past record of the respondent had rejected the appeal.

7. The case of the respondent before the Tribunal was primarily that the penalty imposed against him was shockingly disproportionate. He would also plead that he was prevented from attending to his duties by extreme family circumstances.

8. On the other hand, the petitioner justified the inquiry report, orders of the Disciplinary Authority and the Appellate Authority. The Tribunal has decided the O.A. primarily on three grounds which are (1) the inquiry report is false and perverse; (2) the Inquiry Officer did not consider the past record to make any recommendation to the Disciplinary Authority. The order of the Disciplinary Authority is also arbitrary as he had considered the subsequent absence of the respondent between the period January 01, 2008 to August 15, 2008; (3) that the penalty order is disproportionate to the charge levelled.

9. Mr.Anand Nandan, learned counsel for the petitioner would

urge that the Tribunal has misdirected itself both on facts and law. According to him the Inquiry Officer was justified in recording the admission made by the respondent with regard to his unauthorized absence. According to him absence, for family circumstances, cannot be justified. If such a plea is accepted then every employee would on this ground justify his absence. According to him the absence is wilful and was rightly proceeded in a departmental inquiry. He would further submit that in reply to the show cause notice issued to him, the respondent reiterate the family problems and had stated that in future he would not give any chance to complain. According to Mr.Nandan the contents of the reply would also suggest that the respondent had admitted his absence as was done by him in the proceedings. He would further submit that he had not referred to the fact that before remaining absent he had sought leave or had informed the authorities. The conclusion of the Tribunal that the inquiry report is false and perverse is untenable.

10. He would further submit that the absence of respondent for 51 days is a serious charge and could not have been taken lightly by the authorities. The non consideration of the past record of the Inquiry Officer is not fatal inasmuch as the charge of remaining absent, on its own strength is serious enough to entail the penalty of dismissal. In any case according to him the respondent remained absent even for a period between January 01, 2008 to August 15, 2008. This period could not have been overlooked by the Disciplinary Authority.

11. Mr.Anil Mittal, learned counsel for the respondent would justify the order of the Tribunal. According to him the authorities

could have only considered the past record and not the record subsequent to the charge sheet for imposing penalty. According to him even the penalty is disproportionate overlooking the fact that the respondent had worked for almost 27 years with DTC. Vide the impugned orders of the Disciplinary Authority and the Appellate Authority, the past service put in by the respondent has been washed away, which would not entail any terminal benefits to the respondent.

12. We have considered the submissions made by the counsel for the parties. We note, the grounds averred by the respondent in the O.A., are primarily; the penalty was shockingly disproportionate to the charge; the respondent was prevented by attending his duties by extreme family circumstances. In other words, other than the aforesaid two grounds no other ground was averred by the respondent. The scope of the O.A. shall be the grounds which have been averred by the respondent. Regrettably the Tribunal considered issues like the past record of the respondent being not considered; that the inquiry report is false and perverse etc.

13. Even otherwise the grounds which have been raised and considered by the Tribunal also overlooking the reply given by the respondent to the show cause notice issued to him wherein the respondent being conscious of the fact that he remained absent without any intimation, stated that he would not give any cause for complaint in future, which meaningfully read amounts to an “admission”.

14. In any case we would not like to advert much on the merits of the contention raised by the counsel for the parties. Suffice would it

be to say that the Tribunal, should have looked into the contents of the reply given by the respondent to the show cause notice and the limited grounds pleaded by the respondent in the O.A. and their effect on the issue to be determined by it. The Tribunal having failed to consider the aforesaid aspects we are of the view that the matter needs to be remanded back to the Tribunal. Accordingly, we set aside the order of the Tribunal dated August 14, 2012 passed in O.A.No.3676/2011 and revive the O.A. to its original number with a direction to the Tribunal to adjudicate the O.A. afresh keeping in view our observations above as expeditiously as possible within a period of six months from the date of this order.

15. The writ petition is allowed in terms of the above. There would be no order as to costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 06, 2013
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