

D.T.C. Vs. Anil Kumar (Ex-driver)

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Court : Delhi

Decided On : May-11-2012

Judge : P.K. Bhasin

Appeal No. : W.P. (C) 7634 of 2005

Appellant : D.T.C.

Respondent : Anil Kumar (Ex-driver)

Judgement :

P.K. BHASIN, J.

1. By way of this writ petition the petitioner, Delhi Transport Corporation has challenged the Award dated 03-02-04 of the Industrial Tribunal No. 1, Delhi in ID No. 152/01 whereby the respondent - workman, who was employed as Driver with DTC, had been ordered to be reinstated in service with full back wages and continuity of service after holding the punishment of his removal from service for availing excessive leave to be illegal.

2. The respondent - workman was charge-sheeted for unauthorized absence from duty for 147 days and after a departmental enquiry he was ordered to be removed from service by the management of DTC vide order dated 22nd September, 1992. The respondent-workman felt aggrieved with the punishment of removal from service awarded to him and, therefore, he raised an industrial dispute by approaching the labour authorities which, in turn, made a Reference to the

Industrial Tribunal vide Reference dated 30th January, 2001 with the following term of Reference:

"Whether the punishment imposed upon Sh. Anil Kumar s/o Sh. Ranarsi Dass by the management vide their orders dt. 22.9.1992 is illegal and/or unjustified and if so, to what consequential benefits in terms of existing leave/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"

3. Before the Industrial Tribunal the respondent - workman filed his statement of claim in which he claimed that he had been illegally removed from service. The petitioner - management contested the respondent's claim on the ground that he had been rightly removed from service after holding a proper enquiry.

4. The following issues were framed by the Industrial Tribunal for trial:

"1. Whether the enquiry held was no fair and proper and valid and if not, its effect.

2. As per the term of the reference."

5. After examining the evidence adduced during the trial the Industrial Tribunal vide its impugned Award came to the conclusion that the enquiry held against the respondent - workman was vitiated as there was violation of principles of natural justice in the conduct of the enquiry. Relevant findings of the Industrial Tribunal for vitiating the enquiry was to be found in the para nos. 19 to 20 of the impugned Award which are re-produced below:

"19. The enquiry officer in his report has simply reproduced the statement made by the department witness as well as the statement made by the workman, which was to the same effect as was his reply to the charge sheet and after further observing that the workman had submitted medical certificates of his wife for receiving treatment at Lok Narayan Jai Prakash Hospital for March 1990 to December 1990 and May 1991 to June 1991 and that the workman had stated that there is nobody except his wife and himself to look after the children..... One cannot over look the fact that being admitted in Hospital cannot be the only ground for a person to remain on leave. The enquiry officer had rather upheld the

contention of the workman that there is nobody to look after the children and naturally his wife is ill for long periods and is receiving treatment. Then there are domestic problems and it cannot be said that the workman, availed the leave for no reasons, showing lack of interest in the duties of the corporation. Even the findings of the enquiry officer are not to the effect that the conduct of the workman show that he has lack of interest in the duties of corporation..... Rather the enquiry officer had taken into consideration the difficulties faced by the workman and have appreciated them and as such, he could not even have given a finding that the workman was guilty of showing lack of interest in the duties of the corporation.

20. So, the findings of the enquiry officer are not against the workman and there is rather no finding and the charges have not been answered. The enquiry is liable to be set aside on this very ground.”

6. Feeling aggrieved the petitioner - management filed the present writ petition challenging the correctness of the Award of the Industrial Tribunal. It was argued by learned counsel for the petitioner that the findings of the learned Industrial Tribunal to the effect that the enquiry conducted against the respondent - workman was vitiated are totally perverse and, therefore, cannot be sustained at all. It was submitted that the workman himself had admitted during the enquiry that he did not want the enquiry to go on as he has been admitting the allegation levelled against him and, therefore, there was no occasion for the Industrial Tribunal to come to the conclusion that enquiry was vitiated because of violation of principle of natural justice. It was further contended that the other finding to the effect that the charge of unauthorized absence levelled against the respondent - workman also had not been established is also equally perverse in view of the fact that the respondent - workman himself had not denied the charge of unauthorized absence from duty and that he had claimed that he had been submitting leave applications with medical certificates but he had not produced anything during the enquiry. In any event, simply by submitting leave applications along with medical certificates of his wife it could not be said that he had not committed any misconduct since as per the rules he was supposed to seek leave in advance and only in case of his own sickness that he could apply for leave but that too within reasonable period by

submitting leave application and medical certificate which is not the case of the respondent - workman here. Learned counsel also submitted that this writ petition deserves to be allowed and impugned order of the Industrial Tribunal is ordered to be set aside.

7. When learned counsel for the petitioner was asked as to what was the fate of its application which it had filed under Section 33(2)(b) of the Industrial Disputes Act seeking approval of its action in ordering removal of the respondent from its service and which approval application at one stage had been rejected but this Court had in the writ petition of the petitioner remanded back the matter. Further learned counsel for the petitioner as well as the respondent did not inform the Court anything about the fate of that matter after order of this Court.

8. Learned counsel for the respondent - workman, on the other hand, supported the impugned Award of the Industrial Tribunal and contended that there is no infirmity whatsoever or jurisdictional error committed by Industrial Tribunal justifying any interference by this Court.

9. As noticed already, the charge levelled against the respondent - workman was that he had remained absent from duty for 147 days without seeking prior leave. In this regard, it would be appropriate to notice the final conclusion of the Enquiry Officer who had conducted the enquiry against the respondent - workman. The concluding para of the enquiry report reads as under:

"I have perused the case file carefully and also read the statement of the delinquent employee. The employee has admitted in his statement that he has availed these excessive leave on account of illness of his wife. The employee has produced the medical certificates issued by the LNJP Hospital regarding the illness of his wife. As per the medical card, his wife remained under the treatment during the period from March, 1990 to December, 1990 and from May, 1991 to June, 1991. Besides the aforesaid there was none else to look after his wife and children and as such he has availed the aforesaid excessive leave.

Therefore, this case file is forwarded to the Depot Manager for further action and the delinquent employee is guilty of availing excessive leave."

10. This conclusion of the enquiry officer clearly shows that he had not held the respondent - workman guilty of remaining absent from duty unauthorizedly and for no good reason. That was the charge against him and not that he had taken excessive leave. Once the enquiry officer was satisfied that the delinquent employee had taken leave, though excessive, for the sickness of his wife and that medical documents had also been given by him the enquiry officer had no business to make the observation that the workman was guilty of availing excessive leave and also because that was not even the charge and the disciplinary authority also could not punish the workman for unauthorized absence without reversing or disagreeing with the enquiry officer. That was not done.

11. This writ petition is, thus, devoid of any merit and, therefore, is dismissed.

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