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

+ LPA No.799/2013 & CM Nos.16940/2013 & 4331/2014

Date of Decision: 3rd July, 2014

DELHI TRANSPORT CORPORATION Appellant

Through Mr.Abhay N. Das, Advocate

versus

SH RAJBIR SINGH EX CONDUCTOR Respondent

Through Ms.Vaishalee Mehra, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. The appellant before us assails the judgment dated 28th May, 2013 passed in WP (C) No.2739/2004 whereby the court overturned the order dated 17th October, 2001 as well as the industrial Award dated 5th September, 2003 passed in ID 956/96.

2. By the order dated 17th October, 2001, the Labour Court had decided the preliminary issue with regard to the legality and validity of the inquiry conducted by the present appellant in his favour. The challenge by the respondent herein resulted in industrial Award dated 5th September, 2003 whereby the termination and punishment imposed upon him was held to be in accordance with law.

3. The facts giving rise to the instant case, to the extent necessary, are briefly noted hereafter. The appellant was appointed as a conductor with the

DTC and on 15th May, 1992 was discharging his assigned duty on a bus route referred to as “Mudrika Plus (+)” in the bus number 965. When the bus reached the Guru Teg Bahadur Nagar stop, it was checked by the checking staff consisting of two officials of the DTC namely Shri Hakim Singh and Shri Jagdish Singh. It is the case of the appellant that during this checking, the respondent was found to have given an unpunched ticket to one of the passengers on the bus. The appellant contends that the respondent had issued an already sold ticket to one passenger who was travelling from Azadpur to Guru Teg Bahadur Nagar at 1520 hours in bus number 9651. The appellant contends that the passenger had informed that he paid Rs.1/- to the respondent who had issued the said ticket. The appellant has further contended that the checking official prepared a challan Exh.MW 1/1 and also recorded statement of the passenger Exh.MW 1/2.

4. On these facts, a chargesheet dated 28th May, 1992 was issued to the petitioner alleging as follows:-

“1. When one passenger of your vehicle was checked, one ticket bearing No.980/28657 of Rs.1/- denomination was found, whose punching is not of Azadpur to Camp, as was stated by the passenger before to the checking staff that he boarded on this bus from Azadpur to Camp and you gave the passenger ticket to the passenger. From this it is crystal clear that you have given to his passenger a ticket which was checked before.

2. You committed an offence by reselling the sold ticket and caused financial loss to the Corporation in deceitful manner.

3. You do not perform your duties as per the rules of the Corporation.

4. You do not perform your duties as per the rules of the Corporation.

5. You took back the waybill from the checking staff

and put the same in your pocket. When the waybill was asked again, you refused to give it back to the checking staff and suddenly you whistled and took away the bus.

6. When passenger was brought before you and the ticket which the passenger was carrying was shown to you then you admitted that this ticket is mine and when checking staff asked you to put your signatures on the same, you refused to put the signatures.”

5. The charge was that the respondent's above acts amounted to misconduct under Clause 12 of the Executive Instructions against the duty of the conductor, read with Clause 19(a), (b), (f), (h) & (m) of the Permanent Order which regulates the conduct of employees of the Delhi Transport Corporation.

6. As the respondent denied the charges against him, he was subjected to a Departmental Inquiry. The Inquiry Officer submitted a report finding the petitioner guilty of the charges. Based on the findings of the Inquiry Officer, the Disciplinary Authority issued a notice to show cause dated 17th August, 1992 proposing to remove him from service. The services of the respondent were thereafter terminated by an order dated 30th June, 1995. The respondent challenged the termination of his services and raised an industrial dispute against his removal. The Govt. of NCT of Delhi by an order dated 15th November, 1996, referred the following dispute for adjudication:-

“Whether the removal of Sh.Rajvir 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?”

7. On 18th March, 1998, the industrial adjudicator framed the following issues:-

“1. Whether the enquiry was not conducted according to the principles of natural justice and, therefore, not fair, proper and valid?

2. As per terms of reference.”

Issue no.1 was treated as preliminary issue and by an order dated 17th October, 2001, it was held that the inquiry was fair and proper. The case was therefore fixed for evidence on merits.

8. We may note that during the domestic inquiry conducted by the DTC, statements of the two inspecting officials namely Shri Hakim Singh and Shri Jagdish Singh were recorded. So far as the passenger is concerned, three attempts were made to produce him during the inquiry but his appearance could not be secured. The Labour Court held that it was not necessary to produce the passenger in these circumstances and placing reliance on pronouncement of the Supreme Court reported at **(1982) 1 LLJ 46 State of Haryana & Anr. Vs. Rattan Singh** upheld the finding of guilt against the respondent as well as the punishment of termination of service imposed upon him.

9. The challenge by way of WP(C)No.2739/2004 by the respondent to the order dated 17th October, 2001 and the Industrial Award dated 5th September, 2003 was accepted by the learned Single Judge by the impugned judgment dated 28th of May, 2013. It has been firstly held that disciplinary proceedings were not conducted in accordance with law and principles of natural justice. It was thereafter, also concluded that there was no evidence to support the finding of guilt of the present respondent. The learned Single Judge has closely

analyzed the proceedings of the disciplinary inquiry as well as the statement of the witnesses recorded both during the inquiry as well as during the industrial adjudication before arriving at the conclusion that the proceedings of the inquiry were conducted in violation of the principles of natural justice. We find that the learned Single Judge has adverted at length to the statement of the management witness MW-1 Shri B. Das – the disciplinary authority. MW-1 had admitted before the Labour Court that the inquiry officer had not supplied the list of documents to the workman and that on 31st July, 1992 and 7th August, 1992, the workman was also not asked as to whether he wanted a defence assistant or not.

10. So far as the contention on behalf of the respondent that there was no evidence to support the charges against the petitioner, our attention is drawn to the record as well as the following findings by the learned Single Judge based on admitted facts :-

(i) The inspecting team of Shri Hakim Singh and Shri Jagdish Singh had not counted the cash of the respondent which would have conclusively established as to whether he had pocketed money allegedly paid by the passenger.

(ii) The contradiction in material particulars between the statement of Hakim Singh who stated that he had tallied the waybill of the conductor with the respondent and that he had found the opening number of the waybill as being number 28361. On the other hand, Shri Jagjit Singh who had also appeared during the inquiry, had stated that the closing ticket number of the

waybill was 28361.

It is noteworthy that according to these witnesses, the ticket recovered from the passengers was bearing number 28357. It has been pointed out to us by Ms. Vaishalee Mehra, learned counsel for the respondent that if the number 28361 was the closing number of the waybill, then there is no reason to believe that the ticket allegedly recovered from the passenger had not been issued from the waybill. We may note that even the inquiry officer has so noted.

(iii) It is also an admitted position before us also that the original waybill is in the possession of the DTC. Yet the same has not been produced either in the domestic inquiry or before the Labour Court.

(iv) No effort was made to challan the respondent on the spot. It has been alleged that the respondent took away the bus while the checking staff was still looking into the matter. However, it is on record that the checking staff had the benefit of a mobile van and there is no good reason as to why the staff did not immediately proceed against the conductor. No action was also initiated or taken against the driver.

11. Even if it could be held that the general efforts were made to produce the passenger during the inquiry proceedings, it has been pointed out and noted by the learned Single Judge that the alleged statement of the passenger was not recorded in the presence of the respondent. As per the checking staff, the statement was recorded after the passenger had deboarded the bus and it had left. The signatures of the respondent were also not taken on the used ticket allegedly issued.

12. The failure to record the statement during disciplinary proceedings of the passenger who makes a complaint against the conductor by itself may not be the ground for setting aside disciplinary action against him. However, this circumstance has to be examined after taking the totality of the circumstances brought on record and the entire evidence which has been led by the DTC into consideration.

13. In the instant case, there is contradiction in material particulars between the testimony of Shri Hakim Singh and Shri Jagdish Singh as noted above. Additionally, the DTC has failed to prove the statement of the passenger recorded by the checking staff and has failed to produce the original waybill before the domestic inquiry and the Labour Court. The DTC has relied on merely conflicting statements of the raiding party without there being corroborative statement of either of the two.

14. The learned Single Judge has therefore, held that the instant case is a case of 'no evidence' against the delinquent.

15. It was held in para 4 by the Supreme Court in *Rattan Singh (Supra)* in the judgment reported at *(1982) 1 LLJ 46 State of Haryana Vs. Rattan Singh:-*

“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 mis-directed 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 common-sense 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 leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

16. The learned Single Judge has rightly relied on the observation of the Supreme Court that judicial approach has to be objective, must exclude extraneous material for consideration and ensure observance of the rules of natural justice. The actions of the authorities must fairplay as to their basis and perversity, arbitrariness, bias or surrender to independence of judgment to vitiate conclusions reached and such findings even though of domestic Tribunal, cannot be held to be good.

17. For all these reasons, we see no reason to differ with the findings of the

learned Single Judge who has recorded that the disciplinary inquiry was held in violation of the principles of natural justice and that there was no evidence to support the findings of guilt. The respondent was entitled to exoneration. We agree with the observations of the learned Single Judge to the effect that such statements cannot be considered as 'some' evidence in terms of the judgment of the Supreme Court

18. Our attention is drawn by Ms.Vaishalee Mehra, learned counsel for the respondent to CM No.4331 of 2011 filed by the respondent under Section 17-B of the Industrial Disputes Act, 1947. On 7th March, 2014, notice was issued on this application and was accepted in court by the petitioner. No reply has been filed in this application. In this application, the respondent has pointed out that being anxious to have gainful employment, the respondent had reported to the DTC at its Vasant Vihar Depot where he was working at the time of removal but he was not assigned any duties. In view thereof, the respondent has addressed several letters including the letters dated 8th, 26th, 15th 23rd & 26th July, 2013 which have been placed on record. The respondent also wrote a letter dated 12th July, 2013 to the Chairman of the Appellant enclosing a copy of the judgment of the learned Single Judge.

19. These letters were of no avail. In these circumstances, he was constrained to file Contempt Petition No.701 of 2013. No appeal was filed within the eight weeks' time granted to the appellant. In view of the statement by the DTC that it was assailing the judgment of the learned Single Judge, the contempt petition was disposed of on 11th September, 2013. The appellant was

granted partial stay of the judgment of the learned Single Judge (dated 28th May, 2013) by the Division Bench by its order dated 28th October, 2013 when stay of the direction of reinstatement of the workman was passed.

20. In view of these facts, it is directed that the appellant shall reinstate the respondent within a period of two weeks from today. In case no orders with regard to change of posting of the respondent is passed and served upon the respondent within two weeks from today, the respondent shall report to the Depot Manager at the Vasant Vihar Depot of the DTC on expiry of the period of two weeks from today.

21. The respondent shall be entitled to payment of wages etc. in terms of judgment dated 28th May, 2013.

22. The appellant shall also ensure compliance with the directions passed by the learned Single Judge with regard to payment of interest in the judgment.

23. For all these reasons, we find no merit in this appeal which is hereby dismissed. The petitioner shall ensure that the orders of the learned Single Judge are complied with forthwith.

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24. In view of the appeal having been dismissed, these applications do not survive for adjudication and are dismissed as such.

**(GITA MITTAL)
JUDGE**

**(DEEPA SHARMA)
JUDGE**

JULY 03, 2014/aa