

**(2002) 07 DEL CK 0133**

**Delhi High Court**

**Case No:** CW 3313/87

Dalbir Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

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**Date of Decision:** July 5, 2002

**Citation:** (2002) 64 DRJ 818

**Hon'ble Judges:** V.K. Jain, J

**Bench:** Single Bench

**Advocate:** Meera Mathur and R.S. Mathur, for the Appellant; S.K. Luthra, for the Respondent

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### **Judgement**

Vijender Jain, J.

This writ petition was filed by the petitioner aggrieved by the dismissal of services from DTC. No counter affidavit has been filed by the respondent/DTC. On 7.1.2002 this Court directed the respondent to produce the record and in this regard several opportunities were granted to the respondent. Today Mr. Luthra made a statement that the records are not available in the office of the respondent.

2. Learned counsel for the petitioner has assailed the order of termination of the service of the petitioner on the ground that inquiry was not conducted properly as the petitioner was not allowed to call the defense witnesses. My attention has been drawn to the application dated 6.2.1987 filed by the petitioner before the Chairman and Depot Manager of DTC. A copy thereof is at page 41 of the paper-book. It was further contended by learned counsel for the petitioner that no date has been given on the inquiry report by the inquiry officer. It was further contended by learned counsel for the petitioner that the inquiry officer did not take into consideration that in the Kalandara made by the Police it was stated by Om Prakash, Store Keeper and Ram Chander, Mechanics that no theft has occurred in the premises of the respondent and the reliance placed by the inquiry officer on the statement of Paras Ram, Security Guard was misplaced and contrary to the statement of store-keeper at the earliest opportunity. This Court is handicapped in view of no counter affidavit

having been filed nor any records having been produced. Mr. Luthra had to perform an arduous task of defending the case without any defense on record. Learned counsel for the respondent has contended that the application which was filed for summoning the witnesses was made on 6.2.1987 which was the date when the inquiry officer concluded the inquiry. He has further contended that the application was not addressed to the inquiry officer.

3. I am afraid that the submission of the learned counsel for the respondent in view of what has been stated by inquiry officer at page 40 of the paper-book is not correct. As a matter of fact, what has been stated by the inquiry officer at page 40 was that at that stage the investigation was over but in the interest of justice if it was expedient, the same could be re-started again. Once an application was given by the petitioner on that very day itself, it was incumbent upon the inquiry officer to have called the witnesses sought to be produced by the petitioner in his defense. The application was not only addressed to the Chairman of the DTC but also to the Depot Manager of the DTC. Even if I do not take this application into consideration the finding of the inquiry officer on the basis of the statement recorded by the Paras Ram, security guard, that five brass bushes were stolen from the depot store and the statement of store-keeper which was recorded by the police at the time of making Kalandara becomes inconsistent. Inquiry officer has also taken into consideration the observation of the punishment awarded by the Metropolitan Magistrate to the petitioner that he was admonished. Kalandara which was prepared by the inquiry officer at the depot of the respondent on the spot categorically stated that when inquiries were made from Om Prakash, Store Keeper and Ram Chander, mechanics, about the theft, they told that no theft had occurred there. In view of that fact as mentioned in Kalandara having not taken into consideration by the inquiry officer, the inquiry report suffers from material irregularity and the dismissal inflicted upon the petitioner based on such inquiry report is patently illegal. The petitioner was removed from service in the year 1987. As I have declared the order of removal illegal, I hereby quash the same. Petitioner be reinstated forthwith with full back wages and with all consequential benefits.

4. Rule is made absolute. Petition stands disposed of.