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

Judgment delivered on: 20th August, 2014

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W.P.(C) No.596/2013

DELHI TRANSPORT CORPORATION

..... Petitioner

Represented by: Mr. Sumeet Pushkarna and
Mr. Vijay Kajaria,
Advocates.

Versus

OM PRAKASH

..... Respondent

Represented by: Mr. K. Venkataraman, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

W.P.(C) No.596/2013

1. Vide the present petition, the petitioner Delhi Transport Corporation (for short 'DTC') has assailed the order dated 18.12.2009 passed by the learned Presiding Officer Labour Court and the subsequent award dated 27.08.2012 passed by the learned Presiding Officer Labour Court-XVII, Karkardooma Courts, Delhi, against the respondent workman (for short 'POLC').

2. Brief facts of the case are that the respondent workman was working with the petitioner DTC since 1982. On 05.06.1992, he was on

Bus No.9206 plying on route No.838. When the bus was checked by the checking team at Uttam Nagar at 10.53 AM, said team found that the respondent workman had accepted fare of Rs.2/-each from two passengers, who had boarded the Bus from Hari Nagar-Ghantaghar for Uttam Nagar, without issuing any ticket to the said passengers.

3. Mr.Sumit Pushkarna, learned counsel appearing on behalf of the petitioner DTC submitted that the respondent workman was confronted, who accepted his fault and surrendered two un-punched tickets of Rs.2/- each to the checking staff. Thereafter, the checking team also checked the cash available with the respondent workman, which was found short by Rs.2.50. Accordingly, a challan was prepared by the checking team.

4. The statement of passenger was recorded, wherein he stated that tickets were not issued to him and his wife inspite of giving Rs.4/- to the respondent workman.

5. ATI Sh. Ram Singh and TI Randhir Singh submitted the report dated 05.06.1992 regarding misdeed of the respondent workman. On receipt of the report from ATI Sh. Ram Singh and TI Randhir Singh, the respondent workman was placed under suspension vide memo dated 10.06.1992 w.e.f. 11.06.1992. Thereafter, a chargesheet dated 16.06.1992 was issued to the respondent workman on account of causing financial loss to the petitioner DTC by not issuing tickets after accepting the due fare. After considering the reply filed by the respondent workman, matter was referred to the Enquiry Officer. Accordingly, a domestic enquiry was conducted into the misdeed of the respondent.

6. Learned counsel further submitted that in the enquiry proceedings, full opportunity to defend his case was given to the respondent workman.

Despite having been given the opportunity to cross-examine the aforesaid ATI and TI, the respondent workman denied to avail the same. Therefore, on conclusion of the enquiry, the Enquiry Officer found him guilty of the misconduct. Accordingly, on the basis of the report of the Enquiry Officer, a show-cause notice was issued by the Disciplinary Authority calling upon for reasons to be stated as to why the respondent workman should not be removed from services.

7. Since, the respondent workman failed to submit any reply to the show-cause notice within the stipulated period, therefore, the Disciplinary Authority passed the order dated 10.03.1995 for removal from services against the respondent workman.

8. Being aggrieved, the respondent workman raised an industrial dispute challenging his removal from service.

9. Written statement on behalf of the petitioner DTC was filed and rejoinder thereto was also filed on behalf of the respondent workman. Thereafter, evidence by way of affidavit and rebuttal evidence was also filed by the petitioner DTC and respondent workman respectively.

10. Mr.Pushkarna, learned counsel for the petitioner DTC submitted that vide order dated 18.12.2009, the learned POLC vitiated the enquiry of the Management. Thereafter, vide impugned order dated 27.08.2012, the learned POLC held that the termination of the services of the respondent workman by the petitioner DTC was illegal and unjustified. Accordingly, the learned POLC directed for reinstatement of the respondent workman with 50% back wages from the date of termination till the date of reinstatement with continuity of service and all other consequential benefits.

11. Mr.Pushkarna submitted that the learned POLC failed to appreciate that the settled law that once an admission of an offence/misconduct is made by an employee, the employer can rely upon the same and take action in accordance with the rules and the applicable law. He further submitted that the admission of the respondent workman qua his misconduct has not been set aside or disbelieved on record by the learned POLC. Despite, the learned POLC has given the finding against the petitioner DTC vide its impugned order dated 27.08.2012.

12. Mr.Pushkarna, further submitted that the learned POLC failed to appreciate that while the petitioner DTC examined only two witnesses in support of its case, the workman only examined himself in support of his case. The statement of the Management witnesses was not controverted or set aside in the light of available evidence on record, though still the same was not believed by the learned POLC, apparently, on the grounds of inadequacy and non-production/examination of passenger witnesses.

13. It is submitted that the learned POLC failed to appreciate that there was enough material on record to show the guilt of the respondent workman as the statement of the passenger witness was duly verified by a Deputy Manager of the petitioner DTC. The reporter of the incident clearly stated that the passengers told him about giving money to the respondent workman and non-issuance of tickets by him.

14. Learned counsel for the petitioner DTC submitted that the fact of shortage of Rs.2.50 having been found with the respondent workman was held irrelevant by the learned POLC as the case of the petitioner DTC was not based on this fact. The fact of the matter is that the cash with the respondent was not in accordance with what was supposed to be there

with him. In any case, fact of his non-issuance of tickets despite having been taken the money was admitted by the respondent workman and thus had to be read in that light.

15. Mr. Pushkarna, submitted that the learned POLC ought not to have ignored the record of the respondent workman containing entries of misconduct.

16. To strengthen his arguments on the issues raised above, he relied upon the case of ***Depot Manager, APSRTC Vs. B. Swamy, 2007 (5) SCALE 637***, wherein the Apex Court held as under:-

“7. We fail to understand how the incident could be characterised as accidental. The mere fact that this was the first occasion when the respondent was caught, is no ground to hold that it was accidental. What weighed with the learned Judges was the fact that the respondent had not been found to be involved in such irregularities earlier. In our view that is not very material in the facts of this case. A conductor of a bus enjoys the faith reposed in him. He accepts the responsibility of honestly collecting fares from the passengers after issuing proper tickets and is obliged to account for the money so collected. If conductors were to be dishonest in the performance of their duties, it would cause serious pecuniary loss to the employer. The High Court was therefore, not justified in observing that the management gave "excess gravity" to the offence. We are constrained to observe that the High Court was not justified in characterising the order of the management as one induced by exaggeration of the gravity of the offence. The conductor performs only the duty of issuing tickets to the passengers and accounting for the fare collected from the passengers to the management. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimised by the fact that he was not earlier caught indulging in such dishonest conduct. There is no

guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment.”

17. Also relied upon the case of ***U.P.S.R.T.C. Vs. Ram Kishan Arora, 2007 (6) SCALE 721***, wherein the Apex Court held that commission of a criminal breach of trust by a person holding a position of trust is a misconduct of serious nature and opined that the charges levelled against the respondent having been proved, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was not at all justified in reducing the punishment and imposing the punishment of stoppage of two increments only.

18. On the other hand, Mr. K. Venkataraman, learned counsel appearing on behalf of the respondent workman submitted that the enquiry was conducted in violation of principles of natural justice, equity and fair opportunity. Hence, the removal from service of the respondent workman was illegal and unjustified.

19. It is submitted that learned POLC vide order dated 18.12.2009 decided the preliminary issue in favour of the respondent workman observing that the inquiry proceedings were in violation of principles of natural justice.

20. Mr.Venkataraman, learned counsel further submitted that the petitioner DTC examined two witnesses, i.e., MW2 and MW3, and the respondent workman examined himself as the only witness in support of his case. The learned POLC observed that MW2, Sh.M.L.Aggarwal, being Disciplinary Authority, was not a witness of this case; therefore, his evidence was not relevant to the question of alleged misconduct of the

workman.

21. In the examination-in-chief, MW3, Sh. Ram Singh stated that on checking of the bus, two passengers were found without tickets, who boarded the Bus from Hari Nagar-Ghantaghar to Uttam Nagar. The fare was Rs.2/- each and the respondent collected money of the tickets but did not issue them tickets. MW3 further stated that the checking team had also checked the cash and found that a sum of Rs.2.50 was short with the respondent.

22. Accordingly, the learned POLC in para-16 of the impugned award observed that, “it is clear from the authority that as per the statement of MW3 the passengers told him that they had paid the amount of fare to the respondent/Conductor, is in the nature of hearsay, which is not admissible. The cash with the respondent workman, as per the case of the Management, was found less by Rs.2.50. In case, as alleged by the Management, the workman had been paid Rs.2/- by the passengers, the cash would have been Rs.4/- more and not less.”

23. Further observed, “the result is that there was no evidence on record that the alleged amount of Rs.4/- was paid to the respondent workman”.

24. The learned POLC also noted that the chargesheet against the respondent workman was that he accepted the fare from the two passengers. However, the charge was not that he allowed said two passengers to travel without tickets.

25. Mr.Venkatarman, learned counsel for the respondent workman submitted that the learned POLC had taken all the relevant material into consideration including the evidence of the parties and held that the

termination of the service of the respondent workman by the petitioner DTC was illegal and unjustified.

26. Even otherwise, vide order dated 18.12.2009, the learned POLC had also held that the enquiry proceedings have been conducted in apparent violation of principles of natural justice. Moreover, order of removal from service of the respondent workman was clearly disproportionate to the allegations levelled against him.

27. Learned counsel submitted, in the writ jurisdiction, the petitioner DTC has to establish whether the impugned order was passed without jurisdiction or apparently illegal on its face, which the petitioner failed at all stages.

28. The present petition is based upon the facts. The question of law has not been established. Moreover, the petitioner DTC has lost the case before the two authorities below.

29. To support his submissions, learned counsel for the respondent workman has relied upon the judgment of ***Delhi Transport Corporation Vs. Shyam Lal, (2004) 8 SCC 88***, wherein the Apex Court held as under:-

“7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13.1.1989 and 24.2.1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon.

8. Be that as it may, we find that the Division Bench while dealing with Letters Patent Appeal filed by the

workman based its conclusions on other cases which related to unauthorized absence and where the factual background was not similar to those involved in the present case. On that short score alone, the order of the Division Bench is to be quashed. We set aside impugned judgment of the High Court and remit the matter back to it for consideration of the case on its own merits in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is allowed to the extent indicated above with no order as to costs.”

30. Mr.Venkataraman, learned counsel further submitted that the respondent workman fairly accepted that he received Rs.2/- only. There were two passengers and fare from Hari Nagar-Ghantaghar to Uttam Nagar was Rs.2/- per passenger, thus, passengers were supposed to pay Rs.4/-. However, when he asked the passengers to give Rs.2/- more, the same was not paid. Bus route No.838/- from Jama Masjid to Uttam Nagar was a busy route and every time the bus used to be over crowded. The respondent workman was busy in issuing tickets to other passengers. The two passengers in question took the benefit of the same, thus, not paid the requisite amount and when they were caught without tickets at the Bus Stop of Uttam Nagar by the checking team; they put the entire blame upon the respondent workman.

31. Mr. Venkataraman, submitted that it was the duty of the passengers to give the proper fare and insist for the tickets. Moreover, there was sufficient time for the passengers from Hari Nagar-Ghantaghar to Uttam Nagar, despite, they did not ask for the tickets for the obvious reasons mentioned above. Moreover, no co-passenger came forward to establish the story of the Management. Therefore, passengers in question just to

avoid the penalty which was to be imposed upon them, put the blame on the respondent.

32. I have heard the learned counsel for the petitioner DTC and the respondent workman.

33. I note, the learned POLC while conducting the preliminary enquiry recorded in its order dated 18.12.2009 that stand of the petitioner DTC was that the respondent workman was asked to take the help of co-worker in the enquiry to which he refused. The respondent workman was given the opportunity to cross-examine the Management witnesses during the enquiry, which was not availed of.

34. Further recorded that stand of the petitioner DTC was that non-examination of the passengers is not fatal in view of the dictum of the Apex Court in the case of *State of Haryana Vs. Rattan Singh, AIR 1977 SC 1512*.

35. Also recorded that the workman took the stand that there was no presenting officer nor a Labour Welfare Officer as contemplated under the guidelines for enquiry. Hence, the respondent was not given an opportunity to cross-examine the witness.

36. In view of the above noted facts, the learned POLC in the aforementioned order dated 18.12.2009 recorded as under:-

as under:-

“ I have perused Ex.WW1/M3. One G.R. Balwani the enquiry officer. Enquiry started on 08.04.93. On that day there is a noting by the enquiry officer that the workman was read over with the charges and the workman refuted the charges. There is no noting that the workman is offered a chance to engage a defence assistant amount the co-workers. What is noted by the enquiry officer is that “vaha apne sath koi sahyougi nahi

laya". This shows that no opportunity for defence assistance was given to the workman. It was obligated upon the enquiry officer to have conducted the enquiry in the presence of the Labour Welfare Officer when the workman did not bring a co-worker with him. In the alternative it was expected of the enquiry officer to have conducted the enquiry in the presence of the Labour Welfare Officer. In such a situation mere noting that the workman was given an opportunity to cross examine the management witnesses seemingly projects that the enquiry was conducted in a haste and the same was held in a mechanical manner.

After going through the enquiry proceedings at Ex.WW1/M3, I am satisfied to hold that there has been apparent violation of principles of natural justice. Accordingly, the enquiry issue is answered in favour of the workman and against the management."

37. Fact remains that vide order dated 18.12.2009, the issue was decided in favour of the respondent workman and against the petitioner DTC. However, the petitioner did not challenge the same which has attained finality. It is belated to challenge at this stage, which is hit by delay and latches.

38. The petitioner DTC examined two witnesses, i.e., MW2 and MW3 in support of its case, whereas, the respondent workman examined himself as the only witness. Although the burden of proving misconduct was on the petitioner DTC, however, this Court noted that the respondent workman, in his cross-examination, deposed that on 05.06.1992, he was on duty on Bus Route No.838 plying from Zama Masjid to Uttam Nagar Terminal. When the Bus was checked by the checking team at Uttam Nagar Terminal, two passengers were found travelling without tickets. MW2, Mr. M.L. Aggarwal, was not a witness of the spot, being the

Disciplinary Authority in the present case. Hence, evidence of MW2 is not relevant to the question of alleged misconduct of the respondent workman.

39. As per the chargesheet, MW3 was the reporter of the misconduct. It appears that he was summoned through the Court. In his examination-in-chief, he stated that on checking of the Bus, two passengers were found travelling without tickets. The said passengers told that they had boarded the bus at Hari Nagar-Ghantaghar, they paid Rs.2/ each to the respondent workman, but he did not issue them the requisite tickets. MW3 further stated that the checking team had also checked the cash with the respondent workman and found a sum of Rs.2.50 short with him.

40. Keeping in view the facts and circumstances of the case in hand, if it is assumed that it is a case of the amount taken by the respondent workman without issuing the requisite tickets, then in such an eventuality, amount of Rs.4/- (Rs.2/- each) would have been more than the amount of tickets issued, whereas, in the present case, a sum of Rs.2.50 was short with the respondent workman. Thus, it is established that the two passengers in question did not pay proper fare and not bother to take the tickets. However, when they were caught by the checking team, just to avoid the penalty which was to be imposed upon them, they put the entire blame on the respondent workman.

41. So far as the statement of MW3 that the passengers told him that they had paid the amount of fare to the respondent is concerned, the same is in the nature of hearsay, hence, is inadmissible in law.

42. As per the case of the petitioner DTC, cash with the respondent workman was found less by Rs.2.50. In case, as alleged by the petitioner

DTC, respondent workman had been paid Rs.2/- each by the passengers in question, then the cash would have been Rs.4/- more and not less by Rs.2.50. Moreover, there is no finding of the Disciplinary Authority that the alleged amount was paid to the respondent workman.

43. In addition, there is no charge against the respondent workman that he allowed the passengers to travel without issuing tickets.

44. In view of the facts recorded above and the legal position as relied upon by both the parties, I find no merit in the instant petition.

45. The same is accordingly dismissed with no order as to costs.

CM No.4753/2013 (U/s 17 B ID Act)

With the dismissal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT
(JUDGE)**

AUGUST 20 , 2014

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