

Dtc Vs. Rattan Lal

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Court : Delhi

Decided On : Nov-25-2014

Judge : Suresh Kait

Appellant : Dtc

Respondent : Rattan Lal

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: November 25, 2014 + W.P.(C) No.3635/2011 DTC Represented by: Petitioner Mr.Sarfaraz Khan, Advocate. Versus RATTAN LAL Represented by: Respondent Mr.G.S.Charya, Advocate. CORAM: HONBLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. The present petition is directed against the award dated 20.08.2010 passed by the learned Labour Court in ID No.347/2004, whereby while setting aside the order of dismissal, the learned Tribunal awarded penalty of stoppage of two increments with cumulative effect and the workman was reinstated with continuity of service, but without back wages.

2. As per the statement of claim filed by the respondent/workman, it is stated that he had been working with the petitioner Management on the post of Conductor and never gave a chance to complaint. The Management was satisfied with his work. During the period from 30.01.2003 to 10.07.2003, his wife was ill and he

could not resume his duty, however, he intimated the petitioner Management and requested to grant leave.

3. On 11.07.2003, he resumed his duty after his wife had recovered from illness along with her medical certificate. However, the petitioner Management issued the chargesheet to which he replied but without considering his reply, the petitioner Management initiated a departmental inquiry without following the principles of natural justice and passed an order dated 05.04.2004, whereby he was removed from service under Section 15(2)(vi) of D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952 read with Section 4(e) of the Delhi Road Transport Laws (Amendment) Act, 1971. It is further stated that the inquiry was conducted without giving him an opportunity to defend his case. Moreover, the punishment awarded was disproportionate to the alleged misconduct committed.

4. In the written statement, the petitioner Management had taken various pleas. It is stated that the workman remained unauthorisedly absent and thereby he committed a serious misconduct. Accordingly, a report was called and pursuant thereto charge sheet was issued to the respondent/workman. Since his reply was not satisfactory, an inquiry was initiated against him. He was given full opportunity to defend his case and accordingly, the workman fully participated in the inquiry proceedings. He was also offered opportunity to take help of coworkman, but he refused. After conclusion of the inquiry, the workman was removed from the service of the petitioner Management. However, before passing the order of removal from service, a show cause notice was issued to the workman, which was duly replied.

5. On the pleadings of the parties, following issues were framed by the learned Tribunal:- 6. I. Whether the Enquiry was conducted as per the Principles of Natural Justice?. II. As per terms of Reference. III Relief.

Mr.Sarfaraz Khan, learned counsel appearing on behalf of the petitioner Management submitted that the charge sheet dated 28.05.2003 for aforementioned misconduct with an explanation as to why departmental enquiry should not be initiated against him under the Road Transport Amendment Act, 1971 read with Section 15(2) of the Delhi Road Transport Corporation Terms &

Conditions of Appointment & Services Act, 1952, on the following grounds:- 7.

1. That since 30.01.2003 you have not been attending your duties and absenting yourself unauthorizedly which shows your negligence in your duties.
2. Your above conduct shows disregard to the terms laid down by D.T.C.

Learned counsel for the petitioner/Management further submitted that vide order dated 21.08.2003, a revised charge sheet was issued on the following grounds:

1. That you have absented yourself from duty unauthorizedly from 30.1.2003 to 10.7.2003, which shows negligence towards duty on your part. The applications sent by you giving information have been rejected since they were not received within time period, details whereof are as under:
Letters requesting for leave Information received in the Office Dated 21.2.03 to 6.3.03 6.3.2003 Dated 7.3.03 to 12.3.03 12.3.2003 Dated 7.5.03 to 11.5.03 25.5.2003
2. That apart from the above since 11.7.03 you have not reported for your duties and moved an application on 10.7.03 stating that due to the illness of your wife, you could not attend the duties from 30.1.03 to 08.7.03 which is not acceptable since for the illness of your wife, you must have sent leave applications to this office from time to time, you have failed to do so.

3. From your aforesaid conduct, it is clear that you have absented yourself unauthorizedly from duty from 30.1.03 to 10.7.03. This shows that you have no intention in doing the job of the Corporation sincerely. Your aforesaid conduct comes within the purview of stable orders at Page 19 (a, f, h and m) of D.T.C. which is equivalent to misconduct.

8. Further submitted that the respondent remained unauthorizedly absent from duty for 120 days. Vide order dated 13.08.2010, the learned Tribunal upheld the enquiry by observing that broad principles of natural justice have been followed by the petitioner Management while conducting the departmental enquiry as the respondent/workman fully participated in the enquiry proceedings, and got all the documents pertaining to the charge.

9. Mr.Sarfaraz Khan, submitted that the petitioner Management has not sanctioned the leave of the respondent/workman.

10. To support his submissions, he has relied upon a case of Delhi Transport Corporation Vs. Sardar Singh, AIR 2004 SC4161 wherein the Apex Court held as under:

7. In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the concerned employee. The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Order read as follows: "4. Absence without permission:(i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission. (ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the Organisation.

19. General Provisions-Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as mis-conduct: (a)..... (h) Habitual negligence of duties and lack of interest in the Authority's work."

8. Clause 15 of the Regulations so far as relevant reads as follows: "2. Discipline-The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:(i)..... (vi) Removal from the service of the Delhi Road Transport Authority. (vii) Dismissal from the service of the Delhi Road Transport Authority.

9. When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

Learned counsel submitted that in view of the aforementioned dictum of the Apex Court, the petitioner Management has rightly dismissed the respondent/workman, which has been confirmed by the learned Tribunal vide its order dated 13.08.2010.

11. On the other hand, Mr. G.S. Charya, learned counsel appearing on behalf of the respondent/workman while refuting the submissions made by learned counsel for the petitioner Management, has relied upon an office order issued by the Joint Manager Transport on 08.05.1968, whereby the uniformity in imposition of penalties on the employees for misconduct and other irregularities have been categorized, viz., major and minor. For having absent from duty without intimation or prior permission of competent officer and leaving station without permission, stoppage of increment with or without cumulative effect has been provided. As per charge sheet Ex. MW1/2, the respondent/workman was charged for remaining unauthorizedly absent from 30.01.2003 to 10.07.2003. The petitioner Management have detailed the unauthorized absence of the respondent in Ex.MW1/2, which establishes that the workman remained unauthorizedly absent for the above mentioned period. In the charge sheet, dates of receiving leave applications, i.e., 06.03.2013, 12.03.2013 and 25.05.2013 have also been mentioned, which

establish that the respondent/workman applied for the leave, however, belatedly.

12. Learned counsel submitted that the respondent had to take leave during this period as his wife was sick. To substantiate this fact, the respondent/workman placed on record the medical papers and certificate pertaining to the treatment of his wife, which have been exhibited as Ex. WW1/2 and Ex. WW1/3. The aforesaid documents establish that wife of the respondent/workman was under treatment for Neurosis with depression.

13. I have heard the learned counsel for the parties.

14. Admittedly, the respondent/workman remained unauthorizedly absent from duty with effect from 30.01.2003 to 10.07.2003 for which he submitted leave applications on belated dates, i.e., 06.03.2003, 12.03.2003 and 25.05.2003. The explanation given by the respondent/workman during the course of enquiry was that he remained absent due to ill health of his wife, who was suffering from neurosis with depression. Thus, his misconduct as per office order dated 08.04.1968 does not call for major penalty of dismissal.

15. It is trite that the learned Tribunal has power under Section 11A of the Industrial Disputes Act, 1948 to reduce the punishment after considering the facts and circumstances of the case.

16. In the case of *Krushnakant B. Parmar Vs. Union of India & Anr.* (2012) 3 SCC178, the Apex Court held as under:

16. In the case of Appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behavior was unbecoming of a Government servant. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful. Absence from duty without any application or prior permission may amount to

unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct. xxxx xxxx xxxx 21. In the present case the Inquiry Officer on appreciation of evidence though held that the Appellant was unauthorisedly absent from duty but failed to hold the absence is willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the Appellant guilty.

17. Moreover, this Court in case of Vijay Singh Vs. The Management of DTC, bearing LPA No.499/2009 held as under:

5. We find that the Labour Court in para 18 of the Award accepted the case of the workman that he had adduced a genuine reason for his absence on account of the abnormal behaviour of his minor daughter. The observations of the Labour Court in para 18 read as under:

18. From the terms of reference, I am only to decide the legality of removal. Considering the spirit of section 11 A of the I. D. Act, this court cannot interfere with the wisdom of the disciplinary authority as regards the imposition of penalty. The record shows that the workman had consistently assigned the reason for his absence due to the abnormal behaviour of his minor daughter. Even in the enquiry he had requested the enquiry authority to appreciate his predicament. For the show cause notice also, the same prayer was made expressing his willingness to work. While passing the order of removal dated 28.04.1992, the disciplinary authority noted that the past record was considered. In view of the past record, no leniency was shown. As per the settled position of law the disciplinary has to state the supporting reasons as held in Roop Singh Negi Vs. Punjab National Bank, 2009 LLR252 While giving the reasons, the disciplinary authority has never touched the ground urged by the workman for his absence. The past record is for

the incidents that once the glass was found broken and that he was on leave without pay once misbehaved with the passengers, refused to switch on the light inside the bus. He was also once punished for the same reason of availing excessive leave.

6. Having come to the above conclusion, the Labour Court nevertheless felt constrained to uphold the removal of the Appellant and only granted a limited relief. We are unable to appreciate why the Labour Court did not hold the removal of the workman to be a punishment disproportionate with his alleged misconduct.

7. We find that the reference made by the learned Single Judge to the decision of the Supreme Court in *Delhi Transport Corporation v. Sardar Singh* AIR 2004 SC4161 to be misplaced. Para 6 of the judgment in *Sardar Singh* shows that the Supreme Court was dealing with a batch of appeals in which the number of days of absence in different cases alone was noticed. Those cases were ultimately remanded for a fresh consideration. Every case would have to be decided on its own peculiar facts. There is nothing in *Sardar Singh* to indicate that any of these cases involved absence on account of the abnormal behaviour of the minor daughter of the employee, which is the case here.

8. The learned counsel for the DTC submitted that the Appellant had not made a representation to this effect before the disciplinary authority and, therefore, the order of removal could not be held to be bad for that reason.

9. We find that the order dated 28th March 1992 of the disciplinary authority is a cryptic one. It neither refers to any past misconduct of a similar nature nor the reason given by the Appellant for his absence during the period in question. The order dated 28th March 1992 passed by the disciplinary authority suffers from non-application of mind. In the circumstances the punishment of removal from service awarded to the Appellant is, in our view, unsustainable in law.

18. In the above noted case, the workman was served with a charge sheet dated 15.01.1992 for unauthorised absence from duty for a period of 102 days during the period from 01.01.1991 to 31.12.1991. In the domestic inquiry, he was found guilty of the said charge. The Labour Court held that the inquiry conducted by the DTC

was valid. Accordingly, the punishment of removal from service was set aside and the petitioner was directed to reinstate the respondent/workman in service with continuity of service without back wages.

19. As per office order dated 08.05.1968 issued by the Joint Manager(Transport), uniformity in imposition of penalties on employees for misconduct and other irregularities have been categorised; viz. Major and minor. For having absented from duty without intimation or prior permission of competent officer and leaving station without permission; penalty of stoppage of increment with or without cumulative effect has been provided.

20. Keeping in view the above discussion and the settled position of law, I find no discrepancy in the award dated 20.08.2010, whereby the learned Tribunal set aside the order of dismissal dated 05.04.2004 passed by the petitioner Management and awarded penalty of stoppage of two increments with cumulative effect while granting reinstatement with continuity of service but without back wages in favour of the respondent/workman.

21. Accordingly, the present petition is dismissed with no order as to costs.
SURESH KAIT (JUDGE) NOVEMBER25 2014 sb/RS

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