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

Date of Decision: November 19, 2015

+ **W.P.(C) 16065/2004**

D.T.C.

..... Petitioner

Through: Mr. Manish Garg & Mr. Hitesh
Kumar, Advocates

versus

RANBIR SINGH

..... Respondent

Through: Mohd. Taiyab Khan, Advocate
with respondent in person

+ **W.P.(C) 16346/2004**

D.T.C.

..... Petitioner

Through: Mr. Manish Garg & Mr. Hitesh
Kumar, Advocates

versus

RANBIR SINGH

..... Respondent

Through: Mohd. Taiyab Khan, Advocate
with respondent in person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above captioned first petition, the challenge is to impugned order of 13th September, 2002, vide which it has been held that the departmental inquiry initiated against respondent stood vitiated. Vide impugned order of 3rd March, 2003, petitioner's application under Section

33 (2) (b) of *The Industrial Disputes Act, 1947* stands rejected by the trial court while holding that the alleged misconduct does not stand proved.

In the above captioned second petition, challenge is to the impugned Award of 16th July, 2003, which directs reinstatement of respondent with 50% of back wages.

With the consent of learned counsel for parties, the above captioned two petitions were taken up for hearing together, as the challenge to impugned orders in the above captioned two petitions is on identical ground and so, by this common judgment, the above captioned two petitions are being disposed of.

The factual matrix of this case, as highlighted during the course of hearing, is that respondent was appointed as Conductor by petitioner in August, 1983 and in January, 1994 respondent was on duty in petitioner's bus from Delhi to Jammu and on the way, four passengers had boarded the bus and respondent had purportedly collected the fare from the said passengers but had issued the tickets of less denominations and it was so detected by the check staff near Samba.

A departmental inquiry was conducted by *Shri Sushil Jacob*. In the inquiry proceedings, Transport Inspector- *Hari Singh* deposed about this incident and Assistant Transport Inspector- *Ranbir Singh* had also deposed in support of the charges framed against respondent. The Inquiry Officer held that the charges stood proved against respondent. Acting upon the Inquiry Report, penalty of *removal from service* was inflicted upon respondent. The statutory appeal preferred by respondent was dismissed and thereafter, petitioner had raised an industrial dispute regarding the illegality of *removal from service* and before the trial court,

the Inquiry Officer as well as the Transport Inspector – *Hari Singh* had deposed. Trial court vide impugned order of 13th September, 2002 held that the checking staff had not recorded the name and statements of passengers from whom the respondent had collected the full fare but had issued tickets of lesser denominations and the inquiry stood vitiated for lack of legal evidence.

Vide impugned order of 3rd March, 2003, it was held that the misconduct attributed to respondent does not stand proved due to lack of evidence of the passengers, which was crucial to prove the charges against respondent. Thus, petitioner's application seeking approval of the penalty of *removal from service* was rejected by the trial court vide impugned Award of 16th July, 2003. It has been held that due to non-approval of respondent's *removal from service*, the domestic inquiry stood vitiated and hence, reinstatement of respondent with 50% back wages has been ordered.

At the hearing, learned counsel for petitioner had assailed the impugned order by contending that the sufficiency of evidence is not required to be gone into and there was no justification for the trial court to have disbelieved Transport Inspector, who had deposed before the trial court. It was asserted that for not examining the passengers, the Transport Inspector- *Hari Singh* had given a plausible answer of respondent threatening the passengers not to depose and so, in such a situation it cannot be said that the principles of natural justice have been violated or the inquiry has been vitiated. To contend so, reliance was placed upon *Apex Court's* decision in *State of Haryana Vs. Rattan Singh* 1977 (2) SCC 491 and decisions of Coordinate Benches of this Court in

Vikram Kumar Vs. Delhi Transport Corporation 2015 SCCOnline Del 10880 and *Subhash Chander Vs. Presiding Officer Labour Court* 2013 SCCOnline Del 1275. Lastly, it was submitted that it has come on record that respondent was having some land and so, trial court was not justified in granting 50% of the back wages. Thus, quashing of the impugned order and restoration of penalty order was sought by petitioner.

Learned counsel for respondent had supported the impugned order and submitted that petitioner had ten years of service and there was no adverse entry in his service record and that the charge levelled against respondent is baseless and does not stand proved at all and the trial court has rightly held that neither the misconduct stands proved nor the inquiry was fairly conducted and so, both these petitions deserve dismissal.

Upon hearing and on perusal of the impugned orders, material on record and the decisions cited, I find that Transport Inspector- *Hari Singh* in his evidence has stated that respondent did not permit him to record the statement of passengers. To say the least, Transport Inspector- *Hari Singh* did not require any permission from respondent to record the statements of passengers. In the absence of crucial evidence of passengers, the misconduct alleged against respondent does not stand proved. Trial court has rightly declined approval to the *removal of respondent from service*. In the absence of legal evidence, the inquiry stood vitiated. Reliance placed by petitioner's counsel upon Apex Court's decision in *State of Haryana Vs. Rattan Singh (supra)* does not advance the case of petitioner because in the said decision, it has been declared that in domestic inquiry, strict and sophisticated rules of evidence under the Indian Evidence Act are not applicable. However, the crucial evidence to prove the charge has

to be led.

In the instant case, petitioner has failed to get the preliminary evidence of passengers recorded. In *Vikram Kumar (supra)*, not only the statements of passengers were recorded but even the said statement was got signed by the Transport Inspector. In *Subhash Chander (supra)*, it has been held that zero tolerance is to be shown to dishonest conduct of the employees. There is no doubt about it but there has to be basic and preliminary evidence to prove the charge of misconduct. So far as quantum of sentence is concerned, decision in *Subhash Chander (supra)* would apply but not to a case like the instant one, which lacks evidence.

It is true that the initial burden is on the employee to prove that he was not gainfully employed during period in question. In the instant case, learned counsel for respondent, on instructions from respondent who is present in the Court, apprised this Court that respondent owns just two *bighas* of land in *Gohana* (Haryana) and is merely earning ₹25,000/- per annum from the agricultural land and has two handicapped children to support and there is no other source of income. In such a situation, awarding of 50% of the back wages is fully justified. In the considered opinion of this Court, impugned orders do not suffer from any irrationality nor disclose any palpable error. Finding no substance in the above captioned two petitions, they are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 19, 2015

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