

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

+ **W.P.(C.) No.s 743/2006 & 747/2006**

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

DELHI TRANSPORT CORPORATION PETITIONER
! Through: Mr. Ataul Haque, Advocate.

VERSUS

\$ SH. ATTAR SINGH RESPONDENT
^ Through: Mr. S.S. Sisodia, Advocate.

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

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

Both these writ petitions are proposed to be disposed of by this common judgment because they both relate to removal of the respondent from service of Delhi Transport Corporation w.e.f. 27.07.1993.

2. Briefly stated, the facts of the case relevant for the disposal of the present writ petition are that the respondent was appointed as a Conductor with Delhi Transport Corporation w.e.f. 01.10.1979. On 03.05.1993, when he was on duty on bus no. 8060 route no. 986 from Jahangirpuri to Rohini Sector-9, his bus was checked by the checking staff when it reached at 'Uttari Pitampura Bus Stand' and it was found that the respondent had issued three re-sold tickets No. 559/75057-75059 of denomination of Rs.2/- each and they were found punched in down

direction stage though the bus was going in up direction. The respondent was charge-sheeted vide charge-sheet dated 17.05.1993, typed copy whereof is at pages 35-37 of the Paper Book.

3. Domestic inquiry was held against the respondent and the Inquiry Officer vide his report which is undated and is at pages 53-58 of the Paper Book found the petitioner guilty of charges attributed to him. The disciplinary authority after considering the report of the Inquiry Officer agreed with his report and decided to remove the respondent from its service and accordingly, the respondent was removed from the service of DTC w.e.f 27.07.1993.

4. Since an industrial dispute relating to general demands raised by the employees of DTC was pending adjudication before the Industrial Adjudicator, the petitioner Corporation filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of removal of the respondent from its service and the said application was registered before the Industrial Tribunal as OP No. 445/1993. The Industrial Tribunal vide its order dated 19.12.2003 in OP No. 445/1993 declined to grant the approval for removal of the respondent.

5. While the approval application of the petitioner under Section 33(2)(b) was pending before the Industrial Adjudicator, the respondent also raised a separate industrial dispute with regard to his removal from the service of DTC and that dispute was referred by the appropriate Government for adjudication before the Industrial Tribunal and was registered as ID No. 97/2001. The Industrial Tribunal vide its order dated 21.10.2003 decided the inquiry issue against the petitioner Corporation holding that the inquiry conducted against the respondent was vitiated for non-observance of principles of natural justice. Thereafter, the Tribunal below vide impugned award dated 17.05.2005 held the removal

of the respondent from the service of the petitioner Corporation to be illegal and directed the petitioner Corporation to reinstate him in its service with full back wages.

6. Aggrieved by the impugned award dated 17.05.2005 passed by the Industrial Adjudicator, the petitioner Corporation has filed these two writ petitions seeking to challenge the order of rejection of approval dated 19.12.2003 and also the impugned award dated 17.05.2005 which direct reinstatement of the respondent with full back wages.

7. Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner Corporation has argued that the Court below has committed an error in declining approval for removal of the respondent on the ground of non-examination of the passengers from whom re-sold tickets were recovered at the time of checking of the bus in which the petitioner was on duty at the time said bus was checked on 03.05.1993. He has relied upon an earlier judgment delivered by this Court in ***DTC Vs. Shri Gyan Chand 2009 II AD (Delhi) 571*** wherein this Court had taken note of two judgments of the Hon'ble Supreme Court in ***State of Haryana Vs. Rattan Singh 1977 (1) SLR 750*** and ***Cholan Roadways Limited Vs. G. Thirugnanasambandam 2005 I AD (SC) 390*** and had held that non-examination of the passenger during the inquiry will not vitiate the inquiry proceedings.

8. Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner has further argued that the charge of giving re-sold tickets to the 3 passengers attributed against the workman (respondent herein) was proved by the petitioner Corporation before the Inquiry Officer by producing the A.T.I. who had checked the bus and, therefore, his testimony cannot be faulted with to say that the respondent was not guilty of the charge leveled against him.

9. I have given my anxious consideration to the above argument advanced on behalf of the petitioner but I could not persuade myself to agree with any of his submissions. The judgment in Gyan Chand's case (supra) relied upon by the petitioner's counsel is not applicable to the facts of the present case. Each case has to be decided on the merit of its own case. In Gyan Chand's case, there was overwhelming evidence before the Inquiry Officer to record finding of guilt against the delinquent conductor, which is missing in the present case. It is no doubt true that non-examination of the passenger, either during the course of domestic inquiry or before the Industrial Adjudicator, will not be fatal to the inquiry held against the delinquent workman in case the charges leveled against him are otherwise proved from evidence produced before the Inquiry Officer. In the present case, the inquiry file has been placed before me and I have gone through the same with the assistance of the counsel appearing on behalf of DTC.

10. Mr. Ataul Haque, learned counsel appearing on behalf of the petitioner Corporation does not dispute that the only evidence produced before the Inquiry Officer was that of T.I. Shri Daulat Ram, whose testimony is annexed along with WP(C) No. 743/2006 and is at pages 44-45 of the Paper Book. Except this testimony of Shri Daulat Ram, there was no other evidence produced by the petitioner management before the Inquiry Officer. A bare perusal of the Inquiry Report would show that the inquiry held against the petitioner is vitiated for non-observance of principles of natural justice. The inquiry report is at pages 53-58 of the Paper Book of WP(C) No. 743/2006.

11. As per the case of the petitioner Corporation, the report regarding incident of 03.05.1993 was put up before the concerned authorities of the petitioner Corporation by T.I. Shri Dalel Singh Rana. He submitted his

report after two days of the checking of the bus on 05.05.1993. His report, which he gave to the concerned authorities of the petitioner Corporation, is at pages 32-33 of the Paper Book of WP(C) No. 743/2006. T.I. Shri Dalel Singh Rana who allegedly checked the bus did not state in his report dated 05.05.1993 that T.I. Shri Daulat Ram was also with him at the time of checking of the bus. T.I. Shri Dalel Singh Rana was not examined by the petitioner Corporation either before the Tribunal below or before the Inquiry Officer.

12. Counsel on behalf of the petitioner Corporation says that Shri Dalel Singh Rana was not examined either before the Tribunal below or before the Inquiry Officer as he had retired from the service of the petitioner Corporation. There is nothing on record to suggest as to when Shri Dalel Singh Rana retired from the service of the petitioner Corporation. I am of the view that even if T.I. Dalel Singh Rana had retired still he could have been called by the management and examined before the Inquiry Officer as he was the vital witness to prove the alleged misconduct against the respondent.

13. T.I. Daulat Ram, the sole witness examined by the management before the Inquiry Officer, does not say in his statement that T.I. Shri Dalel Singh Rana was also with him at the time of checking of the bus. However, despite this, the Inquiry Officer has taken into consideration the report of Shri Dalel Singh Rana dated 05.05.1993 into consideration without his being produced for his evidence before him. The contents of the report of Shri Dalel Singh Rana dated 05.05.1993 have been taken into account by the Inquiry Officer without giving an opportunity to cross-examine and test his veracity to the delinquent workman. Is it not violative of principles of natural justice?

14. I am of the view that the bread and butter of a man should not be

snatched by relying upon adverse material against him at his back without giving an opportunity to him to prove the genuineness of such material. Such a procedure followed by the Inquiry Officer apparently is violative of principles of natural justice. In my considered opinion, the charge of selling of used tickets by the respondent to the passengers has not been proved by the petitioner Corporation by way of satisfactory evidence on this aspect.

15. For the foregoing reasons, the removal of the respondent from the service of the petitioner Corporation by no means can be held to be justified. For that reason, the impugned orders do not call for any interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India.

16. The necessary consequence of affirming the impugned orders will be that the respondent will be deemed to be continuing in the employment of the petitioner Corporation right from the date he was removed from its service w.e.f. 27.07.1993. About 16 years have now passed since the date of removal of the respondent. During all these years, he did not do any work with the petitioner Corporation presumably because he was not allowed to resume duties despite award of the Industrial Adjudicator directing the petitioner Corporation to reinstate him. This leaves the Court to decide the question of back wages to which the respondent may be entitled in law.

17. Mr. S.S. Sisodia, learned counsel appearing for the respondent, on instructions from his client present in Court, says that his client will be satisfied in case he is awarded only 25% back wages for the period intervening between the date of his removal and the date of his reinstatement.

18. This concession given by the counsel for the respondent is most

reasonable. The respondent is, therefore held entitled to 25% back wages for the period from the date of his removal, i.e. 27.07.1993 till today and he will be entitled to full wages/salary henceforth. The petitioner is directed to allow the respondent to join his duties with it tomorrow itself so that the petitioner may not have to pay for no work done by him. Needless to say that the respondent will be entitled to all consequential benefits including continuity of service, seniority, notional promotion, etc. which he otherwise would have got but for the impugned removal.

19. In view of the above, both these writ petitions stand disposed of.

JULY 23, 2009
'ma/bsr'

S.N.AGGARWAL, J