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IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision: 25th September, 2017

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W.P.(C) 827/2013

BHAGWAN SINGH

..... Petitioner

Through: Mr. Anil Mittal with Ms. Komal
Aggarwal, Advocates.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Sarfaraz Khan, Advocate.

AND

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W.P.(C) 837/2013

BHAGWAN SINGH

..... Petitioner

Through: Mr. Anil Mittal with Ms. Komal
Aggarwal, Advocates.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Sarfaraz Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petitions have been filed by the Petitioner challenging two separate orders dated 10.10.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi vide which both his Original Applications i.e. O.A No.1947/2011 & 1952/2011 have been dismissed.

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WP(C) No.827 & 837/2013

2. The Petitioner had filed the two OAs challenging two separate penalty orders, both dated 14.02.2011, which challenge has been rejected by the Tribunal by two separate orders both dated 10.10.2012. Since the facts in both the cases are interlinked and common arguments had been addressed by the learned counsel for the parties, both the petitions are being disposed of vide this common order. The individual facts of both the cases are being noted only to the extent, they are essential for adjudication of the present petitions.

3. The Petitioner's first O.A No. i.e. 1947/2011 had been filed challenging the penalty of "stoppage of next due two increments with cumulative effect", imposed on him vide order dated 14.02.2011 while the second O.A i.e. O.A No. 1952/2011 had been filed challenging the penalty of 'bringing him to the initial stage to the post of driver for the period of two years'.

4. The Petitioner was a Driver with the Respondent/DTC since 13.08.1982 and was a member of the Delhi Parivahan Mazdoor Sangh (Reg.). He claims to have made complaints dated 22.09.2006 and 21.02.2007 against Shri Chintamani Nautiyal, Assistant Traffic Inspector and Shri Muni Ram, Depot Manager alleging therein that they were harassing the staff. On 07.03.2007, the Petitioner alongwith one Shri Rameshwar Dayal went to the Schedule Section of the Respondent/DTC, where, as per the common case of the parties, there was an exchange of heated words between them. This led to a complaint being filed by Shri Chintamani Nautiyal against the Petitioner and Shri

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Rameshwar Dayal. Based on this complaint, the Petitioner was served with a charge-sheet dated 23.03.2007, in which, it was alleged that he along with Shri Ramehswar Dayal had gone to the Schedule Section on 07.03.2007 where he had hurled abuses to Shri Chintamani Nautiyal and the Deputy Manager Shri Muni Ram, and vitiated the atmosphere by threatening both of them.

5. The Petitioner submitted his reply denying the charges and a Departmental Enquiry was held against the Petitioner on the basis of charge-sheet dated 23.03.2007. Based on the evidence adduced in the enquiry, the Petitioner was held guilty of the charges and vide order dated 11.11.2008 he was awarded the penalty of "stoppage of next due two increments for a period of two years". The Petitioner's statutory appeal being rejected, he preferred O.A. No. 3095/2009 before the Tribunal challenging this penalty awarded to him vide order dated 11.11.2008. This O.A filed by the Petitioner was allowed by the Tribunal vide its order dated 25.11.2010 on the limited ground that the penalty order was a non-reasoned order and, accordingly, the matter was remanded back to the Respondent. The Respondent after issuing a fresh show-cause notice to the Petitioner and considering his reply passed an order dated 14.02.2011 reiterating the penalty of stoppage of next due two increments for a period of 2 years with cumulative effect. This penalty was again challenged by the Petitioner by way of O.A No. 1947/2011, which is the subject matter of writ petition no.827/2013.

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6. At around the same time, the Petitioner had been issued another charge-sheet dated 24.04.2007 in which it was alleged that on 28.03.2007 at about 9:40 a.m he had abused and beaten Shri Muni Ram, the Deputy Manager. It was also alleged that due to the assault by the Petitioner, the button of Shri Muni Ram's shirt had broken and it was further alleged that the Petitioner used caste related words against him. The entire incident was witnessed by various employees of the Depot.

7. Upon denial of the charges by the Petitioner, a Departmental Enquiry was held against him in respect of charge-sheet dated 24.4.2007. The Enquiry Officer after considering the entire evidence found the charges as proved. Upon consideration of the Enquiry Report, the Disciplinary Authority i.e. Depot Manager vide his order dated 13.05.2009 imposed the penalty of bringing him to the initial stage of driver for 2 years. His statutory appeal having been rejected, the Petitioner preferred O.A. No. 3094/2009 before the Tribunal which was also disposed of with the same directions, as issued in the Petitioner's other O.A. No. 3095/2009, dated 13.01.2011, noted hereinabove.

8. The Respondent, thereafter, issued a show-cause notice to the Petitioner and after considering his representation thereto, once again passed an order dated 14.02.2011 confirming the punishment of bringing him to the initial stage attached to the post of Driver for two years.

9. The Petitioner once again filed a statutory appeal, which was also rejected and in these circumstances the Petitioner filed the O.A. No. 1952/2011 which was also dismissed vide order dated 10.10.2012 along with his other O.A. 1947/2011 as noted above. It is this order passed by the Tribunal in O.A No.1952/2011, which is the subject matter of W.P(C) 837/2013.

10. While dismissing the O.As, the Tribunal rejected the Petitioner's plea that the complaint dated 07.03.2007 made by Shri Chintamani Nautiyal (ATI)-which was the basis of charge-sheet dated 23.03.2007, was a counterblast to his earlier complaint made against Shri Chintamani Nautiyal. Similarly, the Tribunal did not find any merit in the Petitioner's plea that the complaint dated 28.03.2007 made by the Deputy Manager, Shri Muni Ram, was a counterblast to his earlier complaint against Shri Muni Ram. In its impugned orders, the Tribunal also noticed the fact that during cross-examination of the departmental witnesses in the enquiry, the Petitioner had not made any suggestions to either of the complainants, namely, Shri Chintamani Nautiyal or Shri Muni Ram, regarding his alleged plea of their complaints being a result of counterblast. The Tribunal also did not find any merit in the plea of the Petitioner that the witnesses examined in the enquiry did not support the charge. The Tribunal found that the conclusions arrived at by the enquiring authority, and the decisions taken by the disciplinary as well as Appellate Authority, were based on

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material record and, accordingly, the Tribunal rejected both the O.As vide two separate orders dated 10.02.2012.

11. In these circumstances aggrieved by the dismissal of his O.As, the Petitioner has preferred the present two writ petitions.

12. At this stage it may also be noted that the Petitioner stands superannuated from the service in the year 2013 and, therefore, the only effect of both the penalties imposed on him, has been a reduction in his terminal dues as well as his monthly pension. An additional Affidavit has been filed by the Petitioner bringing out that as a result of both the penalties, he has not only received Rs.1,71,309/- less towards his retirement gratuity, but is also receiving Rs.4,616/- less every month as Pension viz-a-viz similarly situated employees.

13. Appearing for the Petitioner, Mr. Anil Mittal, Advocate has in support of both the petitions raised common arguments. He submits that both the complaints against the Petitioner were only a counterblast, as a result of his earlier complaints against Shri Chintamani Nautiyal and Shri Muni Ram, made to the Depot Manager, Sarojini. While drawing our attention to the statements of the witnesses examined in the enquiry, he submits that the witnesses have taken contradictory stands regarding the presence and role of Shri Rameshwar Dayal, who had accompanied the Petitioner to the Schedule Section on 07.03.2007 which, according to him, shows that he has been falsely implicated at the behest of Shri Chintamani Nautiyal and Shri Muni Ram. He submits that in view of the major

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contradictions in the statements of the witnesses, it would be unsafe to hold the Petitioner guilty of the charges.

14. Mr Mittal submits that, even otherwise, keeping in view the nature of the charges, the penalties awarded to the Petitioner are shockingly disproportionate. He submits while awarding the penalties, the Respondents have ignored the fact that the Petitioner was a member of the employees union, and there are major contradictions in the statements of the witnesses. He submits that as a result of the impugned penalties, the Petitioner is facing grave hardship even after his retirement, as he is receiving lesser pension than his peers, after 30 years of otherwise satisfactory service.

15. Per contra, the learned counsel for the Respondent, while supporting the impugned orders of the Tribunal, submits that both the charges against the Petitioner were very serious and he had not only unauthorisedly intervened in the working of the Schedule Section on 07.03.2007, but was also seeking choice postings for the members of the union. He submits that the Petitioner had not only hurled abuses in the Depot, but had also threatened to beat the Assistant Traffic Inspector as well as the Depot Manager Traffic. He submits that as a result of the assault by the Petitioner on 28.03.2007 in the Depot, Shri Muni Ram-Depot Manager was compelled to make a complaint to the police.

16. He contends that penalties imposed on the Petitioner are fully commensurate with the charges proved against him in the

Departmental Enquiry. His submission is that, on the other hand, keeping in view his long service, the Respondents have, in fact, taken a compassionate view and imposed a lesser penalty on the Petitioner than actually warranted in the facts of the case.

17. Having considered the rival submissions made by the learned counsel for the parties and perused the record, we do not find any merit in the present petitions.

18. From the record, we find that both the impugned penalties awarded to the Petitioner, are based on findings given by the Enquiry Officer in the two departmental enquiries. The Petitioner was given full opportunity to participate in the enquiry. Pertinently, no grievance has been raised before us regarding the procedure followed by the Enquiry Officer, and the only plea sought to be raised is that the Enquiry Report is based on conjectures and surmises. Once there is no infirmity in the procedure followed by the Enquiry Officer, and there is no dispute that the principles of natural justice were duly followed, it is not open for us to re-appreciate the evidence adduced in the enquiry. We find that in both the cases, the findings of the Enquiry Officers are based upon appreciation of evidence. It is not even pleaded by the Petitioner that it is a case of 'no evidence'. In such circumstances, we see no reason to interfere with the conclusion arrived at by the Enquiry Officer and the Disciplinary Authority.

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19. The Supreme Court has, time and again, held that the power of judicial review in departmental proceedings is extremely limited and the Court should not act as an Appellate Authority. Once a domestic Tribunal has come to a particular conclusion, it is not open for the Court to re-appreciate the evidence or to substitute its own view for that of the domestic Tribunal. The Supreme Court in ***B.C. Chaturvedi vs. Union of India***, (1995) 6 SCC 749, while dealing with the scope of judicial review in departmental proceedings held in Paras 12 and 18 of its decision as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules

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prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It would also be relevant to refer to the decision of the Supreme Court in the case of **Karnataka SRTC vs. A.T. Mane**, (2005) 3 SCC 254 wherein the Supreme Court in Para 8 and 9 held as under:-

"8. This Court in the case of State of Haryana and Anr. vs. Rattan Singh which is also a case arising out of non issuance of ticket by a conductor held thus:-

"In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials

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which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence -- not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case, evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but the tribunal to assess the evidence of the conductor."

"9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to

reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy vs. Karnataka SRTC."

In these circumstances, we do not find that any case is made out for interfering with the findings of the Enquiry Officer holding the Petitioner guilty of the charges in both the cases.

20. We have also considered the submission of the learned counsel for the Petitioner that the two penalties awarded to the Petitioner are harsh and disproportionate. In the facts of the case, where the Petitioner-a bus conductor, has been found indulging in hurling abuses, threatening and assaulting his superior officers in the Bus Depot, we are unable to accept the submission that any of the two penalties are excessively harsh or disproportionate. We find that despite his behaviour being found to be unacceptable, the Petitioner was continued in service till his superannuation and he continues to draw pension. When the effect of the penalties-of the kind imposed upon the Petitioner, is assessed cumulatively-spread over several years, obviously it would appear to be substantial. But that is no ground to interfere with it since, when they were inflicted, they were justified and reasonable. Thus, we see no reason to interfere with the penalties awarded to the Petitioner.

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21. In these circumstances, we find no infirmity in the orders passed by the Tribunal. Both the writ petitions are dismissed with no order as to costs.


REKHA PALLI, J

VIPIN SANGHI, J

SEPTEMBER 25, 2017

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