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

% *Judgment delivered on: 23rd September, 2014*

+ W.P.(C) 3633/2011

DTC

..... Petitioner

Represented by: Mr. Sarfaraz Khan, Ms. Tehsina Hussain and Mr. Sabbar Ahmad, Advs.

Versus

SATYA NARAIN

..... Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner has assailed the order dated 30.07.2009 passed by Ld. Labour Court in ID. No.172/08/97 as well as the impugned award dated 01.07.2010, vide which the respondent / workman was reinstated in service without back wages.

2. Mr. Sarfaraz Khan, Id. Counsel appearing on behalf of the petitioner submits that respondent / workman has admitted his guilt in the enquiry and the same has been accepted by the Disciplinary Authority. Accordingly, vide order dated 26.10.1995, show cause notice to the enquiry report was issued. Respondent / workman filed reply thereto. However, finding no substance in his reply, Petitioner Corporation passed removal order dated 09.12.1996 against the respondent / workman.

3. Mr. Khan submits that there is no violation of the natural justice. Respondent / workman was given opportunity to lead evidence and defend

his case, however, preferred not to lead any evidence. Thus, the enquiry was held against the respondent / workman. Therefore, the removal order passed by the petitioner was fully justified. Despite, the Id. Tribunal has reinstated the respondent / workman in service, which is unjustified, illegal and not sustainable in law.

4. Admittedly, petitioner issued chargesheet dated 12.05.1995 on the charges that on 30.04.1995, the workman was performing his duty on Bus no. 6553, route number 08215. After completing duty, he deposited the cash, but not deposited the way bill no. 456510, due to which the ticket staff working in the morning shift was finding difficult to prepare the earning statement.

5. Locker of respondent / workman was checked wherein original way bill, 3 punched tickets of Rs.4/- each and 13 tickets of Rs.4/- each were found which were already sold. However, the cash received by the respondent / workman against those tickets were not deposited. Apart from that, Rs.10/- bag money and Rs.53/- more were found in his locker which was deposited in the cash section.

6. The enquiry officer conducted the enquiry, wherein the respondent / workman was asked whether he admits the charges levelled against him in the chargesheet, to which he admitted the charges and submitted that he does not intend to be enquired in the matter any further.

7. Accordingly, the enquiry was closed on 18.09.1995 with the sole purpose that in case it needs be for natural justice, case may be re-opened at any stage. The Enquiry Officer recorded in its report as under:

“On being not satisfied with the reply to the charge sheet, for detailed enquiry in the matter, case was referred to the Enquiry Officer (P). On 18.09.1995, the enquiry proceedings were started wherein the charged official was read over the charges contained in the charge sheet against him, which were admitted by him without any pressure and out of his own free will and told that he does not want any more enquiry in the matter. Therefore, the case is clear. Since the charged official has admitted the charges levelled against him in the charge sheet out of his own free will and without any pressure, therefore, the charges framed in the charge sheet stands proved.”

8. Accordingly, Disciplinary Authority issued show cause notice dated 26.10.1995 as to why he should not be removed from the service.

9. Respondent / workman filed his reply, whereby stated that he requested for relevant documents vide application dated 31.10.1995, which was not supplied to him. He had given the explanation as to why he could not submit the way bill and why the punched tickets were found in his locker.

10. Admittedly, the petitioner considered the said reply, however, not found satisfactory, accordingly passed the removal order dated 09.02.1996 as under:

“The reply submitted by Sh. Satya Narain, Conductor B.No. 17085, T.No. 36304 in response to Show Cause Notice No. HND-I/AI(T)/115-R/95/3455 dated 26.10.1995 has been considered thoroughly by the undersigned and not found satisfactory. So the following penalties imposed upon him.

He is hereby removed from the services of his Corporation with immediate effect under clause 15 (2) (vi) of DRTA (Conditions of Appointment and Services) Regulations, 1952. The subsistence allowances already paid is considered sufficient.

He is required to deposit all the D.T.C. articles with I/c Livery, HND-I in his possession within 24 hrs. of the receipt of this memo. None of the deposit D.T.C. articles by him in accordance with the instructions contained in C.O. NO. 21 dated 27.01.1954 will render him liable to pay penalty of Rs.2/- per day for the days he kept any of the D.T.C. articles in his possession after the specified period of 24 hrs. In case a police report is lodged on the date for the loss of returnable DTC's articles a penalty of Rs.500/- will be imposed at the time of settlement in accordance with C.O. NO.1 dated 09.01.1992."

11. It is pertinent to note, Ld. Tribunal held the enquiry in this case. Vide order dated 15.10.1999, two issues were framed which are as under:

- "1) Whether the enquiry was not held in accordance with law?*
- 2) As per terms of reference."*

12. Ld. Tribunal recorded that the Enquiry Officer stated in the report that the workman had admitted the charges. The said Officer has simply obtained the signatures of the workman and closed the enquiry. On the above facts, the Ld. Labour Court opined that it was expected from the Enquiry Officer to record a separate statement of the workman or would have asked him to give the same in writing. The purpose of enquiry is to ascertain the truth made in the charges. There is no clear-cut statement of the workman admitting the guilt, except the recording of proceedings to which the signatures of the workman were obtained. Therefore, this cannot be treated as admission without ambiguity and opined that the enquiry suffers from principle of natural justice.

13. Both the parties have led their evidence before the Ld. Labour Court. On considering the evidences, Ld. Labour Court in Para 15 of the impugned order recorded as under:

“The opening of the locker and the tracing out of the way bill cannot be accepted for the following reasons:

a) The Incharge ticket section has only deposed that he made a report about the need for opening the locker.

b) He has not participated in the proceedings of opening the locker. The affidavit is silent whether he participated or not. In the cross-examination, it is elicited that one Roshan Lal, Ram Mehar, Deputy Managers known as ATS were presented along with the security guard and some conductors.

c) There is no detailed report of opening the locker. The circular relied by the management itself directs a committee of depot officers to check the locker.

d) This circular is to be considered from the date of its issue, the opening of the locker was prior to issuance of this circular. Therefore, even if presumed that there was no need for the committee, but it was expected of the management to have examined the security guard or Roshan Lal (TTC) or Ram Mehar (Depot Manager) to corroborate the say of MW.3.

e) Even if MW.3 is presumed to have been present at the time of opening of locker, his signatures are not found anywhere on Ex.MW.3/1. Furthermore, MW.3 had never stated in his affidavit that he participated in the proceedings of the opening of the locker.

14. Accordingly, Ld. Labour Court opined that opening of locker was not proved by examining the proper witnesses. The evidence of MW3 only shows that he made a report seeking permission to open the locker. Thereafter, the proceedings have been taken place are not proved on record. Accordingly, respondent / workman has been reinstated apart from the fact that non-depositing of cash of Rs.53/- can only be an irregularity, thus cannot be considered for extreme penalty of dismissal from service.

15. The issue for consideration before this Court is that firstly, the enquiry officer closed the enquiry against the respondent / workman, however, prepared the report that the respondent / workman had admitted his guilt.

16. The fact remains that the evidences have not been led by the parties. The Disciplinary Authority accepted the Enquiry Report and issued show cause notice as to why the respondent / workman should not be removed from the service.

17. In such eventuality, the petitioner / Corporation would have demanded for *de-novo* enquiry and opportunity should have been given to the parties. Moreover, the respondent / workman raised the issue and gave his explanation of not depositing the way bill and the punched tickets. However, his explanation was not considered by the petitioner and removed him from the service vide order dated 09.02.1996.

18. The Id. Labour Court also finds no evidence against the respondent / workman by which the misdemeanour can be established.

19. In view of above, I find no merit in the instant petition. Same is accordingly dismissed with no order as to costs.

SURESH KAIT, J

SEPTEMBER 23, 2014

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