

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. 7280/2005

Judgment delivered on :12 January, 2010

Shri Chander Pal Petitioner
Through: Mr. Nitinijya Chaudhary, Adv.

Versus

Delhi Transport Corporation Respondent
Through: Ms. Saroj Bidawat, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

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

KAILASH GAMBHIR, J. (ORAL)

By this petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks quashing of award dated 13.4.2004 passed by the Industrial Tribunal No-III in I.D. No. 124/02, whereby reference was answered against the workman by upholding the punishment awarded to him and also quashing of the order of removal dated 4.6.1992 passed by the respondent Corporation.

The brief facts of the present case as per the petitioner relevant for deciding the present petition are that the petitioner was employed as a Conductor with the respondent, Delhi Transport Corporation. The petitioner was served with a charge sheet dated 24.9.1991 alleging that the petitioner had not issued tickets to the passengers after collecting due fare from them. It was alleged that his cash was found to be in excess by Rs.7.50 and that he was found sitting on some other seat. An enquiry was initiated in the matter and the enquiry officer held the petitioner guilty of misconduct. The respondent thereafter proceeded to pass an

order of removal dated 4.6.1992 against the petitioner workman. Simultaneously, the respondent corporation filed an application under Section 33(2) (b) of the I.D. Act seeking approval of its decision for removal of the petitioner from service and the learned Tribunal proceeded to grant approval to the application filed by the respondent corporation vide its order dated 28.2.2001. Aggrieved with the said order the petitioner raised an industrial dispute before the Labour Court in which it was held that proper and fair enquiry was held by the respondent Corporation and passed an award dated 13.4.2004 upholding the order of removal dated 4.6.1992.

Counsel for the petitioner submitted that the learned Tribunal wrongly observed that there was an inordinate delay on the part of the petitioner to raise the industrial dispute after a lapse of about 10 years from the date of removal of the petitioner. He placed reliance on the judgment of the Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors. (2002) 2***

SCC 244. He further contended that the petitioner had raised the industrial dispute after the approval was granted to the order of removal by the Industrial Tribunal under Section 33 (2) (b) of the I.D. Act vide order dated 28.2.2001. Counsel for the petitioner further submitted that the Industrial Tribunal also erred in holding that the charges leveled in the charge sheet against the workman stands proved, as no evidence was produced on record by the respondent to prove the charge of misconduct against the petitioner. Counsel for the petitioner also submitted that the principles of natural justice were blatantly violated by the enquiry officer as the petitioner was not supplied with the requisite documents as asked by him and also the assistance of a co-worker was not provided to him, besides non-examination of the passengers as witnesses. Counsel further submitted that even the statement of the driver of the bus, Shri Jugwinder Singh, was ignored by the enquiry officer, who, in his deposition clearly stated that there were 8-10 passengers in the bus when the

bus was checked by the checking officials and no passenger was found without a ticket. Based on the above submissions, counsel for the petitioner submitted that the findings of the Tribunal are illegal and unwarranted besides being perverse.

Refuting the said submissions of the counsel for the petitioner, Ms. Saroj Bidawat counsel for the respondent stated that the enquiry officer conducted a detailed enquiry as per rules after following the due procedure. Counsel also submitted that the petitioner had fully participated in the enquiry proceedings and was given full opportunity to defend himself and thus the petitioner cannot complain that the principles of natural justice were violated by the enquiry officer. Counsel for the respondent further submitted that the petitioner never made any request for summoning the passengers and relying on the judgment of the Apex Court in ***State of Haryana Vs. Ratan Singh AIR 1977 SC 1512(1)*** wherein the Apex Court took a view that the evidence of the

passengers in cheating cases may not be easily available and therefore, absence of the same cannot be held as fatal.

Counsel for the respondent also submitted that the petitioner had raised the industrial dispute after a long spell of about 10 years and that too after the approval was granted by the Industrial Tribunal to the respondent management under Section 33 (2) (b) of the I.D. Act. Counsel thus submitted that the award passed by the Tribunal is legal and justified and does not call for any interference by this court while exercising writ jurisdiction under Article 226 of the Constitution of India.

I have heard learned counsel for the parties at considerable length and perused the records.

The petitioner workman was removed from the service on the charge that he did not issue tickets to the passengers after collecting the fare from them and his cash was also found in excess by Rs.7.50 and a detailed enquiry

was held against the petitioner. In the proceedings before the enquiry officer, the petitioner was offered the assistance of a co-worker but the same was refused by the petitioner himself. With regard to the submission of counsel for the petitioner that the petitioner was not supplied copies of the certain documents demanded by him during the enquiry proceedings; no such application was moved by the petitioner to seek direction for supply of the documents. The Tribunal also found that no request was made by the petitioner before the enquiry officer to summon the passengers who were found travelling without the ticket. The enquiry officer recorded the statements of the checking staff and their testimonies could not be impeached by the petitioner during the cross-examination. It is thus evident that the petitioner had fully participated in the proceedings before the enquiry officer and therefore, the petitioner cannot complain that the principles of natural justice were violated by the enquiry officer.

Based on the findings of the enquiry officer, punishment of removal was awarded to the petitioner workman by the order dated 4.6.1992. The Industrial Tribunal found inconsistency in the defence of the petitioner as in his reply to the charge sheet, he nowhere remotely indicated that one passenger was found without ticket by the checking staff whereas the same was admitted by him in court while deposing as WW-1. It is also amazing to know that the petitioner himself gave an explanation for the ticketless passengers that since the area is populated by the majority of Gujjars who do not purchase tickets and that they are persuaded with great difficulty to purchase tickets.

The contention of the petitioner that there was non-examination of the passengers as witnesses is of no legal consequence in the light of the judgment of the Apex Court in ***State of Haryana Vs. Ratan Singh AIR 1977 SC 1512(1)*** where it was held:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal."

The Industrial dispute was raised by the petitioner after a gap of about 10 years for which counsel for the petitioner placed reliance on the judgment of the Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors. (2002) 2 SCC 244.*** In my considered opinion, even if the delay is condoned in view of this judgment, the same does not help the petitioner as he has been unable to show any patent illegality or perversity in the order of the Tribunal on the merits of the facts which is the mandatory requirement for approaching this Court.

It is a settled legal position that while exercising power under Article 226 of the Constitution of India this Court will not enter the domain to re-appreciate the facts and the evidence led by the parties before the Tribunal or to disturb the finding of the Tribunal unless the findings given by the Tribunal are illegal or perverse either based on no evidence or contrary to the evidence led before the Tribunal or where any material fact or evidence has been ignored by the Tribunal. It is also a settled legal position that the Labour Court or the Tribunals are the final fact finding courts and it is for both the parties to lead the necessary evidence before the industrial court to establish and prove their case. It will be useful to refer to the following observations by the Apex Court in ***Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193:***

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High

Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

In the facts of the present case counsel for the petitioner has not advanced any reasons to point out any patent illegality or perversity in the impugned award passed by the Tribunal and therefore there is no scope for interference with the same.

I, therefore, do not find any merit in the present petition, and the same is hereby dismissed.

January 12, 2009
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KAILASH GAMBHIR,J