

Prem Chand Vs. D.T.C. and ors.

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Court : Delhi

Decided On : Feb-10-1995

Reported in : 59(1995)DLT502

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Constitution of India](#) - Article 226; Delhi Transport Corporation Act, 1950 - Sections 12(1)

Appeal No. : Civil Writ Appeal No. 244 of 1994

Appellant : Prem Chand

Respondent : D.T.C. and ors.

Advocate for Pet/Ap. : Jagdev Singh and; T. Sridharan, Advs

Judgement :

S.D. Pandit, J.

(1) Prem Chand joined the service of the respondent- corporation as a Conductor on 22.6.198. On 12.3.1992, the Checking Party found hi in in possession of excess cash as well as re-selling the used tickets. Consequently, a departmental enquiry was held against him and on the charge against him being found proved, he had been dismissed vide order dated 6.7.1992. Thereafter, he had preferred appeal before the Chairman-cum-Managing Director, but the same has been

dismissed and, therefore, he has filed the present petition.

(2) It is contended by the petitioner that the said order of dismissal is contrary to the Office Order No. 1 issued vide Circular No. ADMI-3(18)/65 dated 3.1.1966. He has also urged that the punishment awarded to him is also grossly excessive and harsh one. According to him, the Enquiry Officer was also not justified in holding that the charge against him was proved. therefore, in the circumstances, he has come before this Court for quashing the order of his dismissal.

(3) The contention raised on behalf of the petitioner is that we should go through the evidence recorded by the Enquiry Officer and find out whether the Enquiry Officer was justified in upholding the charges framed against him, having been proved. Petitioner must remember that it is not his case that there was no evidence against him but he wants to contend that the said evidence is not sufficient and the evidence ought not to have been accepted by the Enquiry Officer but it must be remembered that the High Court is not in a proceeding under Article 226 of the [Constitution of India](#), a Court of appeal which will reappreciate the evidence and on reappreciation of evidence evaluate the decision of the departmental enquiry against an employee. The Court is to only determine whether the enquiry is held by the authority competent in that behalf and is in accordance with the procedure prescribed in that behalf and whether the rules of natural justice have not been violated. A finding cannot be characterised as perverse or supported by any relevant material, if it is a reasonable inference from the proved facts. The Enquiry Officer has accepted the evidence of the officers of the Checking Party. The learned Advocate for the petitioner is not in a position to show that the said Enquiry Officer was not a Competent Authority to hold an enquiry. It is not also his contention that the finding is perverse. therefore, in the circumstances, we cannot have reappreciation of the evidence by acting as an Appellate Court. therefore, the contention of the petitioner that we should consider the evidence and record a finding that the Enquiry Officer was not justified in holding that the charge against him was proved, is not tenable in law.

(4) It is the contention of the petitioner that the punishment awarded to him is contrary to the Circular issued on 3.1.1966 and he has quoted the part of the said

circular in his writ petition in support of his submission, in para 3 of the writ petition, which reads as under :-

'IN case of commission of irregularities involving cheating for the first time the Enquiry Officer should take corrective action by sending for the employee personally cautioning him to avoid the recurrence of such a nature in future.'

It may be remembered that the charge against the present petitioner was that he was found in excess amount and he was also found in possession of used and punched tickets which were possessed by him for reselling and that the charge has been held to have been proved against him. It cannot be said that the charge against him was very trivial. The said circular, on which the petitioner has put reliance, mentions in its concluding paragraph as under :

'ALTHOUGH each case of cheating on the part of the Conductors will be decided on its merits, the above procedure is being laid down as a general policy to be followed as guiding principle while dealing with the cases of aforesaid nature but it will be at the discretion of Enquiry Officer to impose a severe punishment even in the first or second case provided the Enquiry Officer is convinced and the evidence justified that the case involved deliberate cheating on the part of the accused-employee by non-issue of tickets or issue of tickets of lesser denomination after having collected the fare. The attention of employees should also be drawn to para 12 of the Executive Instructions laying down the duties of conductors for strict compliance.'

(5) If the above portion of the said circular is taken into consideration along with the charge of present petitioner, then the contention raised on his behalf that he ought to have been given the opportunity to make improvements without taking any action of dismissal against him could not be said to be proper and appropriate. We have to also observe here that the petitioners have got the efficacious remedy to approach the Labour Court as he is a worker. The question raised by him could be appropriately urged before is Labour Court and he is not at all justified in avoiding the efficacious remedy and rushing to this Court for exercising the writ jurisdiction. thereforee, we are not making any observation as to whether the order of punishment awarded against him was justified or not justified. We are only

observing that in the circumstances of the case, we do not think that this is a proper case for exercising jurisdiction under Article 226 of the [Constitution of India](#).

(6) The learned Advocate for the petitioner has contended that the order of dismissal passed against the present petitioner by the Depot Manager is passed by the person, not competent to pass such an order, but there is no foundation for the said contention in the petition itself. In the petition, the petitioner has nowhere taken a ground that the Depot Manager was not a Competent Authority to take action against him. Now, apart from this, it may be said that the said contention has no force in view of the fact that the Delhi Transport Corporation has issued resolutions bearing No. 319 dated 2.3.1974 and Resolution No. 71 dated 28.4.1989 by exercising the powers under section 12(1)(c) of the Delhi Transport Corporation Act, 1950 and by the said resolutions, the Depot Manager has been empowered to take disciplinary action against the conductors/drivers including the action of dismissal and termination. This position is made quite clear by the Division Bench of this Court in the case of Raghunandan Sharma v. Delhi Transport Corporation & Anr. [reported in : 54(1994)DLT370].

(7) thereforee, in view of the said decision, we are unable to accept the contention of the learned Advocate for the petitioner that the Depot Manager was not a Competent Authority to pass the order of dismissal against the petitioner. Thus, we hold that the present petition deserves to be dismissed and we dismiss the same but in the circumstances of the case, we leave the parties to bear their respective costs.

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