

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

Judgment reserved on: 11.02.2013

% **Judgment delivered on: 08.03.2013**

+ **W.P.(C) 7982/2009**

DAYAL SINGH

..... Petitioner

Through: Mr. Sandeep Sharma, Mr. C.S. Rawat
and Mr. Aman Nandrajog, Advocates.

versus

D.T.C.

..... Respondent

Through: Mr. J.S. Bhasin & Ms. Rashmipriya,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. By the present petition, the petitioner seeks the setting aside the order of removal dated 21.10.1994 issued by the respondent employer, and the award dated 16.09.1996 passed by the Labour Court, Fast Track-XXI, Karkardooma Courts, Delhi on the reference made by the Appropriate Government with regard to the petitioner's removal from service. The Labour Court has held the petitioner's removal from service as legal and justified.

2. The petitioner was appointed as a bus conductor by the Respondent and was confirmed on successful completion of probationary period w.e.f. 03.09.1986. The petitioner was on duty on interstate bus route from All India Institute of Medical Sciences, New Delhi to Faridabad on bus no. DLP.9809. The said bus was checked by the checking staff of DTC on 26.04.1993 at 12:30 hours at Ajronda Mor. On the basis of the said check, the petitioner was charge-sheeted on 14.05.1993 on the allegation that the petitioner did not issue tickets to 4 passengers despite collecting fare from them. A domestic inquiry followed, which found him guilty of misconduct. The Disciplinary Authority accepted the Inquiry Report and removed the petitioner from service vide order dated 21.10.1994.

3. The petitioner raised an industrial dispute which was referred to the Labour Court for adjudication. The following preliminary issue was framed on 07.12.1997:

- a. Whether the domestic enquiry was not conducted according to the principles of natural justice and is therefore not valid, fair, proper?

4. Vide order dated 03.01.2004, the Labour Court decided the said issue in favour of the respondent management.

5. On the issue framed in terms of the reference, it was contended by the workman before the Labour Court that the punishment awarded is highly disproportionate to the misconduct proved against him. The workman relied upon the circular of DTC dated 03.01.1966. It was contended by the workman that the circular enumerates that the punishment of termination/

removal cannot be effected in the facts of this case. The Management also admitted that the circular is still in vogue and has not been superseded.

6. The Labour Court relying on the last para of the said circular held that the punishment awarded to the workman is not in violation of the office order no. 1 dated 3.01.1966. The Labour Court also held that, after a perusal of the record of the petitioner, it is seen that he was placed under suspension w.e.f. 30.10.1987 for issuance of tickets of less denomination after collecting the fare. Later on, his suspension was revoked and the punishment of stoppage of next due increment without cumulative effect was imposed on him.

7. The Labour Court relied upon the judgment of the Supreme Court in ***Karnataka Bank Ltd vs A.L Mohan Rao***, 2006 LLR 252. The Supreme Court in this case had observed that “*Setting aside termination of bank employees guilty of serious misconduct after holding of enquiry amounted to misplaced sympathy by the High Court hence the punishment as imposed has been restored by the Apex Court. It is for the disciplinary authority and not for the Court to decide as to which punishment be imposed on a delinquent having admitted the misconduct hence the interference by the High Court was uncalled for*”(emphasis supplied). The industrial adjudicator upheld the removal of the workman from the service and held that the interference of the court is uncalled for.

8. The petitioner submits that at Badarpur Power House, Delhi, 4 ladies boarded the bus, one of them gave Rs. 20/- and asked for 2 tickets for Old Faridabad and 2 tickets for Bata Chowk, Faridabad. The petitioner issued

the said tickets for Rs. 18/- and refunded her Rs.2/- — the balance amount. One of the two ladies who got down at Old Faridabad was carrying all the four tickets. She forgot to hand over 2 tickets to the 2 lady passengers who were in the bus and were to get down at Bata Chowk, Faridabad. The petitioner also submits that no other passenger was found without ticket. The checking staff of the Respondent comprising of 3 officials, (1 TI and 2 ATI) found these 2 lady passengers without ticket. On being asked, the petitioner clarified that he had issued 4 tickets to one lady in a group of 4 ladies.

9. Learned counsel for the petitioner also submits that the enquiry officer failed to consider the complaint filed by the petitioner conductor on 28.04.1993, i.e., within 72 hours of the alleged occurrence which contained the aforesaid version of the petitioner. Hence, the enquiry suffers from grave irregularity.

10. Learned counsel for the petitioner submits that the Management served a charge sheet dated 14.05.1993 upon the workman on 17.05.1993. On 18.05.1993, the workman specifically demanded the way bill dated 26.04.1993 for Bus No.9809 Route AIIMS-Faridabad. As per the instructions of the Respondent contained in the Circular of 1969, the checking staff is required to first close the way bill immediately on entering into the bus and thereafter take further action as may be warranted. The said way bill was not closed immediately.

11. The Management, however, refused to give the said document to the workman vide letter dated 24.05.1993 on the ground that the said document

is a government document. The said act, according to the Ld. Counsel, was malafide and suggests victimisation of the workman. The opportunity of being heard was also denied to the workman.

12. The next submission of the learned counsel for the petitioner is that his cash was not counted. It is argued that the inquiry findings are perverse. Unpunched tickets were taken forcibly and the statement of passengers was not recorded in his presence. The petitioner also alleges that the passengers concerned were not produced in the enquiry by the management. He submits that the said passengers gave incomplete addresses and particulars and, consequently, the petitioner himself was also unable to trace them.

13. Learned counsel submits that the petitioner was not cross examined before the Labour Court. According to the petitioner, he filed his evidence before the Labour court on 14.07.2000 and on 4.09.2002, he made his oral statement before the Labour Court. But the Management representative did not cross examine the petitioner, despite the opportunity being given to him. Therefore, the evidence of the petitioner has gone uncontroverted or rebutted and the charges are baseless.

14. Mr. Sharma submits that though the charge memo dated 14.05.1983 disclosed that the group leader of one of the two groups was a female, the management witness Sh. Jagdish Chandra, Asst. T.I. stated that all the four passengers without tickets were males. He submits that this clearly shows the contradiction in the management evidence.

15. Learned counsel for the respondent has defended the impugned award. He places reliance on the statement of Shri Zile Singh, wherein he stated that:

“On 16.04.1993, Bus no. 9809, was plying from All India Institute of Medical Sciences up-side to Faridabad. At about 14.30 pm, it was caught checking for Ajronda Mor and the passengers on board were checked and a group of two passengers was found travelling without ticket. On enquiry, the group leader told that they had boarded the bus at Badarpur Power House for Bata Chowk and paid Rs.10/- (Rs.5/- per passenger) to the Conductor. But the Conductor did not issue any tickets to them. The conductor was confronted before the passengers. The conductor admitting his mistake gave two unpunched tickets. The statements of the passengers were recorded on the back of the Challan, on which the Conductor refused to put his signature. Likewise, one more group of two passengers was found without ticket. On enquiry the group leader told they had boarded the bus at Badarpur for Dussehra Ground and paid Rs.12/- to the Conductor but no ticket was issued to them. The Conductor was confronted before the passengers. He admitted his mistake and gave two unpunched tickets whose numbers have been mentioned in the report. Passengers were illiterate, therefore, their statement was recorded by Shri Nathu Ram, T.I. The Conductor was challaned. The Complaint Book was sealed. Necessary remarks were given on the Way bill of the Conductor. Report submitted which may be treated as part of my statement. Besides this I have nothing to say”.

16. Learned counsel for the respondent submits that the non-examination of passenger witnesses is not fatal to the case. Reliance is placed by the learned counsel on a judgment of the Hon'ble Supreme Court in ***State of Haryana vs. Rattan Singh***, 1977(2) SCC 49. He has countered the various issues raised by the petitioner above referred to.

17. Mr. Bhasin places reliance on the decision of Division Bench of this Court in *Ishwar Singh v. DTC*, LPA No.2269/2006 decided on 19.01.2007.

18. Having considered the rival submissions and having perused the impugned award and the documents and decisions relied upon by the parties, I am of the view that the present petition has no merit and is liable to be dismissed.

19. The submission of Mr. Sharma with regard to the petitioner not being provided with copies of the relevant documents does not hold water. The only document specifically demanded by the petitioner was the way bill. The said way bill was not a document relied upon by the management to prove the charge against the petitioner. Though the reason given by the respondent to deny the way bill to the petitioner may not have been a relevant and germane reason, the petitioner has failed to establish as to what prejudice he has suffered on account of non production of the way bill by the respondent. Since the petitioner was serving as a conductor with the respondent, it was for him to bring out in the enquiry proceedings and before the Labour Court, the relevance of the said document. However, the petitioner did not establish the relevance of the said way bill in the proceedings which have already taken place and, even before this Court, the said aspect has not been pressed by the petitioner. What is that the way bill could have contained by way of evidence, which could have been used by the petitioner in his defence has not been explained.

20. The aspect about non production of the way bill has been considered in detail by the Labour Court in its order dated 03.01.2004. The relevant extract of the said order read as follows:

“It is seen from the charges and the evidence that nothing in this case turned on the copy of the way bill which was demanded by the workman nor during the enquiry he even once placed any question or demand or expressed as her inability to proceed with the enquiry for not having been given the copy of the way bill as was demanded by him on 14.5.93. DTC has not relied on way bill against him. He had clearly denied the charges against him. In my considered view, non supply of the copy of way bill to the workman, in no manner prejudice him as far as the charges against him were concerned. Ld. AR for the workman in his reply to the charge sheet also has not brought out any fact from which he could establish his innocence on the basis of non recording of the fact in the way bill. In my considered opinion, copy of the way bill which is only record of ticket sold in different denominations, has nothing to do with the charges and in no manner, the workman can be said to have been prejudiced and DTC has refused, which he did not pursue further.”

21. The petitioner did not ask for any other document specifically. His demand was a generalised one. Even before this Court, Mr. Sharma has not claimed that any other relevant document was not provided by the respondent.

22. Merely because the petitioner had put forward his stand in his communication dated 28.04.1993 i.e. within about three days of the checking of the bus in question, the said stand does not, on that account, gain such credibility as to deserve acceptance in the face of evidence to the

contrary brought on record by the respondent management. The petitioner had the occasion and opportunity to make good his stand in the enquiry proceedings. However, the petitioner failed to establish his version. At the same time, the respondent produced its witnesses which comprised of two members of the raiding party, namely Sh. Zile Singh, T.I. and Sh. Jagdish Chandra, A.T.I., who were consistent in their statement and proved on record the report prepared by them on the spot.

23. The submission of Mr. Sharma that one of the witnesses, namely, Sh. Jagdish Chandra, A.T.I. had stated that all the four passengers who were not issued tickets were males, whereas the passengers were female, does not impress me for multiple reasons. Firstly, the report prepared on the spot does not indicate whether the said passengers were males or females. Secondly, even if it were to be assumed for the sake of argument that some of the passengers were females, that by itself would not make much of a difference. Such discrepancies in the statement of the management's witness could creep in, since the witnesses were engaged in conducting raids, and on that account this minor aspect may have been forgotten by the witness. The case against the petitioner proceeded primarily on the basis of the documents on record. It appears that it was the petitioner who stated that all the four passengers were females in his communication dated 28.04.1993, and there is nothing to suggest that the passengers were females. Therefore, there is nothing on the record to conclude that the witness Sh. Jagdish Chandra, A.T.I. was wrong in stating that all the passengers were females.

24. Merely because the petitioner's cash may not have been checked in the moving bus does not lead to the inference that the charge against the

petitioner was not proved. The charge was proved by the management on the basis of the report prepared on the spot and the statement of the passengers recorded by them. It is not the petitioner's case that the members of the raiding party or the passengers entertained any animosity towards the petitioner. In fact, the case of the management was that the petitioner admitted his mistake when he was confronted at the spot. The petitioner's version, that forcibly unpunched tickets were taken from him was not supported by any independent evidence. The failure to cross examine the petitioner is also not fatal, as the respondent led its evidence to prove the enquiry report successfully.

25. So far as the non production of the concerned passengers is concerned, the same could not be said to be fatal in view of the judgment of the Supreme Court in ***Rattan Singh*** (supra). The petitioner had the opportunity to summon the said witnesses. In case the said witnesses were not served on account of they not being available at the address, or the address itself being incomplete, the result would not be that the domestic enquiry would fail. It is not the petitioner's case that the enquiry officer prevented the petitioner from summoning the said passengers. In ***Rattan Singh*** (supra), the Supreme Court held that the provisions of the Evidence Act are not required to be complied with strictly while conducting a domestic enquiry and only reasonability and credibility of material is required to be established to reach the conclusion.

26. In ***Ishwar Singh*** (supra), the Division Bench was dealing with somewhat a similar situation. The Court in this decision observed as follows:

“8. It is established from the records that the aforesaid passengers who have made the allegations were sought to be produced in the inquiry proceeding and summons were issued to them. The order sheet maintained during the domestic inquiry clearly indicates that the concerned passengers were called to be present in the inquiry by issuing summons on several dates. The records disclose that the concerned passengers were summoned on 28.1.1993, 11.2.1993 and again on 9.3.1993. But the said passengers did not appear in the inquiry nor did they send any information. Therefore, it is established from the records that every effort was made by the management and the inquiry officer to examine the aforesaid passenger witnesses but despite best efforts, the passengers witnesses did not appear in the inquiry proceeding to depose and establish the allegations made by them. It is, however, an admitted position that the three checking staff were examined. There is no evidence on record to show that any of them had any animosity against the appellant at any stage. There is no reason as to why any of the said witnesses would depose falsely against the appellant. The appellant had also admitted his fault, though he also stated that there was rush. Besides, it is also established from the records that the statements of the passengers witnesses were recorded by the checking staff at the time of the incidence. These statements were placed before the learned Industrial Tribunal for consideration, which were, however, totally ignored.

9. In this connection, we may refer to several decisions of this court and also of the Supreme Court, which deal with similar pleas as raised before us. Delhi Transport Corporation v. Om Pal and another is a decision rendered by a Single Judge of this court and reported in 113 (2004) DLT 307. In the said decision, this court referred to the decision of the Supreme Court in State of Haryana v. Rattan Singh reported in (1977) 2 SCC 491. Three contentions raised in the said decision of the Supreme Court are as follows:

(1) None of the passengers travelling without tickets were examined in the domestic inquiry.

(2) *The checking inspectors had violated a departmental instructions by not recording the statements of the passengers.*

(3) *The co-conductor in the bus had affirmed the innocence of the conductor.?*

10. *In paragraph 4 of the said judgment the Supreme Court had held that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It was also held in the said decision that passengers are not required to be chased and brought before the domestic tribunal. On the scope of permissible interference with the conclusions in a domestic inquiry, the Supreme Court said in the same paragraph that what has to be seen is whether there was some evidence or was it a case of no evidence. The Supreme Court further held that as long as there was some evidence, sufficiency thereof in proof of a finding by a domestic tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer and, therefore, the order passed in the domestic inquiry was not invalid. The following passage from the decision of the Supreme Court is worth quoting which is as under:-*

“It is well settled that in a domestic inquiry 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."

11. In Shyam Sunder v. Delhi Transport Corporation (CWP No.922/1976, decided on 5th February, 1996), this Court held that since the enquiry officer had based his findings on the examination of the checking staff, there was independence evidence to link the petitioner with the charges levelled against him, and consequently it was held that the statement of the passengers, not being the sole material against the petitioner, the domestic inquiry was not vitiated. The aforesaid decision of this Court as also the decision of the Supreme Court in Rattan Singh (supra) and many other decisions were noticed by this Court in the decision in Delhi Transport Corporation v. N.L. Kakkar and another reported as 110 (2004) DLT 493. After noticing all the judgments, this Court held that consistent view of the courts over the last few decades has been that non- production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic inquiry should not be interfered with so long as they are based on some evidence. In the said judgment this court also noted the law laid down by some other High Courts and thereafter it was held that the production of passengers either in a domestic inquiry or before the Labour Court in an industrial dispute is not at all necessary. This Court was of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the inquiry officer or the Labour Court causing them unnecessary inconvenience. We are of the considered opinion that all the aforesaid decisions are fully applicable to the facts and circumstances of the present case.

12. Reference can be made to the decision of Delhi Transport Corporation v. Sree Kumar and another reported in 113 (2004) DLT 505, which was also decided almost on similar lines.

13. We may also refer to the decision of the Supreme Court in the case of Cholan Roadways Ltd. and G. Thirugnanasambandam reported as (2005) 3 SCC 241. In paragraph 31 of the said decision, the Supreme Court has observed that the lower fora had misdirected themselves in law.

It was held that the Tribunal had wrongly failed to apply principle of res ipsa loquitur, which was relevant for the purpose of that case and that it took into consideration irrelevant facts not germane for determining the issue.

14. It is, therefore, clearly established that it is not mandatory that passenger witnesses should depose to establish guilt. In the present case, the inquiry officer made several attempts and left no stone unturned for appearance of the passenger witnesses in the domestic inquiry, but despite best efforts, they did not appear to depose in the domestic inquiry. Inquiry report cannot be dismissed in its entirety only because the passenger witnesses did not appear. There was enough evidence and material before the inquiry officer to establish the guilt of the appellant. The checkers had no personal axe to grind and were independent witnesses. We are of the considered opinion that the learned Tribunal did not appreciate the issues in the right perspective and on improper interpretation of law had arrived at an erroneous finding. The present case cannot be said to be a case of no evidence. There is no perversity as was sought to be argued by the counsel for the appellant. Guilt of the appellant was established by the inquiry officer.” (emphasis supplied)

27. The reliance placed by the petitioner on the circular dated 03.01.1966 Exh. WW1/X1 has been negated by the industrial adjudicator by placing reliance on the last paragraph thereof, which reads as follows:

“Although each case of cheating on the part of conductors will be decided on its merits, the above procedure is being laid down as a general policy to be followed as guiding principle while dealing with the cases of aforesaid nature but it will be at the discretion of Enquiry Officer to impose a severe punishment even in the first or second case provided the Enquiry Officer is convinced and the evidence justified that the case involved deliberate cheating on the part of the accused employee by non issue of tickets or issue of tickets of lesser denomination after having collected the fare”.

28. The industrial adjudicator has held in the light of the aforesaid that the punishment awarded to the petitioner could not be said to be in violation of the said office order dated 03.01.1966. As noticed by the Labour Court, the Supreme Court in ***Karnataka Bank Ltd. v. A.L. Mohan Rao***, 2006 LLR 252, while dealing with the power of the Labour Court under section 11A of the Act, observed as follows:

“Setting aside termination of bank employee, guilty of serious misconduct after holding of enquiry amounted to misplaced sympathy by the High Court hence the punishment as imposed has been restored by the Apex Court.

It is for the disciplinary authority and not for the Court to decide as to which punishment be imposed on a delinquent having admitted the misconduct hence the interference by the High Court was uncalled for”.

29. As rightly observed by the Labour Court, it was for the disciplinary authority and not for the court to decide as to which punishment be imposed on the delinquent once the charge sheet was established. In the facts of the case, it could not be said that the punishment was disproportionate since the conduct of the petitioner was laced with moral turpitude.

30. In the end, I consider it appropriate to observe that it does not lie within the scope of the jurisdiction of this Court under Article 226 of the Constitution of India to re-appreciate the evidence and to arrive at a different finding – which is what the petitioner has endeavoured to achieve. It certainly cannot be said that the findings are perverse; they are contrary to the evidence brought on record, or; they have been arrived at without any evidence on record.

31. For all the aforesaid reasons, I find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

MARCH 08, 2013
sr