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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 13th July, 2010

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Judgment Pronounced on: 13th September, 2010

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LPA 598/2009

SH. MAHINDER PAL

..... Appellant

Through: Mr. Kishore Kumar Patel, Adv.

versus

DELHI TRANSPORT CORP. & ANR

..... Respondents

Through: Mr. Hanu Bhaskar, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers 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?

DIPAK MISRA, CJ

The present appeal is directed against the order dated 24th July, 2009 passed by the learned Single Judge in WP(C) No. 10355/2009. The appellant-writ petitioner (hereinafter referred to as 'the appellant'), being grieved by the award dated 25th January, 2008 passed by the Presiding Officer, Labour Court, had invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. As set forth, he was appointed as a conductor with the Delhi Transport Corporation (DTC) on 1st August, 1983. On 16th September, 1993, while he was on duty in Bus No. 9870 on inter-State route from Delhi to Chhutmulpur, the checking staff checked the bus at Gagal Hedi and found that three passengers were

travelling from Saharanpur to Gagal Hedi without having tickets though the appellant had collected a fare of Rs.5/- from each of them. The enquiry proceeding was initiated against him by issue of a chargesheet under para 19(a), (b), (c), (f) and (h) of the Standing Orders applicable to DTC employees. In the domestic enquiry, he was found guilty and the disciplinary authority passed an order of removal with effect from 27th October, 1994. An industrial dispute being raised, the concerned Government referred the matter for adjudication to the Labour Court. Initially, the issue was raised with regard to the propriety and justifiability of the enquiry proceedings and the Labour Court, vide order dated 4th January, 2008, decided the said issue in favour of the management. The Labour Court, as is evincible, had come to hold that there had been no violation of the principles of natural justice; that the appellant-workman was afforded adequate opportunity to defend his case; that all documents on which the management had placed reliance were supplied to him; and that the appellant had cross-examined the witnesses that were produced by the management in the course of domestic enquiry. The Industrial Adjudicator, vide award dated 25th January, 2008, came to hold that the charges had been proved and the penalty of removal that had been imposed was not disproportionate to the misconduct proved against the appellant.

2. Before the learned Single Judge, it was contended that the industrial adjudicator had fallen into error by not appreciating Regulation 15-A of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which protected the shortage noticed by the checking

staff, the same being only to the tune of Rs.15/-. The learned Single Judge came to hold that the said Regulation is not applicable when the misconduct is proved; that the disciplinary authority as well as the industrial adjudicator had taken note of the past service record of the appellant-workman which related to similar types of misconduct; that the appellant was punished earlier on two occasions and despite the same, he did not deter himself from issuing tickets to the passengers after collecting fare from them and that the order recorded by the industrial adjudicator did not warrant any interference in exercise of writ jurisdiction.

3. We have heard Mr. K.K. Patel, learned counsel for the appellant, and Mr. Hanu Bhaskar, learned counsel for the respondent-DTC.

4. Questioning the legal substantiality of the award, Mr. Patel, learned counsel for the appellant, has raised the following contentions:

- a) The learned Single Judge has fallen into error by not setting aside the award on the ground that the management had failed to produce the passengers who were travelling without ticket as witnesses as a result of which a dent has crept into the justifiability of the award.
- b) Regulation 15-A of the Regulations is protective in nature regard being had to the nature of the work of the conductors but the same has been given a total go-by by the learned Single Judge by cryptically coming to the conclusion that the same is not applicable to the case at hand.

- c) The industrial adjudicator as well as the learned Single Judge have erroneously relied on the previous conduct and the punishment imposed on the appellant though the same were not put to him in the course of enquiry.
- d) The industrial adjudicator and the learned Single Judge have committed illegality by refusing to apply the doctrine of proportionality to the case of the appellant despite the factum that a sum of Rs.15/- was involved and there could be possibility of not issuing the tickets due to lack of time when the checking took place.

The learned counsel for the appellant has commended us to the decision in *DTC v. Anup Singh*, 133 (2006) DLT 148 (DB).

5. Mr. Hanu Bhaskar, learned counsel for the respondent-corporation, submitted that the order passed by the learned Single Judge is absolutely impeccable inasmuch as he has correctly held that Regulation 15-A is not applicable and further he has also justifiably referred to the previous misconduct of the appellant and the punishment imposed on him. It is his further submission that in a case of this nature, it is not possible to examine the passengers themselves and the charges can be proved by other independent evidence which has been done in the case at hand. It is urged by him that the doctrine of proportionality is not attracted if the totality of the facts and circumstances is taken into consideration.

6. First, we shall advert to the issue whether the enquiry conducted against the appellant is violative of the principles of natural justice and the charges levelled against him were proved or not. To appreciate the issue, we think it appropriate to refer to the relevant part of the chargesheet:

- “(i) *A group of three passengers who were traveling from Saharanpur to Gagal Hedi were not issued any tickets, though you had collected Rs.15/- from them as fare. The passengers were checked by the checking staff while deboarding the bus and were found to be without tickets.*
- (ii) *You refused to put his signature on the statement of the passengers and challan.”*

7. The management had examined three witnesses and they have been cross-examined by the workman. From the evidence and the enquiry report, it is vivid that three passengers had boarded the bus from Saharanpur; that they were caught at Gagal Hedi while alighting from the bus; that the delinquent employee deliberately did not sign the challan and statements of the passengers; that the passengers were issued notices to participate in the enquiry on number of occasions but they chose not to appear; that the checking staff had deposed before the enquiry officer that the passengers had written the statements and had stated about non-issuance of tickets to them; that the documents that have been sought for by the workman had been supplied to him; and that no independent witness was produced by the management.

8. In *State of Haryana & Anr. v. Rattan Singh*, (1977) 2 SCC 491, a three-Judge Bench of the Apex Court has held thus:

“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 passengers 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 over-turning the finding of the domestic tribunal.”

[Emphasis added]

9. From the aforesaid pronouncement of law, it is clear that non-recording of the statements of the passengers is not fatal to an enquiry.

10. In the case of **Anup Singh** (supra), the Division Bench has held as follows:

*“16. We may add here that we may not be understood as holding that in every such case the passengers will have to be examined as witnesses. We are aware that it may not always be possible to examine the passengers themselves. We are also conscious of the decision of the Hon'ble Supreme Court in this regard in *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491. But, surely, there are other forms of evidence which can go to prove that fare charges were collected without tickets being issued. For instance, it should have been possible for the checking staff to tally the cash in the Conductor's hand with the tickets issued and record this contemporaneously in writing in any known and acceptable form which can be proved in the inquiry by the author of the document. This is only one possible method, there might be others too. We are, in the facts of this case, unable to accept the plea of the learned Counsel for the appellant that there is enough evidence on record to prove the guilt of respondent.....”*

[Underlining is ours]

11. In the case at hand, the statements of the passengers were recorded and they were issued notices on number of occasions to appear. Despite the best efforts by the management, they did not appear in the enquiry. As has been held in the cases of ***Rattan Singh*** (supra) and ***Anup Singh*** (supra), that would not vitiate the domestic enquiry if it is otherwise sustainable. In the case at hand, as there are other materials, we are inclined to concur with the finding recorded by the industrial adjudicator that the enquiry was proper and justified and there had been no violation of the principles of natural justice and there is no disregard to the material brought on record. Thus, we are unable to accept the submission of the learned counsel for the appellant that the conclusion arrived at by the industrial adjudicator that the charges had been proved despite the factum that the passengers were not examined is incorrect as the same is sans substance.

12. The next aspect which requires to be adverted to is whether Regulation 15-A comes to the aid and assistance of the appellant. The said Regulation reads as follows:

“15-A Action against conductors for committing shortage.

(1) A conductor who commits shortage of more than Rs.5/- in a day or more than Rs.15/- in aggregate during a month shall be put off duty until he deposit the amount of shortage. In the event of his depositing the shortage the “Off duty” period shall be treated as leave without pay. If the conductor concerned does not deposit the amount of shortage due within 48 hours of the intimation of the shortage to him, he shall also be liable to such disciplinary action as may be deemed necessary by the General Manager. A conductor who commits shortage repeatedly, shall also be liable to disciplinary action

including termination of service, at the discretion of the General Manager.

(2) The permissible aggregate amount of shortage in a month can be increased from Rs.15/- to Rs.20/- at the discretion of the Traffic Superintendent under special circumstances if the Traffic Superintendent is satisfied that the circumstances justify this increase. Where this increase is sanctioned by the Traffic Superintendent the Conductor concerned will become liable to action as indicated in sub-clause (1) above when the shortage committed by him exceeds Rs.5/- in a day over 20 upon aggregate during the month.

(3) In case a conductor does not deposit the amount of shortage committed by him, it will be recovered from his salary on the next pay day or from his security deposit, if he is discharged from service or he quits service.”

13. On a scrutiny of the aforesaid Regulation, it is perceivable that it provides for action to be taken against conductors for committing shortage. That apart the shortage relates to more than Rs.5/- in a day and more than Rs.15 in aggregate during a month. There is a provision for permitting the conductor to deposit the amount of shortage committed by him. In case of non-deposit, there is provision for recovery. The submission of the learned counsel for the appellant is that the said Regulation has to be construed as a protective umbrella before issuing a chargesheet or proceeding in a disciplinary proceeding against the conductors when fare has been collected from the passengers but tickets have not been issued. The concept of shortage basically means an amount lower than needed or expected. To put it differently, the shortage has a different denotation whereas checking on the spot that passengers are travelling without ticket stands on a different platform. A shortage is a leverage given to a conductor as a protective

measure keeping in view the fundamental conception that there is possibility of an error in calculation. It relates to human error but not conduct. The same cannot be equated with misconduct. Thus, the submission raised in this regard is totally misconceived and, accordingly, stands repelled.

14. The next limb of argument of the learned counsel for the appellant is that the previous conduct and the punishment imposed on the appellant were relied upon by the Industrial Adjudicator as well as by the learned Single Judge though the same were not put to him. On a perusal of the chargesheet, it is graphically clear that it has been stated while passing the final order, the past record of the delinquent employee shall be taken into consideration. Thus, the colossal complaint made on this score is not factually correct and does not affect the decision making process of the Industrial Adjudicator and, therefore, the same does not warrant any advertence in that regard. In any case, the same does not merit consideration.

15. The last plank of submission of the learned counsel for the appellant is that the doctrine of proportionality has not been adhered to.

16. In this regard, we think it apt to refer to certain decisions in the field. In ***Karnataka State Road Transport Corporation v. B.S. Hullikatti***, AIR 2001 SC 930, a two-Judge Bench of the Apex Court, while dealing with the duties and responsibilities of a conductor, has observed thus:

“6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well

the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.”

[Emphasis supplied]

17. In ***Om Kumar and others v. Union of India***, (2001) 2 SCC 386, the Apex Court, while addressing itself with regard to the quantum of proportionality of punishment and the role of the authority and the role of the court, has opined thus:

“70. ...In *Ranjit Thakur vs. Union of India*, (1987) 4 SCC 611 this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749 this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in *Ganayutham*.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the

Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment”

[Emphasis added]

18. In ***M.P. Electricity Board v. Jagdish Chandra Sharma***, (2005) 3 SCC 401, while dealing with Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 which is almost similar to Section 11-A of the Industrial Disputes Act, 1947, their Lordships have held as follows:

“The scope of Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 is the same as that of Section 11-A of the Industrial Disputes Act, 1947. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. The Tribunal or the Labour Court cannot interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. The jurisdiction vested with the Labour Court to interfere with punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it can interfere to reduce the punishment. When charges proved are grave vis-à-vis the establishment, interference with punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved.”

*(Quoted from the placitum)
[Underlining is ours]*

19. In ***Regional Manager, U.P. SRTC v. Hoti Lal***, (2003) 3 SCC 605, the Apex Court has opined thus:

“The court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court are not proper.”

[Emphasis supplied]

20. In ***U.P. SRTC v. Suresh Pal***, (2006) 8 SCC 108, the Apex Court has held thus:

“8. Normally, the courts do not substitute the punishment unless they are shockingly disproportionate and if the punishment is interfered or substituted lightly in the punishment in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of court. If such kind of misconduct is dealt with lightly and the courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of the Constitution then it will give a wrong signal in the society. All the State Road Transport Corporations in the country have gone in red because of the misconduct of such kind of incumbents, therefore, it is time that misconduct should be dealt with an iron hand and not leniently.”

[Underlining is ours]

21. In *Amrit Vanaspati Co. Ltd. v. Khem Chand*, (2006) 6 SCC 325, it has been ruled thus:

“In our opinion, the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of Respondent 1 was not considered by the Labour Court and had returned the finding that the evidence of Respondent 1 did not inspire any confidence. We are of the opinion that the High Court is not right in interfering with the well-considered order passed by the Labour Court confirming the order of dismissal.”

22. In the case at hand, the appellant was a conductor in the Delhi Transport Corporation. It has been clearly proved that he had collected the fare but not issued the tickets. The appellant was punished on earlier two occasions for similar type of misconduct. He was let-off with stoppage of increments. The same did not work as a deterrent for him. He continued with the said habit. As it appears, he had totally forgotten about the punishment and possibly harboured the idea that he can always get away with leniency. A person who deals with public money is expected to realise his responsibility and his fiduciary capacity while he acts in holding the said money. A conductor in a bus is a primary collector of revenue. If he plays foul with it, the only expected result would be a loss to the Corporation. The submission of the learned counsel for the appellant that it was only Rs.15/- is

totally inconsequential. It is not for the first time. It is the third occasion when the appellant has involved himself in a similar act. Leniency has its limit. Mercy cannot shower its droplets all the time. Mercy becomes mockery when it is shown to the undeserved. It would not be out of place to say that imposition of a lesser punishment would not only shock the conscience of the court but also create a concavity in the collective psyche because every person thinks that anyone who is in a fiduciary capacity should act with utmost trust and not betray it. Playing foul with public finance not only shocks the national ethicality but also gradually destroys the national economic growth.

23. Ergo, we are disposed to think that the doctrine of proportionality as regards the punishment is not remotely attracted.

24. In view of our preceding analysis, we perceive no merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 13, 2010

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