

MANU/DE/2095/2012

Equivalent Citation: 2012(2)JCC1329

IN THE HIGH COURT OF DELHI

Review Petition No. 780/2011 in W.P.(C) 3850/1991

Decided On: 18.05.2012

Appellants: **Azad Singh**
Vs.

Respondent: **Delhi Tourism & Transportation Development Corporation Ltd**

Hon'ble Judges/Coram:

Hon'ble Mr. Justice M.L. Mehta

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. Anuj Aggarwal, Advocate

For Respondents/Defendant: Mr. P.C.Sen, Advocate in Rew.Pet. 780/2011. Complainant in person

JUDGMENT

M.L. Mehta, J.

1. This is a review petition filed by the respondent against the judgment dated 25.11.2011 passed by this Court in W.P.(C) No. 3850 of 1991, whereby the writ petition was allowed in favour of the petitioner, with a direction to the respondent to pay the petitioner back wages from the date of removal of service and till the age of superannuation and all other consequential reliefs and benefits. The petitioner was in the employment of the respondent since 3rd 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.

2. 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.

3. The petitioner preferred a writ petition before this Court vide W.P (C) 3950 of 1991 and this Court vide judgment dated 25.11.2011 directed the respondent to pay the petitioner back wages from the date of dismissal of the petitioner and all consequent benefits. Hence, the present review petition filed by the respondent.

4. The learned counsel for the respondent submitted that the petitioner was given the option to either plead his case himself or appoint a Defense Assistant, as per rules. He decided to plead his case himself. It was further submitted that Rule 14 (8) (a) of the CCS Rules states that, the delinquent government servant does not have to be necessarily represented by an advocate and may take the assistance of any other government servant posted in any other office either at his headquarters or at the place where the enquiry is held. He relies upon Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Ors MANU/SC/0583/1991 : (1991) 2 SCC 716. It was submitted that even assuming that he was not represented by an Advocate, as per Rule 14 (11) of CCS Rules, the petitioner was entitled to submit his defence and further as per Rule 14 (16) of the CCS Rules, he was entitled to submit his defence, either orally or in writing after the disciplinary authority closed its case.

5. Per Contra, the learned counsel for the petitioner drawing my attention to the evidence available on record, submitted that there was no evidence on record to show that the petitioner was guilty of the offence.

6. I have heard the learned counsels for the parties and perused the case laws and the evidence available on record.

7. There is no dispute with regard to the proposition as pointed out by the learned counsel referring to the different provisions of Rule 14. Reading the judgment under the review in its entirety, it is seen that the observations of the petitioner not having assistance of a lawyer were highlighted to demonstrate that even without lawyer, the evidence that was adduced by the department through the testimonies of four star witnesses was neither cogent nor sufficient. If that was the state of affairs of the evidentiary value of those witnesses without the representative or a lawyer to assist the petitioner, there cannot be any doubt that the assistance of any them to the petitioner would have added more impact on their cross examinations. Taking that what is stated is correct that there was no denial of natural justice to the petitioner, still, there is no apparent error on the record warranting for review of the judgment. In Paras 5 & 7 of the said judgment, it has been clearly discussed that the testimonies of the witnesses of the department were shaky and no reliance could be placed upon them. The learned counsel submitted that this court did not properly appreciate the testimony of Chander Prakash. In this regard, it may be stated that this cannot be the ground for review, but, however, it may be noted that with regard to this witness, it was clearly stated in Para 5 that his evidence was shaky 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 and then, he stated that everything had happened with the friend of the petitioner. Likewise, Mahesh Arora, who was another star witness also was noted to be not reliable. In the impugned judgment, no error apparent on the face of the record has been brought out by the learned counsel for respondent warranting

review. The petition has no merit and is hereby dismissed

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