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

Decided on April 10, 2015

+ **W.P.(C)1387/2003, C.M. No. 2255/2003**

+ **W.P.(C)15508/2006**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Manish Garg, Adv.

versus

ASHOK KUMAR AND ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA (OPEN COURT)

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1. Both these writ petitions relate to the same workman of the petitioner Corporation. Both matters arose out of the same set of facts though travelling to this court through different routes. Since common questions of fact and law arise, both petitions were heard together and are being decided through this common judgment.

2. The background facts may be taken note of at the outset, albeit in brief.

3. The respondent (hereafter referred to as “the workman”) was employed during the relevant period as conductor deployed in that capacity on buses playing on stage carriage routes. It is alleged that on 11.10.1986, he was performing duty as conductor on bus bearing registration No. DLP-1050 plying on inter-State route of Delhi-Sohna (in Haryana). It is alleged that when the bus had reached Dhaula Kaun at about 17:50 hours, it was intercepted by a team of checking staff led by ATI Mr. Ram Nath. It is the

allegation of the petitioner that during the said checking, it was found that the workman had collected fare from certain passengers but had failed to issue tickets to them. It is also alleged that certain passengers had boarded the bus at Dhaula Kaun for going to Kapashera Mode or Kapashera Border but no tickets had been issued. One passenger was found with certain luggage (one big wooden bed, one big gunny bag full of goods, two fans, and certain other such material). Allegedly, the workman had collected ₹20/- from the said passenger as luggage fare but again no ticket was issued in its respect. It is further the allegation of the petitioner that the workman during the course of such inspection by the checking staff became abusive and used filthy language also assaulting them in the process at the said public place. According to the case set up by the petitioner, the acts of commission/omission indulged in by the workman amounted to “misconduct” within the meaning of Para 6 and 7 of the executive instructions (Duty of a Conductor) and clause 19(a)(b)(g)(h) and (m) of the standing orders governing the conduct of employees of the petitioner Corporation.

4. On the basis of domestic enquiry held pursuant to the charge-sheet that was issued with allegations to above effect, findings of misconduct were returned. The enquiry report, when submitted to the Depot Manager (the disciplinary authority) of Shadipur Depot of the petitioner (where the petitioner was attached at the relevant point of time), it was considered and a show cause notice was issued on 10.05.1988 calling upon the workman to explain as to why he be not removed from service. The said exercise eventually resulted in an order being passed by the disciplinary authority on 22.09.1994 removing the workman from service of the petitioner

Corporation. It is case of the petitioner that while communicating the order dated 22.09.1994, one month's wages were remitted by money order to the workman.

5. The order dated 22.09.1994 gave rise to two separate proceedings. The petitioner Corporation submitted the case for approval before the Industrial Tribunal where it was registered as OP No. 296/94. The workman questioned the validity of the action taken against him by raising an industrial dispute which was eventually referred to the labour court by the Secretary (Labour) of the Govt. of NCT of Delhi vide order No. F.24(3842)/97-LAB. The industrial dispute referred at the instance of the workman to the labour court was registered as ID No. 160/06/97.

6. In the proceedings arising out of the case taken by the petitioner Corporation to the Industrial Tribunal for approval of the order of removal from service, the workman submitted written statement, *inter alia*, questioning the validity of the enquiry which had resulted in such action. A preliminary issue was framed thereupon on 17.05.1996 to the following effect:-

“Whether the applicant held a legal and valid enquiry against the respondent?”

7. The Industrial Tribunal allowed the parties to lead evidence on the preliminary issue. On 25.02.2000, by a detailed order, the issue was decided against the petitioner Corporation, *inter alia*, holding that the domestic enquiry had not been conducted in compliance with the principles of natural justice or rules and that the findings recorded by the enquiry officer were perverse.

8. It may be noted at this very stage that, on the other hand, in the industrial dispute taken by the workman to the labour court, similar proceedings were conducted inasmuch as the following issues were settled on 03.03.1999:-

“(1). Whether the enquiry was not conducted in accordance with the principle of natural justice and if so, its effect?”

“(2). As per terms of reference.”

9. In those proceedings, the workman examined himself as WW-1 mainly on the strength of his affidavit Ex.WW-1/A. The management, on the other hand, examined Mr. C.K. Goyal who proved certain records including checking report, charge-sheet, the fact finding proceedings and a document described as admission of “fault” in writing submitted by the workman himself. The preliminary issue as to the validity of the enquiry was decided by the labour court by a detailed order dated 21.09.2001 holding that the enquiry was not fair or proper. It may be mentioned that the document described as admission of guilt by the workman also came to be adversely commented upon at that stage.

10. The petitioner corporation did not challenge before any superior forum either the order dated 25.02.2000 passed in the first mentioned proceedings or the order dated 21.09.2001 recorded in the second aforesaid proceedings.

11. The Industrial Tribunal, in the proceedings taken out for approval of the order of removal, after holding the domestic enquiry to be invalid on account of non-compliance with the principles of natural justice, called upon the petitioner Corporation to prove the misconduct by leading evidence

before it, and for such purposes, framed the following additional issues vide order dated 25.02.2000:-

“1. Whether the respondent committed the misconduct as mentioned in the petition and alleged in the charge-sheet issued by the petitioner?

2. Whether the petitioner remitted one months’ wage to the respondent at the time of his removal from service?

3. Relief.”

12. Similarly, the labour court having held the domestic enquiry to be invalid for same reasons as mentioned above, also proceeded to give opportunity to the petitioner Corporation to prove before it the misconduct of the workman who had raised the industrial dispute.

13. In the enquiry into misconduct held by the Industrial Tribunal, the petitioner Corporation examined Ms. Kusum Sharma (AW-2) as the solitary witness for aforesaid purposes. The said official only proved remittance of one month’s wages to the workman as tendered in terms of Section 33(2) of the Industrial Disputes Act, 1947 with communication of the order of removal. On the other hand, in similar enquiry into the misconduct embarked upon by the labour court, the petitioner Corporation opted to examine Mr. D.K. Shukla, the then Depot Manager, his testimony based on the report of the checking staff led by Mr. Ram Nath. No witness other than the said two officials was examined in the said two independent proceedings. To note specifically, neither Mr. Ram Nath nor any other member of the checking staff was tendered for examination as a witness on behalf of the petitioner Corporation/management.

14. The Industrial Tribunal (in the first said proceedings) and the labour court (in the second said proceedings) were not satisfied with the evidence

led and eventually concluded through their separate independent orders (which have been impugned in these writ petitions) that the petitioner Corporation had failed to prove (before the respective forums) the misconduct of the workman, even though opportunity had been given for such purposes.

15. The Industrial Tribunal, on the basis of the above-noted conclusions, thus, by its judgment dated 22.08.2001, rejected the application of the petitioner Corporation for approval of the order of removal, which is assailed in the Writ Petition (Civil) No. 1387/2003. The labour court, on the other hand, decided the industrial dispute raised by the workman in his favour by its judgment dated 12.05.2006 holding the order of removal to be bad and directing the petitioner management to re-instate the workman with 50% back wages and other due legal benefits. This order is challenged in Writ Petition (Civil) No.15508/2006.

16. The counsel for the petitioner Corporation has argued that the Industrial Tribunal, and the labour court, in the afore-mentioned proceedings have failed to appreciate that the workman had voluntarily admitted his guilt. He submitted that in the face of the admission in writing, findings could not have been recorded to absolve the workman of his misconduct. He also argued that both the forums in question have adversely commented on the case of the management referring to its failure to prove the misconduct by not examining the passengers in whose respect the defalcation of money was alleged. He submitted that in such proceedings, it is not always possible, nor expected, that such public persons would be examined. In his submission, the word of the checking staff in the form of

the report to the management by itself must be treated as sufficient to bring home the guilt of the workman.

17. While there may not be a quarrel generally with the proposition that it may not be possible for the management placed in such situation to call in public persons (or passengers) expecting them to co-operate by offering their evidence, it cannot be said that mere narration of the episode in the report of the checking staff submitted to the management would clinch the issue in its favour. Such reports are only meant for initiating action. The truthfulness or otherwise of the allegations made in the said report would nonetheless need to be tested by positive evidence.

18. As noted earlier, the domestic enquiry leading to the order of removal has been held to be invalid inasmuch as rules of natural justice were found to have been flouted. The order to such effect rendered by the Industrial Tribunal on 25.02.2000 was never challenged. Undoubtedly, a challenge is sought to be brought to such similar order passed (in the course of proceedings arising out industrial dispute) by the labour court on 21.09.2001 through the second writ petition. But then, it has to be borne in mind that the said challenge is stale inasmuch as it was raised after the management had acquiesced in the direction and voluntarily participated in the proceedings in its wake wherein the labour court had granted opportunity to the management to prove before it, in independent enquiry, the misconduct of the workman.

19. The petitioner Corporation has been given opportunity twice over by two different forums (Industrial Tribunal and the Labour Court) to independently prove the misconduct of the workman by adducing evidence. On both occasions, the petitioner Corporation failed to muster the requisite

evidence. The witness examined at such stage before the Industrial Tribunal had nothing to do with either the checking conducted on 11.10.1986 or with the fact finding enquiry held thereafter. The solitary witness examined before the labour court also had no concern whatsoever with the checking done on 11.10.1986 or even in the fact finding enquiry conducted thereafter. For reasons which have not been explained either before the Industrial Tribunal, or before the labour court, or even before this court in either of these writ petitions, Mr. Ram Nath, the head of the checking staff, or any other member of his team who were present at the scene at the time of checking on 11.10.1986 were not produced as witnesses. It is only those persons who would be in a position to narrate the sequence of events or what had transpired at the relevant point of time so as to bring home acts that may constitute misconduct.

20. A lot of stress has been laid on the document described as admission of guilt voluntarily made by the workman. A copy of the said document is at Page 75 of the paper book of the second writ petition. The document purports to be in Hindi and reads as under:-

“Manyvar,

*Mere Se Galti Ho Gayi. Main Aaj Ke Baad
Zindagi Mein Koi Galti Nahin Karunga – Paise Lekar Jo
Savari Utari.*

Prarthi 11.10.86

Ashok Kumar

76924/11.10.86”

21. Though no formal evidence seems to have been led on this score, one assumes that this document was written by the workman in his own hand. The date which the document bears indicates that it was prepared at the time

of inspection and handed over to the checking staff. The last sentence where there is reference to money having been taken from certain passenger who had already alighted seems to have been added later. Who was the said passenger, at what stage he was seen alighting or what was the journey he actually (if at all) undertook is left to imagination. The document is as vague as it could be. There are allegations of the workman having indulged in filthy or abusive language vis-à-vis the checking staff. It is inconceivable that if he were actually abusive in his conduct, or had even assaulted the checking staff as has been alleged, he would be simultaneously submitting such admission voluntarily.

22. It is clear from the record that when charge-sheet was issued, the workman contested attributing false implication, motive and bias. In this fact-situation, it was the onus of the management to prove the misconduct by positive evidence. The so-called admission in writing could not be used as prime or solitary evidence. If at all, it could be used to corroborate the word of prime witnesses who assumably would be available, being employees of the same management.

23. In the facts and circumstances, the document was adversely commented upon and rejected as evidence, and rightly so, by the labour court in its order dated 21.09.2001.

24. Against the above-noted backdrop, particularly when the domestic enquiry was held to be vitiated on account of non-compliance with the rules of natural justice, one is not prepared to accept the case of the petitioner management as to the proof of guilt of the workman solely on the basis of said document. The management has been given due opportunity, not once but twice, not by one forum but two, both independently to prove the

misconduct. On both occasions, the crucial witnesses were withheld. In these circumstances, an adverse inference is bound to be raised that the said witnesses, if produced, would have either not supported the case of the petitioner or would not be in position to prove the charge of misconduct.

25. This court, exercising writ jurisdiction, cannot sit in judgment over findings on facts the way an appellate forum would do. There is nothing as record to show the conclusions reached by the forums below are arbitrary or perverse.

26. On the facts and in the circumstances noted above, the reliance on *DTC v. Shyam Lal* AIR 2004 SC 4271 is misplaced. The factual position is distinguishable. The matter at hand is not a case of hearsay evidence but a case of no evidence. Even otherwise, the case of *Shyam Lal* (supra) was not decided by the Supreme Court on facts of the case, nor any opinion expressed as to the import or effect of “admission” on the charge leveled against the employee involved there.

27. For the foregoing reasons, the result of the application for approval of the order of removal before the Industrial Tribunal, and of the industrial dispute taken out at the instance of the workman before the labour court, must be upheld. Ordered accordingly.

28. The writ petitions are, thus, found devoid of merit and consequently dismissed.

R.K. GAUBA
(JUDGE)

APRIL 10, 2015
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