

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

+LPA No.126/2007

%Date of Decision:21.04.2008

SANT RAM

...Appellant

Through: Mr. K.K. Patel, Advocate

Versus

D.T.C.

...Respondent

Through: Ms. Aarti Mahajan, Advocate.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

A departmental inquiry was conducted against the appellants leveling the charge to the effect that while working as Conductor on bus No. DBP-6517, en route Delhi-Bikaner, two passengers traveling with ticket Nos.97056 and 97057 were found without luggage tickets. They were also having luggage. On inquiry from those passengers by the checking staff, the checking staff was informed that the said passengers had paid fare to the Conductor for the luggage but the Conductor did not issue tickets for the luggage to them. It was also alleged that when the checking staff issued challan to the appellant, he torned the same

and misbehaved with the checking staff. In the inquiry held against the appellants, charges were found proved. On that basis, disciplinary authority imposed the punishment of removal from service vide order dated 4.5.1994. An application was filed by the respondent/DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947 for necessary approval by the Industrial Tribunal. The Tribunal in the said application framed the following issue regarding the validity of the inquiry:-

“Whether the applicant held a legal and valid inquiry against the respondent according to the principles of natural justice?”

2. Evidence was led on this issue by both the parties. After hearing the arguments on this issue, vide judgment dated 7.8.2002, the learned Industrial Tribunal held that the inquiry conducted against the appellant herein was not in accordance with the principles of natural justice and was thus vitiated. Para 3 of the order is relevant as it contains the entire reasoning behind such a conclusion and, therefore, we produce the same hereunder:-

“On the other hand, the respondent entered into the witness box as RW-1 and filed his affidavit EX.EW1/A which bears his signatures at points A and B. He provided the documents EX.RW1/1 to Ex.RW1/3. In his affidavit he deposed that he was not given the assistance of co-worker in the enquiry as per the circular dated 12.2.73, Ex.RW1/1. He was neither given the copy of preliminary investigation nor the list of witnesses. The enquiry officer Shri V.K. Trivedi was not examined. The passengers were neither examined in the enquiry nor on the address given by them as

per the circular dated 13.10.65 Ex.RW1/3. Apart from the examination, the AR of the respondent has also advanced the argument on the same lines. Nobody appeared on behalf of the applicant to address the arguments. It is evident from the file that Shri V. Trivedi is still working in the department. There is nothing on the record to establish that he was not available with the management to lead his evidence for his observations. Consequently secondary evidence has been led. The submission made by the respondent and admissions made by AW-1 Sh. Suneet Mudgal, it is held that enquiry proceeding stands vitiated. Consequently the issue is decided against the petitioner.”

3. Since this preliminary issue was decided against the DTC, thereafter on the basis of pleadings the following three issues were framed by the Tribunal:-

“1) Whether the respondent committed the misconduct as alleged against him?

2) Whether the petitioner remitted full one month's wage to the respondent at the time of his dismissal from service?

3) Relief.”

4. The DTC produced Shri C.K. Goel, AW/1. He filed his affidavit dated 11.10.2002 and also relied upon documents Ex. AW1/1 to Ex.AW1/12. Vide orders dated 26.3.2002 the Tribunal decided the issues in favour of the appellant and against the DTC and as a consequence rejected the application of the DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947. We find that the Tribunal has held that DTC failed to prove the alleged misconduct against the appellant herein, mainly on two grounds:

(a) Mr. C.K. Goel, was not present at the time of checking and proceedings were also not conducted in his presence. He had deposed on the basis of record. In these circumstances, though it is not specifically stated, the Industrial Tribunal did not place any reliance on the testimony of Mr. C.K. Goel; and

(b) DTC did not produce any passenger witness who were the complainant.

5. Feeling aggrieved by this order, the DTC preferred Writ Petition No.8259/2003 which has been allowed by the learned Single Judge. Challenging that judgment, present appeal is preferred by the workman. We find from the perusal of the judgment of the learned Single Judge that learned Single Judge did not agree with the opinion of the Tribunal holding that non-examination of the passengers was fatal. It is observed by the learned Single Judge that merely because the complainant/passengers were not produced in proof of the charge leveled against the appellant, it would not mean that the charge could not be produced otherwise. The learned Single Judge discussed the ambit and scope of Section 33(2)(b) of the Industrial Dispute Act, 1947. It was observed that the jurisdiction of the Tribunal was limited to the enquiry as to whether prima facie case has been made by the employer against the employee or not. In respect of the same the learned Single Judge referred to the judgment of this Court in ***“DTC Vs. Sunder Singh Ex Conductor and another” [2002 VI AD Delhi 13]***. We are in agreement with the aforesaid conclusion of the learned Single Judge. It is not

practical or pragmatic that passengers who were traveling in the bus few years ago and had paid fare for tickets of Rs.2 or Rs.5, should be called as witness or dragged before enquiry officer or Tribunal. The Supreme Court has held so in ***“State of Haryana Vs. Rattan Singh” [1997 2 SCC 1991]***. Therefore, insofar as this aspect is concerned, we do not find any fault with the judgment of the learned Single Judge.

6. As pointed above, another reason given by the Industrial Tribunal was that Shri C.K. Goel, was not witness to the incident and, therefore, no weightage could be given to his testimony. This aspect has not been dealt with by the learned Single Judge. However, we find that the learned Single Judge, after considering the scope of application under Section 33(2)(b) of the Act and also the jurisdiction of the Industrial Tribunal in interfering with the opinion arrived at by the Domestic Tribunal, has observed as under:

“There can be no reason to disbelieve the testimony of checking staff who had conducted the raid and the court cannot cast doubt on the motive of the checking staff on the ground that passengers were not examined. Most of the passengers are unwilling to be dragged to the courts or to bear the brunt of repeated appearance.”

7. We have to bear in mind that the departmental inquiry was held against the appellant herein and in this inquiry both the persons, who formed the team, who had checked the bus in

question had appeared as witness. They had been duly cross-examined by the appellant herein. At the time of hearing, learned counsel for the DTC informed that when the matter came up for evidence before the Industrial Tribunal none of them was alive. In any case, what has to be seen is that the witness, namely, Mr. C.K. Goel, who was produced in the aforesaid backdrop was the Disciplinary Authority. He had produced the entire inquiry record including the testimony of the checking staff. He had also produced on record the necessary documents in support of the charge which were Ex. AW1/1 to AW1/12. The learned Industrial Tribunal without going into these documents in a cryptic manner and without dealing with the material produced before him, brushed aside the testimony of Shri C.K. Goel. We are of the opinion that such an approach was not proper. The learned Single Judge has rightly observed that while dealing with the application under Section 33(2)(b) of the Industrial Disputes Act the Tribunal is to only form a view that whether the prima facie case is made out against the employee and further that the Labour Court is not sitting as appellate forum over the findings recorded by the Tribunal. It is the right law that even if approval under Section 33(2)(v) of the Industrial Disputes Act, 1947 is given the same does not preclude the concerned workman from raising Industrial dispute under Section 10 of the Industrial Disputes Act and challenging the termination. We, therefore, do not find any infirmity in the judgment of the learned Single Judge.

8. The LPA is dismissed.

(A.K. SIKRI)
JUDGE

April 21, 2008
s.pal

(J.R. MIDHA)
JUDGE