

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

+ **W.P.(C) No. 578/2004**

% **Date of Decision: 23rd NOVEMBER, 2009**

DELHI TRANSPORT CORPORATION PETITIONER
! Through: Ms. Mini Pushkarna, Advocate.

VERSUS

\$ SHRI MEHAR SINGH & OTHERS RESPONDENTS
^ Through: Mr. R.D. Sharma, Advocate for
respondent No. 1.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

This writ petition is taken up for final disposal by a consent order because counsel for both the parties have agreed for passing of a consent order in the matter.

2. The writ petition filed by the DTC is directed against an order dated 29.03.2003 in O.P. No. 202/94 declining approval to the petitioner under Section 33(2)(b) for removal of the respondent from its service w.e.f. 03.08.1994. The respondent was employed as a Conductor with the petitioner w.e.f. 14.03.1986. He was served with a charge sheet dated 21.09.1992, which is at page 20 of the paper book. There were two charges against the respondent. The first charge against him was that after collecting the due fare of Re.1/- from a passenger, he had not issued ticket to him. The second charge against him was that on checking of his cash, excess cash of Rs.3.20/- was found from his cash

bag. Domestic inquiry was held by the petitioner against the respondent in which he was found guilty of both the charges. The inquiry report which is Annexure 'G' is at pages 22-24 of the paper book. The petitioner, on the basis of the inquiry report and after taking into account his service record, removed the respondent from its service w.e.f. 03.08.1994.

3. Since on the date of removal of the respondent from the service of the petitioner, an earlier industrial dispute with regard to general demands of the employees of DTC was pending adjudication before the tribunal, the petitioner filed an application under Section 33(2)(b) for approval of the tribunal for removal of the respondent from its service. This approval application of the petitioner has been dismissed by the tribunal vide impugned order dated 29.03.2003 on the sole ground that the passenger from whom the respondent had taken Re.1 fare and had not issued the ticket to him was not examined by the petitioner in the domestic inquiry.

4. Ms. Mini Pushkarna, learned counsel appearing on behalf of the petitioner, has taken me through some judgments of this Court and also of the Hon'ble Supreme Court wherein it is held that non-examination of the passenger cannot be a ground to vitiate the inquiry proceedings held against the delinquent employee. Reference in this regard can be made to the judgments in ***Delhi Transport Corporation Vs. Sewa Ram & Another, 114 (2004) DLT 215; Delhi Transport Corporation Vs. N.L. Kakkar & Another, 110 (2004) DLT 493 and State of Haryana and Another Vs. Rattan Singh, AIR 1977 SC 1512.***

5. On going through the material available on record which was also available before the Court below, I am satisfied that there was sufficient evidence to form a prima facie view regarding misconduct alleged

against the respondent in the charge sheet. It cannot be said to be a case of victimization. Even the statement of the passenger from whom the due fare of Re.1/- was collected by the respondent without issuing ticket to him was there before the tribunal and has also been placed before this Court which is at page 17 of the paper book. The statement of the passenger was exhibited before the tribunal as Ex.AW-1/1.

6. Under the circumstances, approval under Section 33(2)(b) ought to have been granted by the tribunal to the petitioner. At this stage, Mr. R.D. Sharma, learned counsel appearing on behalf of respondent no. 1 workman, on instructions from his client present in the Court, submits that the Court may allow the writ petition and set aside the impugned order. Mr. Sharma has consented for granting approval under Section 33(2)(b) to the petitioner for removal of respondent no. 1 workman from the service of the petitioner w.e.f. 03.08.1994. However, Mr. Sharma, counsel appearing on behalf of respondent no. 1, submits that his client may be given liberty to raise an industrial dispute under Section 10(4) of the Industrial Disputes Act, 1947 in regard to removal of the respondent from the service of the petitioner without prejudice to his rights and contentions as per law. Needless to say that as and when any such industrial dispute is raised by the respondent workman, the same will be adjudicated by the Labour Court/Industrial Tribunal in accordance with law without being influenced by any observation contained in the order granting approval to the petitioner for removal of the respondent. In case, the Labour Court/Tribunal finds that the removal of the petitioner was bad, then it may consider grant of appropriate relief to the respondent keeping in mind the long delay that has elapsed between the date of his removal and the date of reference.

7. In view of the foregoing, the impugned order dated 29.03.2003 in

O.P. No. 204/1994 is hereby set aside. This writ petition is allowed. Liberty is reserved for the respondent to raise an industrial dispute with regard to his removal from the service of the petitioner in accordance with law.

The Registry is directed to release the amount deposited by the petitioner pursuant to Court order dated 10.09.2004 in favour of the petitioner along with interest accrued thereon, if any.

LCR be sent back.

NOVEMBER 23, 2009
'MA'

S.N.AGGARWAL, J