

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W. P. (C) 3850 of 1991**

Reserved on: 3.10.2011
Pronounced on : 25.11.2011

Shri Azad Singh

... Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

Versus

**Delhi Tourism and Transportation Development Corporation
Limited through its Chairman**

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the order dated 12th January, 1990 of the respondent herein, whereby the appeal of the petitioner against the Order of Removal from service dated 26.6.1990 was rejected.

2. The petitioner has been in the employment of the respondent since 03rd March, 1982 as a Driver. After completion of probationary

period satisfactorily, he was employed in permanent capacity of the respondent. On 11th December, 1987, he was charged for misconduct. The statement of Articles of Charge in brief is as under:

(a) That on 27th November, 1987, the petitioner along with an outsider entered in the 'N' Block office of the respondent with a bottle of whisky and he started drinking there and misbehaved with the staff posted at the 'N' Block office and thus, the petitioner indulged into an act unbecoming of a Government servant.

(b) At the aforesaid time and place, the outsider asked one of the persons on cash duty to fetch a glass of water. On refusing to do so, both the petitioner and his outsider friend used unparliamentary language. They also asked one Mahesh Kumar Arora, Cashier to bring the glass of water for them and on his refusing, insulted him.

3. The petitioner submitted his reply dated 24th December, 1987 to the aforesaid charges whereby he categorically denied the allegations and alleged to have been falsely implicated because of his trade union activities. It is alleged that the petitioner requested for being allowed to be assisted by an Advocate during the enquiry proceedings and also to supply the copies of the documents demanded by him. However, his request was declined by the respondent. On 26th June, 1989, he received the order from the department whereby he was removed from the services with immediate effect. He preferred an appeal against the said order to the Chairman of the respondent and since he did not receive any reply, he made representation dated 17th September, 1991 to the respondent requesting his reinstatement and full back wages and continuance of service and that too also remained unresponded.

4. The impugned order is alleged to be illegal, arbitrary, discriminatory and violative of principle of natural justice. The main grounds which have been taken in assailing the orders are (1) that he was not permitted to be represented by an Advocate; (2) that the Presenting Officer as well as the Enquiry Officer cross examined the witnesses in a manner in order to prove the case against the petitioner; (3) he was not permitted to cross examine them nor he was allowed to adduce any evidence in support of his case; (4) the enquiry was bad inasmuch as the Enquiry Officer did not subject the petitioner to liquor test nor the petitioner could be said to be the under influence of liquor on the relevant day and; (5) the extreme punishment of removal from his service was harsh and disproportionate to the gravity of the misconduct and it amounts to victimization.

5. The learned counsel appearing for the petitioner centered his arguments on the point that there was no cogent and elaborate evidence against the petitioner to conclusively hold him guilty of misconduct in as much as out of the four witnesses examined by the respondent department, three had not supported the version in support of the charges and the fourth namely Chander Prakash has falsely implicated the petitioner on account of personal enmity. Learned counsel has submitted that the petitioner was not afforded sufficient opportunity to cross examine those witnesses and was not allowed to be assisted by the Advocate. He took me through the testimony of the four star witnesses examined by the department in support of the charge sheet. Though in the present proceedings, that was not required to be seen, but keeping in view the fact that the enquiry has also been assailed on the ground of violation of principle of natural justice, I have gone

through the statements of those witnesses. From the testimony of those witnesses as adduced by the department before the Enquiry Officer, it is seen that three of those witnesses including Mahesh Kumar Arora are very shaky and have given changing versions. With regard to the testimony of Chander Prakash, it is noticed that he stated that the petitioner along with an outsider came to the office and asked for water from him and Mahesh Arora, who was also there. In his cross examination conducted by the Presenting Officer, he stated that he was busy in work and was not aware as to who had taken out the bottle. Then in contradiction to his previous stand, he has stated that the friend of the petitioner asked him to bring water. It was noted that he was also shaky in evidence because at one place, he stated that he was busy in cash work and did not give any attention nor had he seen them and so cannot say as to whether they came together. In short cross examination which was conducted on behalf of the petitioner, he stated that everything had happened with the friend of the petitioner.

6. Admittedly, the petitioner was not assisted by any lawyer and the type of cross examination as was conducted by the representative of the petitioner as noted above would clearly demonstrate that it was illusory and he was not properly represented by a duly competent and qualified person.

7. In fact, as per the allegations, it was Mahesh Arora who was present there and was asked to bring water. The cross examination of this witness would demonstrate that he did not see any bottle of liquor in the hands of the petitioner and his friend nor did he see them drinking liquor in the office. He also stated that the petitioner did not abuse anyone in his presence and he also did not know when the

petitioner entered the office. In fact the testimony of the other witnesses examined by the department was equally shaky and unreliable and no credence could be placed upon their version.

8. From the enquiry proceedings, it is clearly demonstrated that no effective opportunity of hearing was given to the petitioner and in fact, the cross examination which was allowed, was conducted only in an illusory and ineffective manner meaning thereby that the petitioner remained unrepresented in the enquiry proceedings. In view of this, it can be seen that there was no positive and reliable evidence supporting the charge leveled against the petitioner satisfactorily.

9. Since nothing could be seen from the record if any opportunity to lead evidence was afforded to the petitioner by the Enquiry Officer, it was pointed to the learned counsel for the respondent in the court proceedings on 06th December, 2006. To this, he submitted that the petitioner did not ask for any opportunity to lead evidence and therefore, he could not get any chance to produce his evidence. With this kind of state of affairs and the submissions coming from the respondent, there remains no doubt to conclude that no effective opportunity of hearing in the proceedings to lead defence evidence was afforded by the Enquiry Officer to the petitioner. The plea of the respondent that no request was made by the petitioner for leading any evidence in defence was not only untenable but also contrary to the principles of natural justice. In the case titled **State of Bombay Vs. Gajanan Mahadev Badley**, AIR 1954 Bom 351, similar question arose wherein it was held that if the court believes that reasonable opportunity was not given to the official in the enquiry, the impugned order must be set aside. In that case, an attempt was made to argue that

it is necessary for the servant to make a grievance that he has been deprived of a certain opportunity and it is only if he makes such a grievance and that grievance has not been removed, it would be open to him to complain in court that reasonable opportunity was not given to him. The court rightly repelled that argument and I am in entire agreement with that. If a government servant comes to the court and complains that his dismissal was wrongful and that reasonable opportunity was not given to him as required by the statute, it is for the department to satisfy the court that in fact, reasonable opportunity was given to him. The providing of reasonable opportunity to the servant does not depend upon the servant asking for it. It was a statutory and recognized protection which was to be afforded to the petitioner by the Enquiry Officer in discharge of his obligation despite the fact whether the protection is claimed or not claimed by the servant.

10. In view of my above finding that there was no cogent and sufficient evidence against the petitioner and that in any case, he was neither afforded effective opportunity of cross examination nor any opportunity of leading his evidence, the petitioner could be said to have been prejudiced on account of violation of principle of natural justice. Consequently, the impugned order dated 26th June, 1990 is liable to be quashed and it is ordered accordingly.

11. The question for consideration would be as to what could be the relief that can be given to the petitioner in view of the fact that he has already attained the age of superannuation. The petitioner was in the employment of the respondent for about seven years and in the given facts and circumstances, no order of reinstatement can be passed on account of his having already attained the age of superannuation.

However, he would be entitled to back wages from the date of removal from service i.e. 26th June, 1990 till the age of superannuation and thereafter, all the consequential relief of pension etc. The respondent is directed to give effect to this order within eight weeks.

12. The petition stands disposed of.

M.L. MEHTA, J.

NOVEMBER 25, 2011

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