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

+ Date of Decision: 02.05.2013

% **W.P.(C) 4759/2001**

D.T.C. ..... Petitioner

Through: Ms. Arati Mahajan Sheldha, Adv.

versus

RAMESHWAR & ANR. ..... Respondents

Through: Mr. Anuj Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek quashing of the order dated 11.12.1997 deciding the issue with regard to the legality and validity of the domestic enquiry conducted by the petitioner against the respondent workman, and the subsequent order dated 20.4.2001 of Industrial Tribunal No.II in OP No.234/1992 20.4.2001 in which the petitioner's application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (the Act) has been decided against the petitioner, by declining the approval of the petitioner's decision to remove the respondent from service.

2. The brief facts are that the respondent was employed by the petitioner on 14.03.1985 as a conductor. On 26.09.1991 when the respondent was performing his duty as conductor on Bus No.9485 of RL-24 upside, a checking party of the petitioner checked the respondent's bus at 7:25 hours at Delhi Gate. The checking staff found that in the hand block of tickets held by respondent No.1, he was having 12 sold tickets, out of which 4 were punched from upside, and 8 were punched from down side. These tickets were of the denomination of Rs.2/- each. According to the petitioner, upon counting of the cash held by the respondent, he was found to be having excess cash of Rs.4/-. He was also not found sitting on his seat, but was standing on the front gate of the bus. The respondent was placed under suspension with effect from 1.10.1991. A chargesheet was issued to the respondent alleging misconduct by him. The charges levelled against the respondent were that his hand block had 12 sold tickets, four of them punched on the upside and eight of them on the down side and that the respondent had kept the sold tickets with the intention to resell the same. He was also charged with having excess cash of Rs.4/-, and that he was not found sitting on the seat of the conductor. The charge sheet alleged violation of para 19(c) (b) (f) & (h) of the Standing Orders of the petitioner Corporation. The respondent was also informed that his past record would also be considered while passing the final order.

3. The respondent filed his response to the said chargesheet. The case set up by the respondent was to the effect that at ITO four passengers boarded the bus and without purchasing their tickets they straight away went ahead. He stated that while asking the said passengers to purchase their

tickets, he followed them upto to the front gate. When the respondent asked them to purchase their tickets, they took out two tickets and showed them to him. The respondent checked the tickets and stated that those tickets were not for the journey on the said bus. Thereupon, two other passengers gave their tickets to those four passengers and de-boarded the bus. As the respondent was not satisfied and did not agree with the said four passengers, they took out Rs.4/- and gave the same to the respondent and said that there is no need for them to buy tickets. Before the respondent could say anything to those four passengers, they pushed him and left the bus. Just then the checking staff started checking the bus and challaned the respondent. He further stated that the checking staff did not listen to him, and de-boarded him from the bus at Subhash Park and the duty of the conductor was assigned to another employee. He stated he was not aware, as to where from the two tickets handed over to him by the said passengers, had been issued. The respondent denied the allegations against him as baseless.

4. Since the respondent denied the charges against him, a domestic enquiry was held against the respondent. The enquiry officer made his report on 26.05.1992. He held the charges against the respondent to have been proved. The disciplinary authority accepted the said report and was tentatively of the view that the respondent should be removed from service. The respondent was issued a memorandum dated 5.06.1992, granting him an opportunity to show cause with regard to the action to be taken against him. The respondent, however, did not submit any response despite another reminder sent by the petitioner on 23.06.1992. Consequently, on 30.06.1992

the petitioner removed the respondent from service with immediate effect.

5. The petitioner, soon after passing the order of removal from service, simultaneously moved an application under Section 33(2)(b) of the Act which was registered as OP No.234/1992.

6. The Industrial Tribunal dealt with the issue with regard to legality and validity of the domestic enquiry. This issue was decided by the impugned order dated 11.12.1997. The only issue raised by the respondent to challenge the domestic enquiry report was - that the finding returned by the enquiry officer was perverse. The Tribunal found merit in the submission of the respondent. The Tribunal observed that during the enquiry, two witnesses of the management were examined and both of them were members of the checking team who had checked the respondent's bus on 26.09.1991 and both of them simply stated before the enquiry officer that the respondent was having 12 sold tickets in the hand block at the time of checking. One of them, namely Shri K.L. Negi, had also stated that the cash of the respondent was also checked. However, none of the two witnesses had stated that the cash with the respondent was found to be in excess. On this basis, the Tribunal held that the enquiry officer's finding that the respondent was guilty of having excess cash with him was without any evidence at all. The Tribunal also held that the finding of the enquiry officer with regard to misconduct described in para 19(c) of the Standing Order governing the conduct of DTC employees is also bereft of evidence, since the petitioner Corporation had not established that the respondent had, in fact, caused intentional loss to the Corporation, and the managements witnesses had not stated that the respondent was having excess cash on

account of his not issuing tickets after collecting the fare from the passengers. The Tribunal further held that there was no basis to conclude that the respondent was guilty of misconduct as per para 19(b) of the Standing Orders which deals with misconduct of defrauding the Corporation, as the witnesses of the management had not led any evidence to that effect. The Tribunal also held that statement of the respondent that he had left his seat and gone towards the front gate of the bus because some passengers had gone there without purchasing the tickets - had gone unrebutted, and this aspect had not been considered in the domestic enquiry.

7. In substance, the Tribunal held that since the respondent was not caught red handed selling the used tickets and pocketing the proceeds thereof, the charges against him were not duly proved.

8. The parties led further evidence before the Tribunal to enable the petitioner to establish the charge against the respondent. The Tribunal has thereafter passed the impugned order dated 20.04.2001 holding that the charges against the respondent were not duly proved. Consequently, the permission under section 33(2)(b) of the Act has been declined.

9. The submission of learned counsel for the petitioner is that the finding returned by the industrial tribunal - holding the enquiry officer's finding to be perverse, is itself perverse, as it is contrary to the record produced before the tribunal. She points out that the checking report prepared by the raiding team at the spot itself, *inter alia*, records in the heading/subject, as well as in the body, that sold tickets and excess cash of Rs.4 were recovered from him. The said document forms part of the

proceedings of the tribunal. She further submits that the challan, which was also contemporaneously prepared, records the fact that Rs.4 in excess was found with the respondent. She points out that the respondent had even signed the 12 sold tickets recovered from his hand block, as also the checking report and the challan, which clearly demonstrate the fact that these documents were contemporaneously prepared at the time of checking of the bus in question, of which the respondent was the conductor. Additionally, she points out from the original record of the petitioner that even in the way bill, the factum of recovery of Rs.4 excess in cash held by the respondent was duly recorded. Moreover, the respondent had admitted the fact that he had excess cash of Rs.4 with him during the course of the enquiry conducted before the tribunal. His explanation was, as noted above, that some passengers had given to him the said cash without purchasing the tickets, and it is they who had handed over to him the sold tickets.

10. She also places reliance on ***U.P.S.R.T.C. v. Mahendra Nath Tiwari & Anr.***, (2006) 1 SCC 118. In this case, one of the charges against the respondent, who was a bus conductor with the appellant corporation, was that he was found in possession of 12 used tickets. The Supreme Court held that possession of the said used tickets, prima facie, suggests that there was room to doubt the honesty of the respondent. He did not even try to explain the circumstances of his coming into possession of the 12 used tickets. The Supreme Court further held that the charges are such that they show a betrayal of trust placed on conductor by the employer. I may note that in the present case, the respondent has sought to explain the possession of two used tickets when he says that they were given to him by the two passengers

who did not buy the tickets. However, he has not ventured to explain the position with regard to the other 10 used tickets.

11. She also places reliance on the decision of the Supreme Court in ***Karnataka State Road Transport Corporation v. V.S. Kalikati***, JT 2001 (2) SC 72. In this case, the respondent was a bus conductor working with the appellant corporation. The charge against him was that he had collected for a particular trip the bus fare of Rs.2.25 each from the 35 passengers, but had issued tickets of the denomination of Rs.1.75 only. The Supreme Court held that the respondent, who had been in service as a conductor for nearly 22 years, could not be believed to be ignorant as to what was the correct fare to be charged. The Supreme Court applied the principle of *resp ipsa loquitor*, namely, the facts speak for themselves. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the conductor. The Supreme Court held that this act was either dishonest, or was so grossly negligent that the respondent was not fit to be retained as a conductor, because such action or inaction of his was bound to result in financial loss to the appellant corporation. Learned counsel submits that the present too is a case fit for invocation of the principle of *res ipsa loquitor* in view of the recover of 12 sold tickets and Rs.4 in excess from the respondent.

12. She places reliance on the decision of the Supreme Court in ***Regional Manager, R.S.R.T.C. v. V. Ghanshyam Sharma***, JT 2001 (10) SC 12, wherein the Supreme Court has held that the main duty or function of the conductor is to issue tickets and collect the fare and then deposit the same with the road transport corporation and when the conductor fails to do so,

then it will be misplaced sympathy to order his reinstatement instead of dismissal.

13. Learned counsel for the petitioner further submits that the possession of used tickets by itself has been declared to be an "offence" i.e. misconduct by office order No.139 dated 04.08.1960 bearing no. ADN II-5(10)/60. Under the head list of offences/conductors, a further sub-head 'tickets' enlists six misconducts in relation to issuance and possession of tickets, the sixth being "*being in possession of used and/or sold tickets*". She submits that, therefore, the issuance of used tickets is not essential to be proved to constitute misconduct on the part of the conductor, and mere possession thereof is sufficient to constitute misconduct. The executive instructions issued by the Delhi Road Transport Authority i.e. the predecessor in interest of the petitioner in relation to duties of conductor also, *inter alia*, states "*no ticket once used is ever to be used again, no conductor shall pick up or have in his possession any used ticket*". Any conductor found in possession of or guilty of issuing used ticket, will be liable to dismissal and even be proceeded criminally. These executive instructions clearly state that they constitute a code of principles in practice which should be followed by every conductor rigidly and invariably. They state that any breach of these instructions shall render the conductor liable to disciplinary action as laid down in regulation 15(2) of the D.R.T. (Conditions of Appointment and Service) Regulations 1952, as amended from time to time.

14. In the light of the aforesaid, learned counsel for the petitioner submits that the following observations made in the impugned order dated

20.04.2001 are not sustainable:

> "*There is no evidence on the file to show that the tickets recovered from the possession of the conductor were part of the hand block tickets issued to him by the DTC authorities. The AW has also stated that four such tickets were recovered from the passengers travelling in the bus. If the tickets recovered from the possession of the passengers were resold and were part of the hand block tickets of the respondent then the DTC could have said that the respondent resold the already sold tickets to the passengers.* ***Merely recovery of resold tickets from the possession of the conductor did not cause any financial loss to the DTC/employer. It is not the case that those passengers were not travelling without valid tickets***". (emphasis supplied)

15. Learned counsel for the petitioner further submits that the tribunal grossly erred in observing that there is nothing on record to show that the respondent was habitually negligent in performing his duties and was having lack of interest in the work of the employer. She submits that the past record of the respondent was placed before the tribunal and as per the past record, there were three other incidents of non issuance of tickets by the respondent after pocketing the fare. On the first occasion he was censured on 16.05.1989, on the second occasion two increments were stopped in respect of non issuance of tickets on 06.07.1990. The third occasion – wherein he had not issued tickets to 20 passengers of 7 groups and 1 other passenger after pocketing the fare, was pending enquiry, when the respondent committed the misconduct in question.

16. Learned counsel for the petitioner submits that the defence taken by

the respondent before the tribunal was completely at variance with that taken by him in the domestic enquiry which has been noted herein above. She submits that in the enquiry before the tribunal, the stand taken by the respondent was that the said sold tickets were picked up by the checking staff from the floor of the bus, whereas in the domestic enquiry proceedings, the story set up by the respondent was that two used tickets were given to him by two passengers who did not buy tickets from him and, instead, gave Rs.4 to the respondent and alighted the bus. She submits that either at the stage of replying to the charge sheet, or during the domestic enquiry proceedings, or even thereafter, such a plea was not taken by the respondent and, consequently, the stand taken before the tribunal was an afterthought and patently false. She submits that had there been any truth in the story subsequently set up by the respondent, there was no question of the respondent signing the 12 sold tickets recovered from him.

17. On the other hand, learned counsel for the respondent submits that the enquiry report prepared during the domestic enquiry was a non speaking report. The said report merely takes note of the charges levelled against the respondent, the final statement of the respondent, and then proceeds to record the 'result'. He further submits the charges levelled against the respondent were alleged to constitute violation of para-19 (c), (d), (f) and (h) of the standing orders of the corporation and the conductors duty. However, the charges levelled against the respondent did not fall within the said paragraphs. In this regard, he has referred to the discussion contained in the impugned order in para-15, which reads as follows:

> "*15. The clause-B of section 19 says theft, fraud or dishonesty*

in connection with the authority business or property. 'C' says wilful damage or loss to authorities goods or property, 'f' says habitual breach of any rules, law instructions or order etc. Applicable to the employees of the authority and 'h' says habitual negligence of duties and lack of interest in the work of authority. The facts of the case show that the respondent was not given opportunity to deposit excess amount of Rs.4/- with the employer. There is nothing on record to show that Rs.4 was collected from the passengers without issuing tickets to him. Therefore, it cannot be said that the respondent committed theft, fraud or dishonesty in connection with the business or property of the employer. Similarly, there is nothing on the record to show that the workman wilfully caused damage or loss to the goods or property of the employer. The DTC has not shown any rules, law or instruction or order etc. applicable to the respondent and breached by him. Similarly, there is nothing on the record to show that he was habitually negligent in performing his duty or was having lack of interest in the work of the employer. The reply to the charge sheet says that checking staff did not allow him to perform duty and another conductor was directed to perform duty. The excess amount of Rs.4 whether forced upon the conductor as mentioned in the reply to the charge sheet or the balance amount of the respondent as mentioned by the respondent in cross examination was to be deposited with the petitioner on completion of the duty by the respondent. It is not the case of the management that the said amount was not deposited with the petitioner. Hence, on that ground also it cannot be said that the respondent committed misconduct".

18. The next submission of learned counsel for the respondent is that the view taken by the tribunal is a plausible view and, therefore, this Court should not interfere with the same in exercise of its writ jurisdiction.

19. Having heard learned counsel for the parties, perused the record, the

order dated 11.12.1997 and the impugned order dated 20.04.2001, it is absolutely clear to me that the impugned order dated 11.12.1997 and 20.04.2001 are patently laconic and are liable to be set aside. No doubt, a perusal of the enquiry report shows that there is much to be desired regarding the manner in which the same was prepared. The said enquiry report takes note of the charges against the respondent and also the defence of the respondent. The same then proceeds to set out the "result", or the finding of the enquiry officer. However, the disciplinary authority has not gone only on the basis of the enquiry report, but also on the basis of the record. The noting dated 01.06.1992 made by Sh. Lalit - who appears to be the disciplinary authority, *inter alia*, records that he fully agrees with the enquiry report made by the enquiry officer and after consideration of the entire matter independently on his own, he has found that the respondent is habitual in misconducting himself and that he is a liability on the corporation. Therefore, it is clear that the disciplinary authority - for whose benefit the enquiry report is prepared, has not only gone on the basis of the enquiry report but has for himself examined the evidence led before the enquiry officer.

20. As pointed out by the petitioner, in this case, there was ample evidence against the respondent to prove the charge against him. Firstly, he was found in possession of 12 sold tickets. The fact that he signed these 12 sold tickets on the asking of the checking staff is itself indicative of the fact that he owned up to these sold tickets as coming from his possession. Otherwise, there was no question of the respondent signing the said tickets. He did not deny the possession of these tickets in his possession

contemporaneously. Secondly, he also signed the challan, which too recorded the misconduct that he was found in possessing 12 sold tickets. His cash was also counted which was found to be in excess of Rs.4. This fact was also recorded in the checking report as well as in the challan, which he had signed. The respondent had also noted the said fact in the way bill - though I may observe that the said way bill does not appear to have been produced before the tribunal, but is shown to the Court. Even if this piece of evidence is ignored, there was more than sufficient evidence before the Tribunal to establish the respondents misconduct.

21. The Supreme Court in ***State of Haryana & Anr. v. Rattan Singh***, (1997) 2 SCC 491 has held that in a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. The Supreme Court held that the departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow that is, strictly speaking, not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials from considerations, and observance of rules of natural justice. Fair play is the basis, and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusion reached, such a finding even of a domestic tribunal cannot be held to be good. The Supreme Court observed:

> "***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***". (emphasis supplied)

22. In the light of the aforesaid evidence brought in the domestic enquiry, it could not be said that the finding of the respondent's guilt was not based on some evidence. In fact, in the present case, there was ample evidence to support the finding of misconduct against the respondent as alleged against the respondent. As submitted by learned counsel for the petitioner, the finding that there was nothing placed on record to show recovery of excess cash is itself perverse, since the factum that excess cash was recovered from the respondent finds duly recorded in the checking report, the challan and also in the way bill. The challan was duly signed by the respondent. The fact that the respondent had 24 hours to deposit the excess cash does not change the situation, particularly, in the light of the fact that he was found in possession of 12 sold tickets. The said fact, therefore, cannot be ignored. The explanation furnished by the respondent for possession of the twelve sold tickets was wholly implausible. During the domestic enquiry proceedings, he claimed that two passengers had given him two sold tickets. Even if the said explanation were to be accepted, it does not explain the possession of twelve sold tickets. His subsequent defence that these twelve sold tickets were picked up from the floor by the checking staff is – firstly, an afterthought, as it was not taken during the

departmental enquiry, and, secondly it does not explain his signatures on the twelve sold tickets and in the challan etc. which record the fact that these sold tickets were recovered from him.

23. The submission of learned counsel for the respondent that the breach of the regulations in the standing orders was not made out on the basis of the allegations against the respondent also has no merit. Clause (b) of para 19 deals with theft, fraud or dishonesty in connection with the authority of the business or the property of the corporation. The conduct of the respondent clearly tantamounted to dishonesty in connection with the business of the petitioner corporation. Clause (c) of para 19 deals with wilful damage or loss to the authority's goods or property. The respondent was not caught red handed selling the used tickets, though he was found in possession of the used tickets and in possession of excess cash. The violation of clause (c) of para 19 may, strictly speaking, not have been made out. Clause (f) of para 19 deals with habitual breach of any rule, laws, instructions or orders etc. applicable to the employees of the authority. In the present case, the respondent by possessing sold tickets was clearly guilty of breach of executive instructions referred to above as also the office order no.139 dated 04.08.1960 referred to above. He also breached the guide to conductors issued by the petitioner – which, in clause 12, states that a ticket once issued is never to be used again and as such the conductor should never try to resell and keep in his possession any used ticket. Therefore, the respondent clearly breached clause (f) of para 19. Clause (h) deals with habitual negligence in performance of duties in the work of authority. The respondent's conduct clearly fits into the said clause – as, on the basis of the

past record, as noted above, on three earlier occasions he was found to have collected the fare from the passengers and not issued tickets to them.

24. The submission of learned counsel for the respondent that this Court should not interfere with the impugned orders since a plausible view has been taken by the tribunal has no merit. The findings of the tribunal returned in the order dated 11.12.1997, to say the least, are perverse, as they ignore the documentary evidence found on record. The said order also ignores the aforesaid rule position which was applicable to the case of the respondent. Similarly, the impugned order dated 20.04.2001 is patently laconic and borders on perversity, as the same ignores the facts brought on record as well as the past record of the respondent.

25. For all the aforesaid reasons, in my view, the impugned orders dated 11.12.1997 and 24.02.2001 cannot be sustained and they are accordingly set aside.

26. In the facts and circumstances of the case, I direct the respondent to refund the excess amount received by him over and above the last drawn wages, under section 17B of the Act in terms of the order dated 14.09.2005 passed in C.M. No.12062/2002. It appears that the respondent has not filed the undertaking to refund the differential amount between the last drawn wages and the amount that he may actually receive under the orders of the court. That, in my view, makes no difference, since he has accepted the amount tendered by the petitioner under section 17B. His acceptance itself tantamounts to his agreeing to the said condition.

27. The respondent shall make the refund of the excess amount received by him within the next eight weeks, failing which it shall be open to the petitioner to, *inter alia*, initiate contempt proceedings against him.

28. Petition stands disposed of in the aforesaid terms leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

MAY 02, 2013
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