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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 19741/2004

DELHI TRANSPORT CORPORATION Petitioner
Through Ms. Arati Mahajan Shedha, Advocate

versus

BRAHAM PRAKASH Respondent

And

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W.P. (C) 17729/2005

DELHI TRANSPORT CORPORATION Petitioner
Through Ms. Arati Mahajan Shedha, Advocate

versus

BRAHAM PRAKASH Respondent

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers 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 Digest? No

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ORDER
04.07.2011

1. W.P. (C) No. 19741 of 2004 filed by the Petitioner Delhi Transport Corporation ('DTC') is directed against the orders dated 26th September 2001 passed by the Industrial Tribunal ('Tribunal') declining approval for the removal of the Respondent in an application under Section 33 (2) of the Industrial Disputes Act, 1947 ('ID Act'). DTC also challenges an order dated 31st March 2003 of the Tribunal dismissing its application under Section 33 (2) (b) of the ID Act.

2. In W.P. (C) No. 17729 of 2005 DTC challenges an order dated 4th October 2004 of the Labour Court answering the reference in ID No. 233 of 1995 in favour of the Respondent workman and holding that his removal from service by the DTC was illegal. By the said order the Labour Court directed the reinstatement of the Respondent with back wages and all other consequential benefits from the date of his removal.

3. During the pendency of the these writ petitions, the impugned Award has been implemented with the workman having paid the amount due

thereunder. Further the workman's application under Section 17 B of the ID Act was allowed by an order dated 11th March 2008 of this Court in W.P. (C) No. 19741 of 2004. In lieu thereof, the Respondent was permitted to join duties in the DTC which he did with effect from 14th July 2009.

4. It may also be mentioned that the parties were referred twice to the Continuous Lok Adalat to explore the possibility of a settlement. However, no settlement could be arrived at.

5. This Court has heard the submissions of Ms. Arati Mahajan Shedha, learned counsel appearing for the DTC and has perused the impugned orders.

6. The facts are that the Respondent was employed as a Conductor with the DTC. On 11th March 1994 when he was performing his duties on Bus No. 9883 on route No. 131 the checking staff of the DTC checked the bus. It was found that the Respondent had collected full fare charges from seven passengers but had issued them tickets of lesser denomination. The statements of the passengers recorded by the checking staff were declined to

be signed by the Respondent. The DTC claimed that the Respondent admitted his fault and surrendered seven unpunched tickets. The Respondent caused financial losses to the DTC. On the basis of the report, charge sheet dated 7th April 1994 was issued to the Respondent for committing misconduct. Pursuant to the detailed enquiry the charges were held to be proved. Thereafter DTC filed an application under Section 33 (2) (b) ID Act seeking approval of the Tribunal for removal of the Respondent.

7. One of the preliminary issues raised in the application filed by the DTC under Section 33 (2) of the ID Act was whether it had held a legal and valid enquiry. Although the Respondent questioned the validity of the procedure adopted during the enquiry, the Tribunal by the order dated 26th September 2001 held that he has been given full opportunity to defend himself in the enquiry. However, as regard the report of the Inquiry Officer, the Tribunal observed that the written statement of one Mohd. Naseem, one of the passengers, stating that Respondent had issued him two tickets of Rs. 1 each after collecting Rs. 2 from him was disbelieved on the ground that the Respondent must have won him over. The notice issued to the other passenger Ram Swaroop, who too had given a statement against the

Respondent to the checking staff, was returned unserved as he was not found living at the given address. Consequently, the Tribunal concluded that there was no corroboration of the statements of the checking staff who were examined as management witnesses. In the circumstances, benefit of doubt was given to the Respondent and the enquiry was held to be vitiated. On the basis of the above finding, by a subsequent order dated 31st March 2003, the Tribunal dismissed the application filed by the DTC under Section 33 (2) (b) of the ID Act seeking approval of its removing the Respondent from service.

8. The above orders dated 26th September 2001 and 31st March 2003 have been assailed by the DTC on the ground that the Tribunal could not have acted as an appellate authority and re-examined the evidence. It is submitted that there was evidence on record to enable the Tribunal to come to a *prima facie* conclusion that the Respondent was guilty of misconduct. This was sufficient for the purposes of an application under Section 33 (2) (b) of the ID Act. Reliance is placed on the decision of this Court in ***Delhi Transport Corporation v. Nihal Singh 169 (2010) DLT 727*** and of the Supreme Court in ***Lord Krishna Textile Mills v. Its Workmen AIR 1961 SC 860***. It is submitted that the Labour Court could not have insisted on the corroboration

of the statements of the checking staff by independent witnesses. There were documents on record to substantiate their version. Reliance is placed upon the decisions in *Delhi Transport Corporation v. N.K. Kakkar 110 (2004) DLT 493*, *State of Haryana v. Ratan Singh 1977 (34) FLR 264* and a decision dated 6th September 2006 in W.P. (C) No. 6314 of 2004 (*Delhi Transport Corporation v. Upender Dutt*).

9. This Court finds that in a statement given earlier to the checking staff, passenger Mohd. Naseem had stated that he had paid the Respondent Rs. 2 but had been issued a ticket of Rs. 1 denomination. During the inquiry notice was issued to him to appear. While expressing his inability to appear, Mohd Naseem gave a statement in which he has stated that the Respondent issued him two tickets of Rs. 1 each. Mohd. Naseem stated that he could not earlier explain the matter to the checking staff as he was observing a fast. Basically there were contradictions in the two statements given by Mohd. Naseem. He was, therefore, not a reliable witness. The other passenger, Ram Swaroop, who gave a statement about the Respondent having issued six tickets of Rs. 1 each after collecting Rs. 2/- from each passenger, was not found to be residing at the address given by him. He could, therefore, not be cross-

examined during the enquiry. Resultantly, there was no reliable independent witness to corroborate the versions of the checking staff. The entire evidence sought to be adduced by the DTC was already on record before the Tribunal. The checking staff collected six punched tickets and seven unpunched tickets but failed to check the cash with the Respondent. Therefore, the need to have proven statements of the passengers became important. In the circumstances, the conclusion arrived at by the Tribunal was a possible view. It cannot be said to be perverse or illegal.

10. For the above reasons, this Court does not find any valid ground having been made out for interfering with the impugned orders dated 26th September 2001 and 31st March 2003 of the Tribunal rejecting the application filed by DTC under Section 33 (2) (b) of the ID Act seeking approval of its action of removing the Respondent from service.

11. This Court also finds no legal infirmity in the impugned award dated 4th October 2004 of the Labour Court holding the removal of the Respondent from service to be illegal and directing the reinstatement of the Respondent with continuity of service, back wages and all other consequential reliefs.

12. Consequently, the writ petitions are dismissed, but in the facts and circumstances, with no order as to costs.

S. MURALIDHAR, J

JULY 04, 2011
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