Delhi Transport Corporation Vs Smt. Birmati and Others

Court: Delhi High Court

Date of Decision: March 17, 2011

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Abhay N. Dass, for the Appellant; R.S. Tomar, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.
This appeal has impugned the judgment and decree dated 14.9.2004 which has reversed the finding of the trial judge.

Trial judge vide judgment and decree dated 21.2.1998 had dismissed the suit of the Plaintiff. The impugned had reversed it; claim stood decreed.

2. Plaintiff Onkar Singh was serving as a conductor with the Delhi Transport Corporation (hereinafter referred to as "the DTC"). He was

confirmed on 08.10.1980. On 13.9.1990 while on duty in bus No. 6316 operating on route No. 836 it was found that he had not issued tickets to

six persons; he was also found in possession of excess cash to the tune of Rs. 56.25. Report was prepared by the checking staff and submitted to

the Deport Manager. Charge sheet was framed against the Plaintiff. His explanation was called. The Plaintiff submitted his reply. Vider order dated

14.12.1990 notice was issued to the Plaintiff to show cause as to why his pay not be reduced to the initial stage. Reply has been submitted by the

Plaintiff on 15.1.1991. The impugned order dated 16.3.1991 was passed by the Depot Manager imposing penalty of reduction of his pay to the

first initial stage. Appeal filed before the Regional Manager was dismissed. Mercy petition filed before Chairman of the Defendant corporation also

met the same fate. Present suit was accordingly filed.

3. In the written statement, it was contended that the Plaintiff had admitted his guilt in reply to the charge sheet as also in his reply to the show

cause notice; separate enquiry was not required; the order of penalty dated 16.1.1991 reducing the pay of the Plaintiff to his initial back pay scale

till the date of his retirement was accordingly issued; it calls for no interference.

4. On the pleadings of the parties five issues were framed. Two witnesses were examined on behalf of the Plaintiff and two on behalf of the

Defendant.

5. Trial judge was of the view that since the Appellant had admitted his guilt in his reply to the charge sheet as also in his reply to the show cause

notice no enquiry was necessary; there being no violation of natural justice; suit of the Plaintiff was dismissed.

6. In appeal, this order of the trial judge was reserved. Suit of the Plaintiff stood decreed. The impugned judgment was of the view that a major

penalty had been imposed upon the Plaintiff whereby his pay had been reduced to his initial pay scale till the period of his retirement. This could not

have been done without giving him an opportunity of being heard. Suit was accordingly decreed in favour of the Plaintiff.

7. This is the judgment impugned before this second court by way second appeal. Although there is no formal order of admission, the following

substantial question of law was formulated on 18.5.2007:

Whether the Respondent was given reasonable opportunity of being heard by the Disciplinary Authority?

8. On behalf of the Appellant, it has been pointed out that the Plaintiff had admitted his guilt. Attention has been drawn to the charge sheet which

has been framed against the delinquent as also the charge. It is not disputed that the charge leveled against the Plaintiff is that on 13.9.1990 when

he was on duty in Bus No. 6316 the Checking Staff checked the bus at Mitrau and found six persons without ticket. On enquiry, it was informed

that the said passengers boarded the bus from Najafgarh to Rawta and paid Rs. 6/- to the conductor but the conduct did not issue the tickets to

them. Monetary loss accrued to the corporation.

9. Reply to this charge sheet was filed by the Plaintiff on 13.11.1990; the said reply reads as follows:

It is respectfully submitted that as per your charge sheet No. DD/AT/90/982 dt. 25.9.90 two charges are leveled and because of the over loaded

of the bus from Najafgarh to Mitrau turn, I could not make all the tickets as such I could not issue the tickets to those six persons though I had

taken the fare from all six passengers, because it is the second stand from Najafgarh and bus reaches within 10 minutes to Mitrau. As far as the

charge No. 2 regarding the excess money of Rs. 56.25 is concerned then it is my personal money which I have taken as changed money because

in the morning there remains a problem of change and the balance of one passenger had also remained with me which I had forgotten to return.

Therefore, I request you not to conduct any inquiry and don''t want to submit any explanation. My case may kindly be closed.

The words ""forgotten to return"" are not a part of the original hindi version; this is admitted by both the parties.

10. Thereafter show cause notice dated 14.12.1991 had also been issued to the Plaintiff asking him to show cause as to why his pay not be

reduced to initial pay scale till his retirement from the corporation.

11. Reply to this show cause notice was filed by the Plaintiff vide his communication dated 15.1.1991. It was stated that the Plaintiff is suffering

from monetary loss; his family is adversely affected; financial burden would not have been borne by him. Pardon was sought.

12. The vehement contention of the learned Counsel for the Appellant is that in the reply dated 13.11.1990 given by the Plaintiff he had made

categorical admission of his guilt and in fact he had sought a pardon in the subsequent communication dated 15.1.1991. In these circumstances, the

question of holding an enquiry would not arise. Impugned judgment holding otherwise is an illegality. There has been no violation of natural justice.

Learned Counsel for the Appellant has placed reliance upon a judgment of the Apex court reported in Central Bank of India Ltd. Vs. Karunamoy

Banerjee, to support his submission that where an admission of guilt has been made by the delinquent, nothing more is required on the part of the

management; no separate enquiry is required to be conducted. For the same proposition reliance has been placed upon J.L. Toppo Vs. Tata

Locomotive and Engineering Company Ltd., .

13. Submissions have been countered. It is pointed out that the reply to the charge sheet cannot in any manner be considered as an admission of

guilt. It was only an explanation furnished by the Plaintiff to the show cause notice as to why the tickets could not be issued in that period.

14. Record has been perused.

15. The charge leveled against the Plaintiff was that he had not issued tickets to six persons although he had taken the money of the tickets i.e. of

Rs. 6/-; admittedly these six passengers were travelling from Najafgarh to Rawta. It is also admitted that the bus was checked at Mitrau station

which is in between Najafgarh and Rawta. It is not the case of the of the department that the passengers had disembarked and de-boarded the

bus; the explanation furnished by the Plaintiff on 13.11.1990 was clear and categorical to the extent that he could not issue six tickets to those

persons although he had taken the fare from them as the bus was overloaded and had reached Mitrau within 10 minutes. This was the categorical

and clear explanation furnished by the Plaintiff. This in no manner can be said to be an admission of guilt as is the vehement contention of the

department. The Plaintiff had only given an explanation for not issuing the tickets in that intervening period from Najafgarh to Mitrau. The

explanation being that the bus was over crowded and had reached within 10 minutes from Najafgarh to Mitrau; it is not his case that he was not

going to issue the tickets to the passengers at all. Even in the reply to the show cause notice, he had stated that he is suffering from financial burden

and such a penalty should not be imposed upon him. In these circumstances, he had sought pardon.

16. This documentary evidence relied upon by the department does not in any manner amount to an admission of guilt. The judgment relied upon

by the learned Counsel for the Appellant do not come his aid.

17. It is also not in dispute that what has been imposed by way of a penalty on the Plaintiff was a major penalty. Before imposing a major penalty it

was incumbent upon the department to have initiated an enquiry against him. The impugned judgment has rightly held that before imposing a major

penalty an enquiry should have been conducted; the enquiry could not have been dispensed with; principles of natural justice had been violated.

There is no infirmity in the impugned judgment; it calls for no interference. Substantial question of law is answered accordingly. Appeal as also

pending application is dismissed.