

Dtc Vs. Hanumant Kumar

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Court : Delhi

Decided On : Jan-17-2013

Judge : Vipin Sanghi

Appellant : Dtc

Respondent : Hanumant Kumar

Advocate for Def. : Mr. Avtar Singh

Advocate for Pet/Ap. : Mr. Sarfaraz Khan

Judgement :

11. * IN THE HIGH COURT OF DELHI AT NEW DELHI + Date of Decision:

17. 01.2013 % W.P.(C) 717/2011 & C.M. No. 1512/2011 DTC Through:
Petitioner Mr. Sarfaraz Khan, Advocate versus HANUMANT KUMAR Through:
Respondent Mr. Avtar Singh, Advocate CORAM: HON'BLE MR. JUSTICE VIPIN
SANGHI VIPIN SANGHI, J.

(ORAL) 1. The petitioner/DTC has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 28.10.2009 passed by the Labour Court holding that the inquiry conducted by the petitioner against the respondent/workman was not just fair and proper. The petitioner also assails the award dated 03.06.2010 passed by the Labour Court in ID No.155/2007 arising out of reference no.F-24(892)/06 Lab/2626-30 dated 01.10.2007 made by the appropriate government, which reads as follows: Whether the punishment of

removal from service awarded to Sh. Hanumant Kumar, S/o Brahma Nand, Driver Badge No.19511 by the management of DTC vide order dated 06.09.2004 is illegal and/or unjustified and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?

2. The respondent/workman claimed that he had been serving the petitioner as a driver since 1988. He was served with a charge sheet dated 06.05.2004 for unauthorised absence of 385 days between 27.02.2003 to 17.03.2004. The petitioner conducted an inquiry and the inquiry report found the respondent guilty of misconduct of unauthorised absence. Consequently, the respondent was removed from service with immediate effect under clause 15(2)(vi) of the DRTA (Conditions of Appointment and Service) Regulations, 1952 on 06.09.2004.

3. The Labour Court, firstly, held the inquiry conducted by the petitioner to be unfair and unjust vide impugned order dated 28.10.2009. I may note that in the inquiry proceedings, the respondent filed his affidavit (Exh. WW1/A) testifying that the leave application for the period between 09.02.2003 to 27.02.2003 was sanctioned by the Depot Manager, and that he was bedridden till 05.12.2003. Pertinently, there was no explanation for the absence for the period from 06.12.2003 onwards, even if the respondents case that he was bedridden till 05.12.2003 (for which there was no evidence placed on record) were to be accepted.

4. The Labour Court observes that during the cross examination of the respondent, he admitted having received the charge sheet and having replied to the same. He also admitted that he had signed the inquiry proceedings which were Exh. WW1/M1, and that no force or pressure had been used against him. He admitted to have participated in the inquiry proceedings. The inquiry proceedings were proved on record by the petitioners witness Ramesh Singh, MW-1 as having been conducted in accordance with the principles of natural justice by the Inquiry Officer Sh S. Jakob.

5. Learned counsel for the petitioner submits that inspite of the aforesaid background, the Labour Court sought to set aside the inquiry report on wholly

fallacious grounds. The reasoning of the Labour Court in its order dated 28.10.2009 reads as follows: Though the first sight of the inquiry proceedings revealed that the workman was given an opportunity to participate, the entire inquiry was concluded on 12.07.2004. It is noted that the workman had admitted his guilt. It is also noted that the workman had stated before the inquiry officer that recording of the evidence of management witness be dispensed with. There is a further noting that the defence evidence may be also dispensed with. After perusal of the file, I find that the inquiry if looked into with a clinical eye of law the findings are not sustainable for the following reasons: a) That the much relied admission during the inquiry is not believable in the absence of any witness to such a statement. b) The proceedings reveal that one Chanchal Grover (reporter) was present and that no signature of the said Chanchal Grover is obtained to confirm the admission of guilt by the workman. c) That no Labour Welfare Officer was asked to participate in the proceedings despite the rules of DTC providing for the same. d) No clear cut admission of guilt can be gathered from the record nor from the evidence led herein as the workman in the cross examination volunteered that he had signed on the asking of the clerk. e) That no presenting officer is appointed in this case which is an illegality as noted by our Hon'ble High Court in DTC vs. Maha Singh, W.P. No.2228/94 (DD 28.04.2005). For the aforesaid reasons, I am not satisfied to hold that the inquiry conducted by the management was just fair and proper.

6. Learned counsel points out that the industrial adjudicator disbelieved the admission of guilt with respect to absence made by the respondent despite the fact that, admittedly, he did not claim that he had not made the said admission or that the said admission was made under duress or coercion. He further submits that the industrial adjudicator gave a finding contrary to the record that Smt. Chanchal Grover, who was present, had not signed the inquiry proceedings. He has drawn the attention of the Court to the original inquiry proceedings, which clearly shows that Smt. Chanchal Grover appended her signature on the said proceedings on 12.07.2004, i.e., the date of inquiry itself.

7. Learned counsel for the petitioner further submits that the reason that no welfare officer was asked to participate in the proceedings is not good because the

respondent had himself refused, when offered to avail of any defence representative. He further submits that the admission made by the respondent was clear, and there is no basis to conclude that there is no clear cut admission of guilt made and recorded in the evidence led by the respondent, or in his cross examination. He further submits that it is not necessary that a presenting officer should have been appointed for the conduct of the inquiry. The same is merely a rule of prudence and not a mandatory direction, non-compliance of which would invalidate an inquiry. In this regard, reliance is placed on the judgment of this Court in Mahavir Singh Vs. DTC, 2007 (139) DLT 569. In this case, the workmen impugned the conduct of the departmental inquiry, inter alia, on the ground that no presenting officer had been appointed by the department, which vitiated the entire inquiry. Rejecting the submission, this Court observed that there is no rule that an inquiry cannot proceed without a Presenting Officer. The Court further observed: The witness can depose before an inquiry officer of their own, without the help of a presenting officer. There is no violation of principles of natural justice, if no presenting officer is appointed or present. If a request of allowing presenting officer or defence assistance is declined by the inquiry officer without just cause, a grievance can be made. The party who alleges violation of principles of natural justice has to show how his/her case got prejudiced by alleged violation. Petitioner has failed to show how non appointment of presenting officer prejudiced his case.

8. I may at this stage take note of the judgment of the Supreme Court in The Workmen Employed in B & C Mills, Madras vs. The Management of B & C Mills, Madras, (1970) 11 LLJ 2 SC :

1969. (1) UJ 494. wherein the workmen impugned the award of the Labour Court, whereby it had held that the Inquiry proceedings leading to dismissal against the delinquent employee were valid. In this case, a Senior Labour officer had been authorised to record the evidence and collect necessary materials. Also, no presenting officer had been appointed by the Management. The workmen, inter-alia, raised an objection that the Senior Labour Officer had acted as a Prosecutor in as much, as, he had very severely cross-examined the workman. Dismissing the said objection, the Supreme Court observed that, no doubt, there was no officer separately appointed for conducting the prosecution on the side of the

Management, but what the Labour Officer had done was to put questions to the witness and elicit answers and allow the worker to cross-examine those witnesses. Similarly, he had also taken the statements of the worker and asked for clarification from him wherever necessary. Therefore, the inquiry proceedings, as held by the labour Court, were completely fair and impartial.

9. The aforesaid view was followed by the Supreme Court again in *Mulchandani Electrical and Radio Industries Ltd. vs. The Workmen*, (1975) ILLJ 391

10. Similarly, the Karnataka High Court in *Bharat Electronics Ltd. vs. K. Kasi*, (1987) ILR NULL 366 (1987) IILLJ 20 Kant, took the view that there is no legal compulsion that the Presenting Officer should be appointed. It was observed that the mere fact that the presenting officer was not appointed is no ground to set aside the Inquiry. Commenting upon the role of the Inquiry Officer, it observed that it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines the defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. However, it is also well settled that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long as the delinquent employee is permitted to cross examine the witnesses after the Inquiry Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair.

11. The High Court of Kerala in *M. Rama Warriar & Ors. Vs. Coir Board*, ILR 198.(1) Kerala 596, and the Bombay High Court in *Sukhadeo Vishwanath Garaje v. Food Corporation of India*, (1989) 2 LLJ 27.Bom., have also taken a similar view. In *Sukhadeo Vishwanath Garaje* (supra), the Bombay High Court held as under:

13. Very often there is no separate management representative to conduct inquiry proceedings on behalf of the management and only the witnesses are sent to the Inquiry Officer to depose regarding the incident. In such cases, the questions to such witnesses are put by the Inquiry Officer. This procedure does not violate the principles of natural justice. If the Inquiry Officer examines the witnesses without the assistance of the management's representative, then it does not show that he

himself was a Prosecutor when the record shows that a bona fide inquiry was held. When the Inquiry Officer himself examined and questioned the witnesses, it is not objectionable so long as due opportunity is given to the delinquent to cross examine them. It is competent for the Inquiry Officer to put questions to the witnesses to ascertain the real incident." (emphasis supplied) 12. Before a Division Bench of the High Court of Bombay in *Municipal Corporation of Greater Bombay v. Vishnu Sakharam Pingle*, W.P.(C) No. 2554 of 1993 decided on June 27, 1996, one of the submissions was that the Inquiry Officer had acted more as a Prosecutor because he had cross examined the undertaking's witnesses. The Division Bench relying on the Judgment of the Supreme Court in *Workmen in Buckingham and Carnatic Mills, Madras* (supra) and *Mulchandani Electrical and Radio Industries Ltd.* (supra) held as follows: It may also be pointed out that there is no bar on an Inquiry Officer seeking clarification from witnesses as long as he permits the cross examination of witnesses from whom clarification has been sought. This proposition finds support in the Judgment of *Mulchandani Electrical and Radio Industries Ltd.* (supra). Similarly, the Supreme Court in the case of *Workmen in Buckingham and Carnatic Mills, Madras* (supra) has laid down that merely because in a domestic inquiry the management was not represented by any Officer separately did not prevent the Inquiry Officer from putting questions to the delinquent worker and the witnesses and such a conduct on the part of the Inquiry Officer would not vitiate the domestic inquiry. (emphasis supplied) 13. In view of the aforementioned observations of the Supreme Court as also the consistent view taken by the Various High Courts thereafter, the observations made in the case of *DTC vs. Maha Singh*, W.P.(C) No. 2228/2004 (wrongly written as W.P. (C) 2228/94 in the impugned award) decided on 28.04.2005, appear to be per incurium. The position that emerges from the aforesaid discussion is that the mere absence of a presenting officer representing the management does not vitiate the departmental proceedings. The Inquiry Officer is appointed by the Disciplinary Authority only to hold a fact finding inquiry in compliance of principles of natural justice, and to make a report on the basis of the said inquiry. He is not the Disciplinary Authority or the Punishing Authority.

14. The Inquiry Officer does not act as a judge. He merely conducts a fact finding inquiry at the instance of the Disciplinary Authority. It is for the Disciplinary

Authority to accept, or not to accept, the Inquiry Report made by the Inquiry Officer. It is the Disciplinary Authority who judges the conduct of the delinquent on the basis of the Inquiry Report - if he accepts the same.

15. So long as the delinquent has had opportunity to fairly deal with the evidence/materials produced by the management and to put forward his own evidence on record, there can be no valid grievance to the Inquiry Officer functioning without a Presenting Officer. The aforesaid position would obviously be different if the Disciplinary Authority also functions as the Inquiry Officer.

16. Learned counsel for the respondent really has no answer to the aforesaid. His only plea is of mercy considering that the respondent has expired leaving behind legal representatives.

17. A perusal of the inquiry proceedings leaves no manner of doubt that the same was held in full compliance of the principles of natural justice apart from the fact that inquiry officer Sh. Jakob, the respondent accused and Smt. Chanchal Grover were present. The respondent was asked whether he would like to take assistance from his colleague or welfare officer, to which he stated that he does not want any assistance and he would conduct his case on his own. His signatures are appended immediately after the aforesaid recording was made. Thereafter, the contents of the show cause notice were read over to the respondent and he was asked whether he accepts the allegations or not. He stated that he accepts the allegations of his own accord and without any pressure. He stated in his defence that he was suffering from some disease and due to this reason, he had to stay on leave. He also stated that he does not wish to record the statement of the complainant and that he does not wish to cross examine the complainant. Immediately after the aforesaid statement of the respondent, he again appended his signatures in token of his acknowledgment and signatures on record being correct. The inquiry officer then proceeded to record that since the respondent had accepted the allegations leveled against him on his own accord and without any pressure, the recording of the statement of the complainant was not considered necessary. He, accordingly, closed the proceedings observing that in case it is needed, in the interest of justice, the same could be restarted. The inquiry officer

appended his signature below the aforesaid recording and the respondent again signed the proceedings at the end appending his batch number and the date.

18. Each of the reasoning given by the industrial adjudicator to hold that the inquiry proceedings were bad is completely wrong and the impugned order dated 28.10.2009 borders on perversity. The respondent did not plead even in the statement of claim that the inquiry proceedings were initiated on account of his having admitted his guilt under duress, pressure or coercion. When the respondent himself had not set up any such case, I fail to appreciate how the industrial adjudicator held the inquiry to be bad.

19. Turning to the award made by the Labour Court on 03.06.2010, once again I find that the approach of the industrial adjudicator is completely skewed and he has sought to pick on hyper technicalities rather than to proceed on the substance of the charge against the respondent. Pertinently, there is no dispute with regard to the respondents absence from duty for the aforesaid period of 385 days between 27.02.2003 to 17.03.2004. There is also no dispute that the respondent did not comply with the rules for availing medical leave for the entire period as aforesaid. The medical certificates submitted by him, even if believed, pertained only to a part of the said period with large and vacant holes. The industrial adjudicator notes that the respondent had submitted medical certificates for the period between 09.02.2003 to 06.07.2003 and also for the period 17.08.2003 to 18.11.2003. There is no explanation for the respondents absence from 07.07.2003 to 16.08.2003 (about 40 days) and from 19.11.2003 to 17.03.2004 (about 118 days). It also appears that the medical certificates were those obtained from some private doctor. Despite taking note of the decision of the Supreme Court in DTC v. Sardar Singh, AIR 200.SC 4161, the industrial adjudicator disregarded the same.

20. Learned counsel for the petitioner has also drawn the attention of the Court to the judgment of this Court in DTC v. Mandal Lal, 2007 X AD (Del) 622, wherein it has been observed that conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorized. Burden is on the employee, who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials.

21. The respondent-workman having failed to do so and in view of the aforesaid, neither the impugned order dated 28.10.2009 nor the impugned award dated 03.06.2010 can be sustained, and they are hereby quashed, leaving the parties to bear their respective costs. VIPIN SANGHI, J JANUARY 17 2013 sr

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