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

Date of Decision: September 23, 2015

+ **W.P.(C) 2703/2003**

RAM SINGH Petitioner
Through: Ms.Purnima Maheshwari and Mr.
D.K. Singh, Advocates
versus

DTC & ANRRespondents
Through: Mr. J.N. Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

1. Petitioner was employed as Advance Booking Conductor with first respondent-D.T.C. and was charged with possessing tickets, which were not entered in Way Bill, and was also found to be in possession of excess cash of ₹58/- and also for causing financial loss to first respondent. In the departmental inquiry, petitioner was held guilty and after issuance of show-cause notice to petitioner and upon obtaining his reply, the penalty of dismissal from service was inflicted upon petitioner. The dismissal order of 14th April, 1988 was challenged by petitioner and the Reference sought was as under: -

“Whether the termination of service of Sh. Ram Singh is illegal and/or unjustified and if so, to what relief is he entitled

and what directions are necessary in this respect?”

2. Trial court vide impugned order of 24th December, 1999 has answered the Reference in favour of respondent-Management and vide order of 4th September, 2001, the penalty of dismissal from service has been affirmed.

3. The challenge to the impugned orders of 24th December, 1999 and 4th September, 2001 is on the ground that regarding the alleged misconduct, a criminal case was registered, which has ended in the acquittal of petitioner and so, impugned orders upholding the dismissal of petitioner from service deserve to be set aside.

4. At the hearing, learned counsel for petitioner had drawn the attention of this Court to the judgment of 16th February, 2000 whereby petitioner has been acquitted in the criminal case. Attention of this Court was also drawn to the charge-sheet (*Annexure P-2*) served upon petitioner on 15th October, 1997 in departmental proceedings to submit that once petitioner has been acquitted in the criminal case, then the dismissal of petitioner consequent upon departmental inquiry was unjustified. Attention of this Court was also drawn to the conclusion arrived at by the Inquiry Officer. It was submitted that the Inquiry Officer was of the opinion that pending decision of the criminal case, the question of infliction of penalty deserves to be kept in abeyance.

5. During the course of hearing, it was submitted by learned counsel for petitioner that there is violation of Section 33(2)(b) of *The Industrial Disputes Act, 1947* as the requisite approval was not taken. Reliance was

placed upon Apex Court's decision in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* (1999) 3 SCC 679 to submit that in view of the acquittal of petitioner in the criminal case, *ex-parte* disciplinary inquiry cannot be sustained. Lastly, it was submitted on behalf of petitioner that in any case, the penalty inflicted is disproportionate to the alleged misconduct as even on repetition of offence of cheating for the third time, stoppage of increment without cumulative effect can be inflicted but the extreme penalty of dismissal from service is to be awarded to the delinquent employees, who are incorrigible. It was submitted that in this regard, respondent's Office Order of the year 1966 can be referred to.

6. On behalf of respondent, it was submitted that petitioner was found in possession of fake tickets and the subject matter of the criminal trial is about the forgery of the DTC ticket and the other three or four charges, for which petitioner was departmentally tried, were not the subject matter of the criminal trial and so, Apex Court's decision in *Capt. M. Paul Anthony (supra)* is of no avail to the case of petitioner.

7. It was pointed out that petitioner had initially participated in the departmental inquiry and had infact cross-examined the complainant, but had later on not appeared before the Inquiry Officer and was proceeded *ex-parte*. It was submitted that the acquittal of petitioner in the criminal case was strictly not on merits because complainant had not appeared before the criminal court, whereas in the departmental proceedings, complainant had deposed against petitioner.

8. It was submitted that there is no violation of Section 33 (2)(b) of

The Industrial Disputes Act because after the charges were proved in the departmental inquiry, a show-cause notice (*Annexure P-3 colly.*) was issued to petitioner on 23rd December, 1987, which was replied to by petitioner on 8th January, 1988 and thereafter only, the punishment of dismissal from service was inflicted upon petitioner and the Reference was sought by petitioner only after the dismissal order.

9. Regarding the Office Order of the year 1966, learned counsel for respondent had produced before this Court the service record of petitioner and upon its perusal, this Court finds that petitioner was earlier also found guilty of similar misconduct and was also found guilty of not issuing tickets to passengers after collecting the due fare and prior to the present misconduct, petitioner had misconducted himself on 28 occasions.

10. After having heard learned counsel for the parties and on perusal of the impugned orders, material on record and the decision cited, I find that the departmental inquiry related to not only the bogus tickets found in possession of petitioner but also pertained to petitioner being found in excess amount of ₹58/-. Not only that, petitioner was found in possession of 15053 more fake tickets, which were got recovered by petitioner from his house and infact petitioner had admitted that the recovered tickets were fake.

11. From the evidence of complainant, the charges in the departmental proceedings stood proved. No doubt, the Inquiry Officer had advised that the decision on quantum of punishment can be kept pending to await the outcome of criminal proceedings, but the Disciplinary Authority had

rightly issued show-cause notice (*Annexure P-3 colly.*) to petitioner and after obtaining the reply, had inflicted the punishment of dismissal from service upon petitioner on 14th April, 1988.

12. The acquittal of petitioner in the criminal case is for want of evidence as the complainant had not appeared before the criminal court. It is evident from the judgment of the criminal court that the only accusation against petitioner in the criminal case was of his being found in possession of forged DTC tickets on 5th August, 1987, whereas in the departmental inquiry proceedings, petitioner was found in possession of huge number of fake tickets, which were recovered from his residence.

13. In the departmental proceedings, petitioner had not taken the stand which was taken in response to subsequent Notice (*Annexure P-3*) and had asserted that he would produce his evidence before the court. One fails to understand as to why petitioner was advised to adopt such a stand, which was apparently detrimental to his case. Later on, petitioner had taken the stand in the reply to the Show-Cause Notice, which was confined only to the infliction of punishment. The acquittal of petitioner in the criminal case does not render the finding of guilt rendered in the departmental inquiries unsustainable as Apex Court in *Capt. M. Paul Anthony (supra)* has clearly held that the departmental proceedings as well as the criminal proceedings can go on simultaneously. Since the criminal case and the departmental proceedings were not based on identical allegations, therefore, exoneration of petitioner in the criminal case on the ground of lack of evidence would not be of any avail to petitioner to dislodge the findings returned against petitioner in the

departmental proceedings. So, reliance placed upon Apex Court's decision in *Capt. M. Paul Anthony (supra)* is misplaced.

14. Regarding the applicability of Section 33 (2)(b) of *the Industrial Disputes Act*, I find that no approval from the court was required as no proceedings were pending in the court when the punishment was inflicted. Infact, petitioner had sought the Reference only after the punishment of dismissal from service was inflicted upon him. During the course of hearing, it was not shown as to why petitioner had chosen not to fully participate in the departmental inquiry and petitioner had to be proceeded *ex parte* midway.

15. So far as respondent's Office Order of the year 1966 is concerned, I find that this Office Order does not deal with the case of fake DTC tickets. In the impugned orders, it has been rightly opined that the departmental inquiry was conducted in a fair and proper manner and while considering the serious nature of the charges alleged against petitioner, which stood proved, the penalty of dismissal from service is not found to be disproportionate.

16. Thus, finding no illegality or infirmity in the impugned orders, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

SEPTEMBER 23, 2015

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