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

+ LPA 243/2016

DELHI TRANSPORT CORPORATION Appellant

Through: Mr. Sarfaraz Khan & Mr. Ataur Rahman,
Advocates.

versus

SHISH PAL SINGH Respondent

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **20.09.2016**

Delhi Transport Corporation by this intra-Court appeal impugns the order dated 23.12.2015 whereby the W.P. (C) No.6414/2004 filed by the appellant-Delhi Transport Corporation has been dismissed.

2. The appellant-Corporation had filed an application being O.P. No.313/1994 under Section 33 (2) (b) of the Industrial Disputes Act, 1947 ('Act' for short) for approval of the order of removal of the respondent-Shish Pal Singh dated 30.9.1994.

3. The appellant- Corporation and the respondent had filed evidence by way of affidavits. After considering the evidence led by the parties, the Tribunal, vide order dated 7.2.2003, had held as under:-

"3. On the pleading of parties, following preliminary issue was framed on 18.7.95:

“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?”

4. *The onus to prove the issue is on the applicant. To prove the issue applicant produced AW-1 Shri Qamar Alam who filed his affidavit Ex. AW 1/A in which he deposed that at the relevant time he was disciplinary authority. On the basis of report he issued the charge sheet. The report is Ex. AW 1/1 and charge sheet is Ex. AW 1/2. Workman submitted reply but was found not satisfactory, the then disciplinary authority Shri M.A. Khan entrusted the domestic enquiry vide order dated Ex. AW 1/3. Shri A.S. Bains conducted the enquiry and he is no more in the world. He proved the enquiry report as Ex. AW 1/4. He was cross examined at length. During his cross examination he admitted that he was not present at the time of enquiry. He admitted that copy of statement of passenger was not supplied to respondent. He further admitted that statement was not recorded on the back of the challan. He also admitted that the passenger did not participated in the enquiry.*
5. *On the other hand respondent entered into the witness box and filed affidavit Ex. RW 1/A and further relied upon the documents Ex. RW 1/1 to Ex. RW 1/3. In his affidavit he deposed that list of witnesses was not supplied to him. The enquiry conducted is violative of instructions Ex. RW 1/1. On 20.6.94 he asked for certain documents but documents were not supplied. He was not given the assistance of co-worker during enquiry as per circular dated 12.2.73, Ex. RW 1/2. The passengers were neither examined in the enquiry nor the address given by them inspite of repeated requests*

as laid down in circular dated 13.10.65, Ex. RW 1/3.

6. *The question raised by respondent could not be satisfied by AW-1 as it relates to enquiry proceedings. Therefore, keeping in view the admission made by AW-1 and assertion made by RW-1, enquiry proceedings are hereby held to be vitiated and report is hereby held to be perverse. Issue is decided against the applicant.”*

4. Thereafter, the appellant-Corporation was given an opportunity to lead evidence and prove the misconduct as alleged. As is apparent from the order dated 3.6.2003, the appellant-Corporation did not avail of the said opportunity and merely relied upon the statement of Qamar Alam, AW-1, who was the disciplinary authority. Qamar Alam testified that he had no personal knowledge of the allegations raised by the respondent. No other witness was produced.

5. The counsel for the appellant-Corporation has submitted that the order dated 7.2.2003 holding the enquiry proceedings were not in accordance with the principles of natural justice and stood vitiated, is contrary to law. He submits that the enquiry records produced before the Tribunal were to the contrary and have been ignored.

6. We are not inclined to accept the said contention of the appellant-Corporation. The affidavit of Mr. Qamar Alam has been placed on record and merely states that Mr. A.S. Bains had conducted the enquiry as per rules and principles of natural justice. The said A.S. Bains has expired. Reliance was placed upon the enquiry proceedings exhibit AW 1/3 and enquiry report exhibit AW 1/4. The respondent,

on the other hand, in his affidavit had specifically and categorically stated that he was not furnished with a copy of the preliminary investigation, the list of witnesses or the list of documents, as required by the DTC circular dated 28.5.1980. Further, on 20.6.1994, the respondent had asked for specific documents which too were not supplied.

7. The appellant-Corporation has failed to satisfy the Tribunal and the Single Judge that the enquiry records clearly demonstrate that the contentions of the respondent, as mentioned in his affidavit, were incorrect and false. No such attempt was made. The enquiry report produced before us by the appellant-Corporation would only establish that a copy of the report of one Karan Singh dated 8.1.1993 was furnished to the respondent along with the charge-sheet dated 3.2.1993.

8. The enquiry proceedings dated 16.4.1993 record that the respondent was asked to bring an assistant with him, but he did not avail of the said opportunity. The charge-sheet was read over to the respondent and he had denied the charges. Thereafter, the statements of witnesses were recorded. The evidence of witnesses was completed on 16.4.1993. The respondent had cross-examined the witnesses. The enquiry officer had thereafter repeatedly adjourned the matter for recording of evidence of passenger witnesses. The said witnesses did not appear. This fact was apprised and informed to the respondent as is recorded in the order dated 17.5.1993.

9. There is nothing in the enquiry report or the documents placed on record which would indicate that on or before 16.4.1993, the

documents relied upon by the appellant-Corporation other than the report of Karan Singh dated 8.1.1993, were furnished to the respondent. It is also not shown to us that the list of witnesses was furnished and given to the respondent before the evidence was recorded on 16.4.1993. The request dated 20.6.1994 made by the respondent for a copy of the documents was met with no response by the appellant-Corporation. It is pertinent to note that the order of removal was passed subsequently on 30.9.1994.

10. In these circumstances, we do not think that the Industrial Tribunal, while examining and deciding the application under Section 33 (2) (b), had exceeded or acted beyond their jurisdiction.

11. The present appeal has no merit and is accordingly dismissed. No order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

SEPTEMBER 20, 2016

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