

DTC Vs. Anant Ram

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SooperKanoon Citation : sooperkanoon.com/1178365

Court : Delhi

Decided On : Oct-16-2015

Judge : The Honourable Ms. Justice Sunita Gupta

Appeal No. : W.P.(C) No. 8472 of 2010 & CM No. 18019 of 2014

Appellant : DTC

Respondent : Anant Ram

Judgement :

1. The petitioner/Delhi Transport Corporation (hereinafter referred to as corporation') has preferred the present writ petition under Article 226 of the Constitution of India assailing the order dated 4th October, 2007 and Award dated 22nd May, 2010 passed by the Labour Court in ID No. 202/08/96. By the first order dated 4th October, 2007, the Labour Court decided the preliminary issue with regard to legality and validity of the domestic inquiry conducted by the petitioner in favour of the respondent and by the subsequent Award dated 22nd May, 2010, the reference made by the appropriate Government on 13th November, 1996, with regard to removal of respondent from service was answered in favour of the respondent by holding that the order of removal dated 20th January, 1995 suffers the principle of natural justice and the charges against the respondent/workman were not proved. As a result, respondent was directed to be reinstated in the same post with continuity of service and a sum of Rs.30,000/- was awarded as litigation expenses. However, no back wages were granted to the workman.

2. A charge sheet that was served upon the respondent in the domestic inquiry held against him and which led to his removal from service was as under:-

That on 17.02.93, while you were on duty on bus No. 9788 of route No. Shivaji Stadium NTPC your bus was intercepted by the checking staff at Dehra Ghal and on checking the alighting passengers it has found that a group of three passengers alighted from the bus without tickets from whom you had collected the due fare but you had not issued the tickets. That you refused to sign on the passengers statements. That your cash was checked and found short by Rupees 24.35p. That above act tantamount to misconduct within the meaning of para 15(b) (f) (h) and (m) of the standing orders governing the conduct of DTC employees. ?

3. A departmental inquiry followed since the respondent denied the charges against him. The inquiry officer made his report, finding the respondent guilty of all the charges levelled against him. On the basis of the inquiry report, the corporation passed the order of his removal from service on 20th January, 1995.

3.A. An industrial dispute was raised by the workman. The Govt. of NCT of Delhi referred the dispute vide order dated 13th November, 1996 with the following terms of reference:-

Whether the removal of Sh. Anant Ram is illegal and, if so, to what relief is he entitled and what directions are necessary in this respect? ?

4. Thereafter, the workman filed his claim stating therein that he was appointed as a conductor in the year 1982 and there was nothing adverse against him. A show cause notice dated 18th August, 1993 was issued to him on the basis of charge sheet dated 10th March, 1993. He refuted the allegations vide his reply. He also demanded certain documents which were supplied to him on 12th April, 1993. The inquiry was initiated against the workman and he was participating in the same but the High Court had stayed the inquiry proceedings against the conductors of the corporation and the workman was also covered under the same. After the vacation of the stay granted by the High Court, the workman was asked to reply the show cause notice dated 18th August, 1993. He requested for certain documents for submitting his reply but only few documents were supplied. The workman was

asked to file the reply within ten days. However, before the expiry of the said period, he was removed from the services w.e.f. 20th January, 1995. The appeals preferred by the workman before the General Manager did not meet any fruitful result.

5. The claim of the workman was contested by the management and it was alleged that the workman had taken fare from the passengers but did not issue the ticket. He was also found short of cash of Rs.24.35p during the checking of the bus. All the documents were supplied to the workman. The appeal filed by the workman was rejected after consideration and he was duly informed about the same.

6. On the pleadings of the parties, following issues were framed:-

(i) Whether the inquiry was not conducted in accordance with the principle of natural justice?

(ii) As per the terms of reference.

7. On inquiry issue, the workman examined himself, however, no evidence was led on behalf of the management. Labour Court vide impugned order dated 4th October, 2007 held that the inquiry was not conducted in a fair and proper manner. The first date of inquiry was 12th July, 1993 wherein the management's witness Babu Lal, TI gave his statement. He was duly cross-examined by the workman. The inquiry proceedings were adjourned for the next date, however, no next date was given. The proceedings were thereafter conducted on 26th July, 1993. On that date, the workman did not appear before the Inquiry Officer. The Inquiry Officer proceeded the workman *ex parte* and on the very same date, concluded the inquiry proceedings. No opportunity was given to the workman to bring his defence evidence or give concluding statement. No evidence was led by the management to prove that the workman was aware of the next date of inquiry proceedings. As such, full and fair opportunity was not granted to the workman to present himself before the inquiry officer.

8. On merits, management examined three witnesses. Workman did not lead rebuttal evidence. By the impugned award dated 22nd May, 2010, the Labour Court observed that the petitioner failed to prove the misconduct as the original un-punched tickets were not filed. The cash was found short by Rs.24.35 p. When the charge against the respondent was that he had collected the fare but did not issue tickets to three passengers then the cash should have been in excess. Moreover, there was violation of principle of natural justice as inquiry report has not been supplied by the petitioner to the respondent. Resultantly, the impugned award was passed in favour of the respondent.

9. Assailing the findings of the learned Labour Court, counsel for the petitioner submits that the respondent has nowhere raised the plea in its statement of claim that he was not given proper notice to appear in the inquiry proceedings on 26th July, 1993. As such, the impugned order of inquiry is liable to be set aside. Moreover, the photocopy of three un-punched tickets were duly proved by the witnesses of the petitioner, as such, the Tribunal misdirected itself by holding that once the original of the un-punched tickets were not filed, the misconduct is not proved. Further, as regards the fact that the cash was found to be short by Rs.24.35p, it was the duty of the respondent being the conductor of the public transport to give the exact details of the cash which was in his possession. Since he failed to discharge his public duty, he should be penalized with appropriate punishment. It was also urged that the Tribunal misdirected itself by holding that there is a violation of principle of natural justice in view of the fact that the inquiry report was not supplied to the respondent. It was submitted that it was never the case of the respondent that he has not been supplied with the inquiry report and was prejudiced in any such manner.

10. Lastly, it was submitted that the respondent has not worked with the petitioner since he was charge sheeted on 10th March, 1993. As such, his reinstatement after 21 years would not be advisable.

11. Counsel for the respondent, on the other hand, submitted that when the impugned award was challenged by the petitioner by filing the writ petition, it was dismissed in *limine* by a Single Judge of this Court by a detailed speaking order

dated 21st December, 2010. The petitioner, however, preferred intra court appeal bearing LPA No.184/2011. The matter was sent back, granting an opportunity to the management to argue the matter on merits. It is submitted that the impugned order does not suffer from any infirmity which calls for interference. Reliance was placed on *Rajbir Singh vs. DTC*, 201 (2013) DLT 279 where it was held as under:-

Mere statements of raiding party, in the absence of any other corroborative evidence, cannot be considered as same evidence. The petitioner was not challaned on the spot by the raiding party. Complaint book was not closed. No independent witness or other evidence produced in the enquiry apart from recording made of raiding party behind back of petitioner, no evidence to connect petitioner with alleged issuance of used tickets to passengers. The enquiry officer merely recorded his ipse dixit that charges are proved. The enquiry was also vitiated on account of non supply of documents sought by the petitioner. Therefore, impugned award is un-sustainable and set-aside ?.

12. It was further submitted that this is the second round of litigation. The respondent is out of employment since 20th January, 1995 and has not got the job inspite of the fact that the petitioner was approached several times and the respondent has not received any financial assistance of any kind from them till date.

13. The scope of the jurisdiction of this Court under Article 226 of the Constitution of India while examining the industrial award is limited. This court does not sit in appeal over the findings returned by the Domestic Inquiry Tribunal or Industrial Adjudicator. An award can be set aside only if it is based on no evidence or contrary to any substantive law or it is in violation of principles of natural justice as held in *Sadhu Ram v. Delhi Transport Corporation*, AIR 1984 SC 1967; *Harbans Lal v. Jag Mohan* (1985) 4 SCC 333; *Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.*, 1988 (Supp.) SCC 768; *Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.*, 1988 (Supp.) SCC 768 and *Sudhoo v. M/s Haji Lal Mohd. Biri Works and Ors.* 1990 Lab. I.C. 1538. Therefore, the issue which arises for consideration is whether in the facts and circumstances of the case, which were brought on record in the domestic

inquiry proceedings and Labour Court, it could be said that there was some evidence to hold the petitioner guilty of misconduct alleged against him.

14. First, coming to the order dated 4th October, 2007, vide which the Labour Court arrived at a conclusion that the inquiry was not in accordance with the principle of natural justice, it is undisputed that the first date of hearing was 12th July, 1993 wherein the management witness Babu Lal, TI gave his statement. He was cross-examined at length by the workman. The inquiry proceedings were adjourned for the next date. However, the inquiry proceedings dated 12th July, 1993, nowhere reflects that any next date was given. The proceedings were thereafter conducted on 26th July, 1993, however, on that date, the workman did not appear before the Inquiry Officer. As such, he was proceeded *ex parte*. On the same day, two more witnesses were examined and the proceedings were concluded. The respondent had stated that he was not aware of the adjourned date of inquiry i.e. 26th July, 1993 and also denied the suggestion that he was informed about the next date. Nothing has been placed on record by the petitioner to show that the workman was duly informed about the next date of hearing. MW1-Sh. M.L. Aggarwal admitted in his cross-examination that the inquiry officer did not post the inquiry to the next date after adjourning the case on 12th July, 1993. In the absence of placing any document on record to show that the respondent was made aware about the adjourned date of hearing, it cannot be said that the respondent deliberately did not appear on 26th July, 1993 which resulted in proceeding him *ex-parte*. On that date, not only statement of two more witnesses were recorded even the inquiry itself was concluded. No opportunity was given to the workman to bring his defence evidence or to give concluding statement.

15. It is by now well settled that it is essential that administrative authorities and Tribunals should accord fair and proper hearing to the parties sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. The principle of *audi alteram partem* is the basic principle of natural justice. This rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. In *Anil Kumar vs. Presiding Officer and Ors.*, AIR 1985 SC 1121, it was observed that a disciplinary inquiry is a *quasi-judicial* inquiry and should be held in accordance with

the principles of natural justice. The inquiry officer has a duty to act judicially and to apply his mind to the evidence.

16. In view of the foregoing, there is merit in the submission of the learned counsel for the respondent that the inquiry was vitiated since the same was not held in accordance with the principles of natural justice. No fault can be found with the findings of learned Labour Court in regard to this issue which warrants interference.

17. Coming to the impugned award, after the issue regarding validity of the inquiry was decided against the petitioner/management, the management examined three witnesses MW1-M.L. Aggarwal, MW2-Babu Lal and MW3-Jagdish Ram Mishra. MW1- M.L. Aggarwal was the disciplinary authority. On the basis of report of the inquiry officer and the report of the depot manager, proposing punishment of removal, he confirmed the same. As such, he was not a witness to the incident wherein allegations of misconduct against the respondent were levelled. In regard to the misconduct, the material witnesses were MW2-Babu Lal and MW3-Jagdish Ram Mishra. According to them, they were on checking duty and checked the bus of the workman and found that he did not issue tickets to the passenger after taking fare from them. The conductor admitted his guilt and surrendered unpunched tickets to them. The statements of the passengers were recorded. The same was not signed by the conductor. The challan was made and the report was submitted. According to them on checking cash, it was found short by Rs.24.35p. Except for the testimony of two members of the checking team, there is no independent evidence to corroborate their version. It was the case of the management that the statement of three passengers were recorded by Sh. Babu Lal, however, during his cross-examination in the inquiry proceedings, he admitted that he had recorded the statement of only one passenger and even his complete address was not noted. No explanation was given as to why the statements of the remaining two passengers were not recorded and why their complete addresses were not noted. As to who were those passengers, has remained a mystery since those passengers were not produced in the inquiry. No doubt in view of *State of Haryana and Another vs. Rattan Singh*, (1982) 1 LLJ 46, it is not necessary to produce the passengers. However, there should be some other independent

evidence to connect the workman with the alleged misconduct. Although it is alleged that three un-punched tickets were given by the respondent/workman, however, original un-punched tickets were never produced before the Court. Record reveals that an application was moved by the petitioner to lead secondary evidence in regard to various documents. While the management was permitted to lead secondary evidence regarding the checking report, challan, charge sheet, show cause notice, removal letter and past record but the prayer for proving the un-punched tickets by way of secondary evidence was declined. Therefore, the submission of learned counsel for the petitioner that the Labour Court misdirected itself in not considering the un-punched tickets which were duly proved by the witnesses of the petitioner is devoid of merits.

18. Not only that, as per the case of the petitioner, the respondent has collected due fare from three passengers but did not issue tickets to them and the cash was found to be short by Rs.24.35p. The submission of learned counsel for the petitioner that the onus was on the respondent to prove the exact details of the cash which was in his possession has no substance as MW2-Babulal and MW3-Jagdish Ram admitted in their cross-examination that the allegation against the conductor was non-issuance of ticket despite taking money, in these circumstances, the money available with the conductor should have been in excess than the tickets issued. In view of this admission by the management witnesses, it was rightly observed that shortage of cash also cast a suspicion on the management version.

19. Even if the passengers in question were not produced, the obligation of the petitioner to establish the charge through some independent evidence still remains. The mere statement of the raiding party in the absence of any other corroborative evidence cannot be considered as some evidence in terms of the judgment of the Supreme Court in *Rattan Singh*(supra). In this case, Hon'ble Supreme Court observed that the essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good.

20. Again in *Roop Singh Negi vs. Punjab National Bank and Ors.*, AIR 2008 SC (Supp) 921, Hon'ble Supreme Court observed:-

The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. ?

21. In the instant case, except for the statements of checking party, there is no other evidence to connect the respondent with the alleged misconduct of receiving money from the passengers without issuing the tickets.

22. Further, it was the case of the workman that during the course of inquiry proceedings, pursuant to the grant of stay by this Court restraining the corporation to continue its inquiry against similarly placed conductors of the corporation, the inquiry against the workman was also stayed. After the stay was vacated, vide memo dated 11th January, 1995, the workman was asked to reply to the show cause notice dated 18th August, 1993. Vide letter dated 16th January, 1995, he requested for certain documents to enable him to submit a reply to show cause notice. Few documents were supplied to him on 18th January, 1995 and he was informed that the reply can be submitted within ten days. However, without waiting for the reply, the services of the workman were dispensed with on 20th January, 1995 and he was removed from service. He preferred an appeal dated 26th February, 1995 to the General Manager of the petitioner/corporation but no response was received. Another appeal dated 11th July, 1995 against the punishment awarded to him was preferred then a non-speaking reply dated 29th August, 1995 was sent whereby his appeal was disposed of in a most illegal and unreasonable manner. It was further alleged that he was not supplied with the inquiry report. After perusing the evidence, the learned Labour Court came to the

conclusion that the workman was not supplied with the copy of the inquiry report which was also in violation of principle of natural justice. It cannot be disputed that serious prejudice would be caused to the workman if the inquiry report is not supplied to him.

23. This view was also expressed in *Union of India v. Mohd. Ramzan Khan*, (1991) 1 SCC 588 which was approved by the Constitution Bench in *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727. In *Ramzan Khan's* case at para 18, it was observed as follows:

Wherever there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.'

24. In *B. Karunakar*(supra), the Constitution Bench has clearly held that in order to impose punishment of removal on a delinquent employee, it is necessary to supply a copy of the inquiry report to him before such punishment is imposed by the disciplinary authority. The Constitution Bench on the issue of non-supply of inquiry report, observed as follows:

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a

fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it. ?

25. For all the aforesaid reasons, I am of the view that the impugned award does not fall in any of the categories referred above which warrants interference.

26. As regards the submission that the respondent was removed from service in the year 1995 and since then he has not worked with the department and, therefore, his reinstatement after 21 years would not be advisable, it is to be noted that the delay is not attributable to the respondent. The respondent was removed from the service w.e.f. 20th January, 1995. He challenged his termination by raising industrial dispute which was registered as ID No.202/08/1996. Initially the inquiry issue was decided against the petitioner vide order dated 14th October,

2007 and thereafter the impugned award was passed on 22nd May, 2010. The same was challenged by the management by filing the present writ petition. The writ petition was dismissed in *limine* by the Single Judge of this Court vide order dated 21st December 2010. The matter was sent back by the Division Bench of this Court in LPA 184/2011. That being so, for the delay in adjudication of the dispute the respondent cannot be held to be responsible.

27. In this context, it will be relevant to reproduce the observations of Hon'ble Supreme Court in *Deepali GunduSurwase vs. Kranti Junior Adhyapak Mahavidyalaya* (D.Ed.) and Ors. (2013) 10 SCC 324 where it was held as under:-

33(vi). In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken a long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. ?

28. Although aforesaid observations were in the context of entitlement of the workman to backwages but the same applies with full force to the case in hand.

29. That being so, it cannot be said that due to lapse of substantial period, the respondent should be deprived of the fruits of the award.

30. Under the circumstances, the writ petition is devoid of merit and the same is accordingly dismissed. Pending application, if any, also stands disposed of.