

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 14.08.2013

+ **LPA 178/2013**

NEPAL SINGH

..... Appellant

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Atul T.N.

For the Respondent : Mr Manish Garg

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal impugns the order dated 21.01.2013 passed by a Single Judge in W.P.(C) 8046/2010. The learned Single Judge has allowed the writ petition filed by the respondent herein and has quashed the order dated 05.10.2009 passed by the Labour Court holding that the inquiry conducted by the respondent in respect of the charge levelled against the appellant was not fair and proper.

2. The Labour Court had come to the conclusion that the findings urged by the Inquiry Officer were not based on "acceptable evidence". This conclusion was arrived at by the Labour Court on the premise that the witness deposing before the Inquiry Officer was required to make an oral statement with regard to the facts constituting the alleged misconduct and it was not sufficient for the witness to rely on and adopt his report/statement

made earlier. The learned Single Judge has held that the Labour Court has misdirected itself in law in coming to this conclusion.

3. The controversy in the present appeal is limited to the question whether the Inquiry Officer could rely on the evidence of the Traffic Inspector who had adopted his earlier report and had not given a fresh oral testimony as to the facts alleged in the report or the incident to which the report related.

4. The appellant was employed as a Conductor with the respondent corporation and was on duty on 16.03.1994 when the bus on which he was performing his duty was intercepted and a check was conducted. It is alleged that certain passengers were found with tickets, the value of which was less than the fare due and paid by them to the appellant. Accordingly, a challan was issued to the appellant. Subsequently, a chargesheet was issued to the appellant on 31.03.1994 which reads as under:-

“That on 16.3.94, while you were on duty with Bus No.9885 of route Sohna/K. Bagh, your bus was intercepted by the checking staff at G.G. by Pass and found that 5 passengers were traveling in the bus who were in possession of less denomination tickets while you had collected full due fare from them.

Your above act tantamount to misconduct within the meaning of para 19(b)(f)&(m) of the Standing Orders governing the conduct of DTC employees.”

5. The respondent filed his reply dated 18.04.1994 to the chargesheet issued to him which was not found satisfactory and an Inquiry Officer was appointed to conduct an inquiry into the charge leveled against the

appellant. During the course of the proceedings, the traffic inspector who was involved in the surprise check conducted on 16.03.1994 deposed and adopted his report dated 16.03.1994 which indicated that passengers were found in possession of tickets of denominations which were less than the fare due or collected from them. This witness was cross-examined by the appellant.

6. On the basis of the evidence and the material available, the Inquiry Officer found that the appellant was guilty of the charge framed against him and submitted the inquiry report dated 29.11.1994. A copy of this report was also provided to the appellant.

7. A show cause notice dated 06.01.1995 was issued to the appellant calling upon him to show cause why the punishment of removal from service not be imposed upon him. The appellant was given yet another show cause notice to the same effect on 11.03.1996 and, thereafter, the Disciplinary Authority passed an order dated 26.09.1996 dismissing the appellant from the services of the respondent corporation. The appellant preferred an appeal against the order of dismissal from service before the Competent Authority which was also rejected by an order dated 04.12.1996.

8. The appellant raised an industrial dispute and the following reference was made to the Labour Court:-

“Whether the removal of Shri Nepal Singh, from service is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?”

9. The pleadings were completed and the Labour Court framed the following issues:-

“1. Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?

2. As per terms of reference?”

10. The Labour Court passed an order dated 05.10.2009 deciding the first issue in favour of the appellant. The Labour Court noted that the management of the respondent had examined one Ram Kanwar, Traffic Inspector who had made a report on 16.03.1994 and had adopted the same in his examination-in-chief. The Labour Court thereafter held as under:-

“It is not in the principles of natural justice to allow the management witness to rely on earlier statement or report. The witness has to speak the misconduct in the enquiry orally supported by the documents. The witness had not stated anything on the misconduct. Though this witness was cross-examined by the workman, it cannot said that the misconduct is proved by a one line statement of the witness who adopted the earlier report dated 16.03.1994.”

11. The Tribunal further held that though the procedure adopted in the inquiry were not in conflict with the principles of natural justice, the findings of the Inquiry Officer was not based on acceptable evidence. On the basis of this reasoning, the Labour Court concluded that the management had not conducted a fair and proper inquiry. Thereafter, the Labour Court proceeded to examine the question whether the removal of the appellant from service was illegal or unjustified. The respondent

produced the Disciplinary Authority as its witness who produced the documents relating to the inquiry including the reports of the checking staff. This evidence too was rejected by the Labour Court on the ground that the Disciplinary Authority was not one of the members of the checking staff and, therefore, had no personal knowledge of the incidence of 16.03.1994. The Labour Court thereafter directed the respondent to reinstate the appellant with continuity of service and other benefits and further directed that a sum of ₹25,000/- be paid to the appellant.

12. Aggrieved by the order dated 05.10.2009 and the award dated 01.07.2010 passed by the Labour Court, the respondent preferred a writ petition which was allowed by the impugned order.

13. The learned Single Judge held that the Labour Court had misdirected itself in law in concluding that the finding of the Inquiry Officer was not based on acceptable evidence. The relevant extract from the decision of the learned Single Judge is as under:-

“14. While examining the issue whether the domestic enquiry conducted by the petitioner was legal, and whether the findings returned in the said enquiry were founded upon acceptable evidence, the Labour Court made the above quoted observation. However, there is no basis for observing that the witness has to speak the misconduct in the enquiry orally, supported by document, and that he cannot rely upon the earlier report prepared by him at the site when the misconduct was found, of which he is the author. The said report was a part of the enquiry proceedings, and the delinquent respondent was aware of the contents of the same. In fact, it is this report, which was prepared at the site at the time of the raid, which formed the very basis of the charge sheet. There was no need for the author to repeat what was stated therein. Once he

appeared in the domestic enquiry proceedings and owned up the report prepared by him, the preparation of the said report stood proved.

15. Pertinently, the respondent had even examined the management's witness in the enquiry proceedings. There is no finding that on the basis of the evidence led in the enquiry proceedings, under no circumstances, the finding of guilt could be returned against the respondent/delinquent. It may be too broad a proposition to state that in no case the Labour Court will go into the aspect of sufficiency of evidence. The Labour Court would not only examine the validity of the departmental enquiry proceedings from the standpoint of procedural compliance, but also examine whether the charge is at all made out, or not.

16. Since the aforesaid misdirection in law is the only reason why the domestic enquiry has been brushed aside by the Labour Court, the finding of the Labour Court that the enquiry was not based on acceptable evidence cannot be sustained and is set aside.

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18. In the facts of the present case, it cannot be said that the domestic enquiry conducted by the petitioner was based on no evidence, or that the management had not led the evidence broadly in compliance of the broad principles enshrined in the Evidence Act. The author of the report had himself appeared as a witness in the domestic enquiry to support the said report. He was not only the author of the report, but an eye-witness to the entire raid. The respondent had also availed of the opportunity to cross examine him and after considering the entire evidence the enquiry report had been prepared. Pertinently, the Labour Court does not discuss the evidence led by the parties to come to the conclusion that, under no circumstances, the finding of guilt could have been returned in this case."

14. We have heard the learned counsel for the parties.

15. The learned counsel for the appellant has been unable to justify the reasoning of the Labour Court that a witness in an inquiry proceeding must depose orally as to the alleged misconduct and cannot rely on or adopt his earlier report. There is no basis in law for this proposition. Besides, it is well settled that the Evidence Act, 1872 and the rules of evidence are not strictly applicable in the departmental proceedings. In the case of **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Ors.**: (1991) 2 SCC 716, the Supreme Court has held as under:

“37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue.....”

Further, in the case of **HPCL v. Sarvesh Berry**: (2005) 10 SCC 471, the Supreme Court has also held that:-

“8. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.”

16. We are in agreement with the decision of the learned Single Judge that the order dated 05.10.2009 passed by the Labour Court holding that the

departmental inquiry against the appellant was not proper is erroneous and misdirected in law. We find no reason to interfere with the order passed by the learned Single Judge and accordingly dismiss the present appeal with no order as to costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

AUGUST 14, 2013
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