

(2011) 05 DEL CK 0060

Delhi High Court

Case No: Regular Second Appeal No. 157 of 2007 and CM No. 7959 of 2007

Delhi Transport Corporation and
Another

APPELLANT

Vs

Shri. Yashpal Sharma

RESPONDENT

Date of Decision: May 2, 2011

Acts Referred:

- Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 - Regulation 15
- Industrial Disputes Act, 1947 - Section 33C
- Specific Relief Act, 1963 - Section 41

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: J.S. Bhasin and Rashmi Priya, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 25.01.2007 which had endorsed the order of the trial judge dated 14.07.2004 wherein the suspension order passed against the Plaintiff Sh. Yash Pal Sharma had been revoked. The punishment imposed upon him vide order of the disciplinary authority dated 27.08.1991 as also of the appellate body dated 27.07.1992 was held to be illegal and invalid; the Department/ Delhi Transport Corporation (DTC) had been directed to pay the salary dues of the Plaintiff treating him as if he had never been under suspension.

2. The Plaintiff Sh. Yash Pal Sharma was appointed as an Assistant Body Fitter in the Defendant corporation in November, 1981. He completed his period of probation satisfactorily. Defendant No. 1 was known as G.N.I.T; it was taken over after the enactment of the Delhi Road Transport Authority Act 1950 by the Defendant

corporation. The conditions of appointment and service of the Plaintiff were governed by the Regulations framed therein i.e. Delhi Road Transport Authority (Conditions of Appointment & Services) Regulations, 1952. The procedure for holding disciplinary proceedings was set out under Regulation 15. On 01.02.1990, Defendant No. 2 suspended the Plaintiff as also one Sh. Gurmeet Singh on the allegation that there was an alleged discrepancy in the actual weight and the stock as per ledger maintained by scrap yard in respect of unserviceable "Leaf" and Leaf Springs; tampering of records and vouchers were the additional allegation. It was alleged that the allegations were vague as no proper details and particulars about the allegations in question were given. Disciplinary proceedings took place for as long as 17 months. Charge sheet was issued only on 19.07.1991. Plaintiff submitted his report on 25.07.91; he asked for certain documents; documents were not furnished. Vide letter dated 06.08.91, the Plaintiff was informed that the Purchase Officer, Sh. B.B. Jain, had been appointed as an Enquiry Officer. The Plaintiff gave reply to the said letter vide reply dated 12.08.1991 stating that he had never refused to inspect the record and documents; unless the documents mentioned in his representation dated 26.07.91 were available on case file, it would be futile to inspect the file. Circular dated 28.05.80 was adverted to. However, no opportunity was granted to the Plaintiff. Enquiry was held by Sh. B.B. Jain on 12.08.91 and 16.08.91. In spite of representations of the Plaintiff, no documents were furnished to him. Memorandum dated 21.08.91 was sent to the Plaintiff to render explanation as to why the proposed punishment of the stoppage of the next due increments with cumulative effect be not imposed. Plaintiff replied vide his representation dated 22.08.91. Without recording proper reasons, punishment was imposed upon the Plaintiff; his appeal was rejected on 27.08.91 which was also again without any reason. Entire proceedings were illegal and void. They were violative of the rules of natural justice. Suit was filed.

3. Defendants contested the suit. In the written statement, objection was that the suit is barred u/s 41(h) of Specific Relief Act; it was pointed out that the discrepancies of the actual weight and the stock had been noted in the two lots weighted on 24.10.90, 25.10.90, 27.01.90, 29.01.90 and 30.01.90 which totals 1,38,940 kgs whereas the ledger shows a balance of 1,41,855 kgs.

4. On the pleadings of the parties, the following three issues were framed.

1. Whether any cause of action has accrued to the Plaintiff to file the present suit?
OPP

2. Whether Plaintiff is entitled to the relief as prayed for in the present suit? OPP

3. Relief.

5. Oral and documentary evidence was led.

6. The Plaintiff was able to prove that the acts of the Defendant were arbitrary and illegal. The findings of the enquiry officer were violative of natural justice. They were set aside. The suit of the Plaintiff was decreed.
7. In appeal, this was confirmed by the first appellate court.
8. This is second appeal. It had been admitted and on 29.05.2007, following substantial questions of law were formulated:
1. Whether the jurisdiction of the Civil Court is barred in view of Section 33C of the Industrial Disputes Act, 1947?
 2. Whether the principles of natural justice and specially the principle of audi alteram partem were not followed by the Enquiry Officer during the course of enquiry proceedings?
9. On behalf of the Appellant, it has been urged that the judgment of the trial court is illegal and arbitrary for the reason that what the Plaintiff was agitated about that he was covered under an industrial dispute; it was necessarily an "industrial dispute"; being an industrial dispute, it could have been raised only before the Industrial Tribunal; jurisdiction of the civil court was barred. The impugned judgment is a perversity and is liable to be set aside. Reliance has been placed upon the judgment reported in 1989 SCC 552 Jitender Nath Biswas v. M/s Empire of India and Ceylon Tea Co. and Anr. as also the second judgment of the Supreme Court reported in (2005) 12 SCC 152 Rajasthan State Road Transport Corporation and Ors. v. Lokesh Kumar Pareek to support this submission.
10. None has appeared for the Respondent.
11. The argument now urged before this Court was never a defence taken in the written statement. Written statement has been perused. There is not a whisper in the written statement that the present suit is not maintainable as being an industrial dispute it is outside the purview of the civil court. Even before the first appeal court, in the grounds of appeal there was no such specific averment; it was not averred that the Petitioner has raised an industrial dispute. This ground cannot now be taken in the second appellate court. A ground not urged in the two courts below cannot be permitted at the second appellate stage. This was held by the Apex Court in a judgment reported in [Santosh Hazari Vs. Purushottam Tiwai \(Dead\) by Lrs.](#), wherein it was held that a completely new point cannot be raised before the High Court for the first time; the question that is involved in the case must have its foundation in the pleadings.
12. There are two concurrent findings of fact against the Appellant. Both the two courts below have held that the order of the Enquiry Officer is liable to be set aside as the acts of the Defendant were arbitrary, illegal, unjust and against the principle of natural justice. The trial Judge whose finding was endorsed by the first appellate court had relied upon the proposition laid by the Supreme Court in [Kashinath](#)

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13. In a second appeal, findings of fact cannot be interfered until and unless there is perversity. The argument now urged was never raised before the trial court or before the first appellate court; it cannot be raised at the second appeal stage. Had this argument been urged, the Plaintiff would have been granted an opportunity to rebut/reply to the same.

14. No perversity has been pointed out. Both the two fact finding courts below have held that the enquiry was opposed to the principles of natural justice. Substantial questions of law are accordingly answered in favor of the Respondent and against the Appellant. There is no merit in the appeal. Appeal as also pending application are dismissed.