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

+ **LPA 300/2016**

DELHI TRANSPORT CORPORATION

..... Appellant

Through: Ms. Avnish Ahlawat, Standing
Counsel DTC with Mr. N.K. Singh,
Advocate.

versus

RAJBIR SINGH

..... Respondent

Through: Ms. Rashmi B. Singh and Ms. Alpana
Bhushan, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
10.01.2019

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SANJEEV NARULA, J.:

CM APPL. 17934/2016 (delay)

1. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA 300/2016 & CM APPL. 17933/2016 (stay) & CM APPL. 27453/2016 (for additional documents)

2. This appeal under Clause X of Letters Patent Appeal is directed against the Judgment dated 12th February, 2016 passed in W.P.(C) 1063/2004 whereby the learned Single Judge has dismissed the writ petition, upholding the order passed by the Presiding Officer, Industrial Tribunal-II,

14

Karkardooma Court. In effect, Appellant's application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), seeking approval for removing the Respondent, stands rejected.

Background

3. Brief facts relevant for the disposal of the present appeal are that on 11th August 1984, Respondent-workman, a Conductor with Delhi Transport Corporation, was on duty on bus No. 10384. Appellant's officer conducted a surprise check and intercepted the bus at Kossi city at about 08:30 hours and noted certain irregularities such as- Respondent-workman had not issued tickets to a group consisting of three passengers after collecting due fare from them; Way-vouchers were found incomplete; Respondent kept counter foil of ticket No. 07987 blank and one ticket 07988 was found missing from the counter foil; he did not stop the bus at the proper stand of Kossi on the signal of the checking official thereby showing mala fide intention. According to the Respondent, the aforesaid irregularities amount to misconduct within the meaning of para 7 and 20 of the executive instructions relating to the duties of a conductor read with para 19 (a), (b) and (m) of the standing orders governing the conduct of Delhi Transport Corporation Employees.

4. On the basis of the report/challan prepared by the checking staff, a charge sheet dated 16th August 1984 was served upon the Respondent. The charge sheet inter alia notes the following irregularities:

“That on 11.8.84 you were booked with bus no. DEP- 8572 on

16

Varinda Van-DLI route and the checking officials intercepted your bus at Kossi City at about 0830 hours and detected a group consisting of three passengers without tickets. On enquiry it was revealed that they boarded the bus from Varinda Van for Kossi City and had paid the due fare @ Rs. 4.95 each, but no ticket was issued to them in lieu thereof. Thus you cheated and misappropriated the Corporation's revenue.

2. That you deliberately kept counter-foil of ticket No; 07987 blank and one ticket No; 07988 was found missing from the counter-foil which shows you malafide intention.

3. That you deliberately did not get the bus stopped at the proper stand of Kossi on the signal of checking officials which amounts to dereliction of duties."

5. Respondent denied the aforesaid charges and accordingly an inquiry was conducted against him. The Inquiry Officer vide his report dated 4th June, 1990 concluded that all the charges levelled against Respondent were duly proved and Respondent was found guilty of all the charges. Consequently, the report was forwarded to Depot Manager (Appointing Authority) for taking appropriate decision. On consideration of the inquiry report, the Management of the Respondent served a show cause notice to the Respondent, "proposing to impose the penalty of removal from service". Respondent submitted his reply to the said show cause notice and on consideration of the said reply, the Depot Manager vide order dated 30th August, 1991 confirmed the provisional opinion to impose the penalty of removal from service of the corporation with immediate effect.

6. The Appellant filed an application before the Industrial Tribunal seeking approval for removal, under Section 33 (2) (b) of the Act. The Respondent

17

filed its reply to the aforesaid application and controverted all the allegations. On the basis of the pleadings before the learned Industrial Tribunal, a preliminary issue was framed to the effect "*whether the applicant held a legal and valid inquiry against the Respondent according to principles of natural justice?*" (OPA). The Industrial Tribunal observed that the Respondent-workman was denied copies of the documents as required by him to defend himself in the enquiry that commenced after six years of issuance of the charge sheet; Respondent-workman was not duly informed about the inquiry proceedings held on 17th June, 1991 and thus the inquiry proceedings were conducted at the back of the Respondent. Taking note of all the above noted facts, the Industrial Tribunal *vide* order dated 3rd April, 2002 held that the inquiry was not conducted in an appropriate and fair manner and as a consequence the proceedings along with the enquiry report were held to be vitiated. The Appellant did not challenge the aforesaid order before the Competent Court.

7. On 3rd April, 2002 the Industrial Tribunal acceded to the request of the Appellant to adduce evidence to establish the charge of misconduct before the Tribunal. Accordingly, the following additional issues were framed:

- "1) Whether the respondent had been exonerated from the charges in the enquiry conducted against him in the year 1987? If so, its effect?
- 2) Whether the DTC could not have taken action against the respondent after his reinstatement In service which was earlier terminated due to participation in the strike of the workers in the year 1988?
- 3) Whether the respondent committed the misconduct for which

18

the charge sheet dated 16.8.84 was issued to him?

4) Whether the petitioner remitted one month's wage to the respondent at the time of his removed from service?

5) Relief.”

8. On the aforesaid issues, trial was conducted before the Industrial Tribunal. The Appellant examined only one witness namely, Shri Devender Saroop, (AW-1), the Depot Manager, who deposed that some of the members of the checking team had retired from service and that one of them had passed away. He identified the signatures of the said officials, but admitted that he did not have any personal knowledge of the case. The Tribunal took note of the fact that one member of the checking team has retired but was available, yet he was not produced before the Tribunal. It was also observed that the Appellant did not summon any of the passengers as its witnesses. *Vide* order dated 2nd June 2003, the Industrial Tribunal after taking note of the sole testimony and other material brought on record, gave its findings on issues No. 3 and 5, against the Appellant. Consequently, The Tribunal declined to grant approval to the Appellant for removing the Respondent from the service.

9. The Appellant challenged the aforesaid order dated 2nd June, 2003 in W.P.(C) No 1063/2004. The writ petition has been dismissed against the Appellant. The learned Single Judge reconsidered the evidence brought on record and has held that the evidence adduced by the Appellant is not credible. The learned Single Judge has held that the findings of the Industrial Tribunal are correct and the decision rejecting the Appellant's application

19

under Section 33 (2) (b) of the Act was justified and called for no interference.

Submissions

10. The learned counsel for the Appellant has argued that the learned Single Judge could not have decided the issue of validity of the inquiry. During inquiry proceedings, the head of the checking staff was duly produced as witness and he was cross examined by the Respondent and therefore even if the said witness was not produced before the Industrial Tribunal, it could not be construed that the management had failed to establish its case. The Industrial Tribunal has erroneously held the inquiry to be invalid being contrary to the settled principle of law that strict rule of evidence does not govern the departmental inquiry. The learned Single Judge failed to appreciate that principles of natural justice were duly followed by the management and therefore there was no ground for interference with the findings of the Inquiry Officer. It was urged that the learned Single Judge has failed to appreciate that the statements of the Depot Manager as well as Traffic Inspector (Kanhiya Lal), produced before the Inquiry Officer sufficiently proved the charges against the Respondent.

11. Lastly, it was submitted that the workman had not worked for almost 21 years with the Appellant and has still managed to get an amount of Rs. 8,68,485/- as back wages under Section 17 (b) of the Act.

Findings

12. In the writ petition before the learned Single Judge, the scope of

22

challenge was only in respect of the order dated 2nd June, 2003 whereby the additional issues framed on 3rd April, 2002 were finally decided. Thus, the scope of challenge in the writ petition before the Learned Single Judge was confined to the findings on the aforesaid additional issues.

13. The ground of challenge raised in the appeal is in fact misconceived, in as much as the ground urged relating to the scope of jurisdiction of the Labour Court to decide the issue of validity of the inquiry does not arise for consideration. The issue regarding the validity of the inquiry was decided as a preliminary issue *vide* order dated 3rd April, 2002 and since the same was not challenged before the Competent Court, it attained finality and the learned Single Judge rightly refrained himself to go into the said question. The learned Single Judge has held since the Appellant- Management had preferred to adduce evidence before the Industrial Tribunal to prove the misconduct of the Respondent, the judgements relating to the question of enquiry were irrelevant as the said issue no longer survived.

14. The Appellant's submission that even if the witnesses were not produced before the Labour Court, it could still be construed that it had established the case on the basis of the deposition of the Inquiry Officer, is completely bereft of merits. Before the Industrial Tribunal only Shri Devender Saroop, the Depot Manager was adduced as a witness who was not part of the checking team and had no personal knowledge of the case. Therefore the Appellant's contention that the facts were proved through him is contrary to the settled principle relating to proof of facts. The genuineness of contents of a document have to be proved by the author of

21

the said document as held in *Om Prakash Berlia Unit Trust of India and others* reported at *AIR 1983 Bom 1*. Further in, *Ajit Singh v. Customs* reported at (2016) 332 ELT 101, this court held as under:

“19. The above law is further supported in *Madholal Sindhu v. Asian Assurance Co. Ltd.*, whereby the Bombay High Court held that it was futile to merely prove the signature or the handwriting of the person who had signed or written various documents without calling that person, who was the only person who could depose to the correctness of the contents of these person. The said decision was approved by a Division Bench of Bombay High Court in *Mohammed Yusuf v. D.* while observing that the evidence of the contents of a document was hearsay evidence unless the writer thereof was examined before the Court.”

(Emphasis Supplied)

15. The question before the Court was whether there was sufficient material brought by the Appellant to prove the charge of the misconduct. On the aforesaid, there is concurrent finding of the learned Single Judge and the Industrial Tribunal holding that there was no material had been brought on record that could even remotely prove the charge of misconduct was proved. In case, the Appellant had any evidence in its possession that could establish the charge of misconduct, it ought to have produced the same before the Industrial Tribunal. To establish the allegation that the Respondent did not issue tickets to a group of three passengers, the Appellant ought to have produced either the passengers, or the members of the checking staff as its witness. Concededly, the same was not done and therefore it falls in the category of those cases where there is no evidence at all before the Court to establish the charge of misconduct.

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16. In view of the above, there is no ground for interference with the findings of the learned Single Judge and accordingly the appeal is dismissed with the cost of Rs. 25,000/-. The pending applications are also disposed of.

Sanjeev Narula

SANJEEV NARULA, J.

S. Muralidhar

S. MURALIDHAR, J.

JANUARY 10, 2019

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