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

Date of Decision: 6th August, 2015

+ **W.P.(C) 6810/2002**

VIKRAM KUMAR

..... Petitioner

Through: Mr.Rishikesh and Mr.Rajiv Dewan,
Advocates

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through Ms. Arti Mahajan & Mr.Manoj
Kumar, Advocates

AND

+ **W.P.(C) 2810/2003**

VIKRAM KUMAR

..... Petitioner

Through: Mr.Rishikesh and Mr.Rajiv Dewan,
Advocates

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through Ms. Arti Mahajan & Mr.Manoj
Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The petitioner has preferred Writ Petition No.6810/2002 under Article 226 of the Constitution of India to assail the order of removal from service dated 14th May, 1993 passed by the respondent-DTC, the judgment and order dated 11th July, 2000 passed by the Labour Court IX in ID No. 119/1994 and Writ Petition No.2810/03 to assail the order 3rd March, 2001

passed by Presiding Officer, Industrial Tribunal II in OP NO. 283/83. By order dated 14th May, 1993, the petitioner was removed from service by the respondent/DTC. By the order dated 11th July, 2000, the preliminary issue with regard to validity of the domestic enquiry held by the respondent against the petitioner was decided in favour of the respondent and against the petitioner holding the enquiry to have been properly held in compliance with the principle of natural justice. By the final award of the same date, the reference made to the Labour Court by the appropriate Government on 8th August, 1994 with regard to removal of petitioner from service has been answered in favour of the respondent and against the petitioner/workman. Vide order dated 3rd March, 2001, the action of the respondent to remove petitioner from service under Clause 15 (2) (vi) of DRTA (Conditions of Appointment of Service) Regulation 1952 was approved.

2. Petitioner was appointed as bus conductor with DTC in 1984. On 11th May, 1992, he was on duty in Bus No. 9434, route No. GL 429 wherein 49 passengers were travelling. The bus was checked by Sh. Jhaman Lal, T.I. who found one passenger without ticket. On checking, the cash of conductor was found to be in order. Sh. Jhaman Lal made necessary remarks on the complaint book and prepared challan which was given to the petitioner. On the basis of report submitted by Sh. Jhaman Lal, T.I., the respondent came to the conclusion that alleged irregularity amounted to misconduct within the meaning of para (b) (h) and (m) of the standing order governing the conduct of DTC employees. Accordingly, respondent issued challan slip to which petitioner submitted his reply, inter alia, contending that the passenger did not give him any money. Cash which was checked by the checking staff was found to be in order. Thereafter, charge sheet dated 14th July, 1992 was

given to which petitioner submitted his reply. The respondent then held a domestic enquiry against the petitioner wherein statement of several witnesses produced by the management were recorded and opportunity to cross-examine them was given to the petitioner. Efforts were made by the management to secure the presence of the passenger but in vain, hence liberty was granted to the petitioner to produce him. Petitioner produced the passenger. Enquiry Officer submitted his report finding petitioner guilty of the charges. On submission of the domestic enquiry report, the petitioner was granted an opportunity to make his representation. After considering the same, respondent/employer passed the order dated 14th May, 1993 removing the petitioner from service. Since the petitioner raised an industrial dispute in respect thereof, the same was referred by the appropriate government for adjudication to the Labour Court which has rendered its award as aforesaid.

3. While passing the order dated 11th July, 2000, on the preliminary enquiry with regard to validity of the domestic enquiry, the Labour Court examined the plea of the workman that documents were not supplied to him and that the passenger did not support the plea of the Management. The Court observed that no plea of non-supply of document was taken by the workman either in the reply to charge sheet or in the statement of claim filed in Court. Moreover, no prejudice has been caused to the workman on account of non-supply of copy of documents. He was granted opportunity to inspect the documents, which he did not avail. As regards the fact that passenger did not support management, it was observed that enquiry officer had duly considered this aspect and observed that passenger seemed to have been won over by the workman. Otherwise, the workman had not taken this defence in reply to charge sheet. Rather in reply to charge sheet, he stated

that he did not know from where the passenger hired the bus and passenger had falsely told the checking team that he had given the amount of fare to the conductor. Enquiry does not suffer from any infirmity. Having held so, it was observed that discretion of the Court u/s 11A to interfere with the quantum of punishment is limited. Charge of misappropriation is serious misconduct and the sum misappropriated is irrelevant. Hence, workman was not entitled to any relief.

4. Respondent/Corporation moved an application u/s 33(2)(b) of ID Act whereby it sought approval of the action taken, namely, termination/removal/dismissal of the petitioner from service of corporation. Vide impugned judgment and order dated 3rd March, 2001, the Presiding Officer, Industrial Tribunal allowed the application approving the impugned action of the respondent in the matter of removal of petitioner from service under Clause 15(2) (vi) of DRTA (Conditions of Appointment of Service) Regulation 1952.

5. The correctness of the impugned order has been challenged by the learned counsel for the petitioner on the following grounds:-

- (i) The finding of enquiry officer is perverse. There is not an *iota* of evidence to substantiate the alleged charge. Respondent did not examine passenger but the petitioner examined him who not only admitted that he was issued ticket but also stated that checking staff threatened him and forcibly made him write something and obtained his signatures. He also stated that ticket issued to him by the petitioner was taken by RTO from him. The cash of the petitioner was checked and found to be

correct both before and after issue of ticket to one passenger.

- (ii) Impugned order of removal is incompetent and illegal. The depot manager is neither competent nor authorized to pass order of removal from service.
- (iii) Entire proceedings against the petitioner are contrary to the provisions of Delhi Road Transport Authority Act. The loss caused by the conductor is to be dealt with by Regulation 15A of the Service Regulation which provides action against the conductor for committing shortage. In the instant case the amount involved is Rs.4/- only, which is less than the prescribed amount of Rs.5/-. Moreover, the petitioner deposited Rs.4/- before expiry of 48 hours. Therefore, the petitioner could not have been proceeded against.
- (iv) The case of the petitioner is not covered by any of the Clause (a) to (m) of the Standing Order prescribed by the respondent authority.
- (v) Impugned order is otherwise bad and illegal because the services of the petitioner were recommended to be terminated but instead order of removal from service has been passed.
- (vi) Punishment is disproportionate to the charge alleged to have been proved.

6. Reliance was placed on *UP State Road Transport Corporation and Ors. vs. Mahesh Kumar Mishra and Ors.*, (2000) 3 SCC 450; *Om Prakash A. Singh vs. Municipal Corporation of Greater Bombay*, (2001) 10 SCC 528, *Gujarat State Road Transport Corporation vs. U.A. Malek*, (2001) 10 SCC 548; *Shri Ganpati Bus Service, Thirunelveli vs. Presiding Officer*,

Labour Court and Ors., (2001) 2 SCC 602; ***DTC vs. Ram Phal & Ors.***, CW 5426/1998 decided on 09.08.2002; ***Delhi Transport Corporation vs. Brahm Prakash***, WP(C) Nos. 19741/2004 & 17729/2005, decided on 04.07.2011.

7. Countering the submissions of the learned counsel for the petitioner, counsel for the respondent submits:-

(i) There is no manifest error in the impugned award resulting in grave injustice to the petitioner. Preliminary issue whether the domestic inquiry conducted by the respondent suffered from any infirmity was decided by the Industrial Tribunal II, Karkardooma Courts against the petitioner. In view of the fact that there is no infirmity in the enquiry and the same was in accordance with the principles of natural justice, the issue cannot be reopened invoking the extraordinary writ jurisdiction. She further submits that respondent examined as many as five witnesses and efforts were also made to secure presence of passenger but he did not appear. Moreover, it was not imperative for the Management to examine passenger as held in ***State of Haryana & Ors. vs. Ratan Singh***, (1977) 2 SCC 491; ***DTC vs. N.L. Kakkar***, 110 (2004) DLT 493. However, liberty was given to the petitioner to examine him who was examined but he was won over by the petitioner. Enquiry Officer rightly did not believe him.

(ii) This Court in writ jurisdiction has no jurisdiction to reappraise the evidence on record.

(iii) Depot Manager is the disciplinary authority and he was fully competent to pass the order of punishment against the petitioner as held in ***Raghunandan Sharma vs. DTC***, 54(1994) DLT 370 DB.

- (iv) Regulation 15A is not applicable as it was not a case of shortage but of misappropriation hence Regulation 19 were applicable.
- (v) There was no recommendation for termination of petitioner. In fact, petitioner is relying on English translation of the memo where word Termination is mentioned whereas copy of Gyapan-show cause notice was filed to show that word used was '*hata diya jaye*' which is equivalent to removal.
- (vi) Punishment by disciplinary authority is commensurate with the misconduct which was grave as petitioner dishonestly indulged in misappropriation of public money. Reference was also made to past conduct of the petitioner when on earlier occasion he was twice imposed stoppage of next two increments with cumulative effect, once administered 'warning', awarded 'advice' order, administered verbal warning once for different irregularities committed by him from time to time. Non-issuance of ticket to a passenger after collecting the fare is a serious misconduct and, therefore, no latitude was required to be shown to the petitioner.

8. Reliance was placed on *Karnataka State Road Transport vs. B.S. Hulikatti*, (2001) 2 SCC 574; *Regional Manager, RSRTC vs. Ghanshyam Sharma*, (2002) 10 SCC 330; *North West Karnataka Road Transport Corporation vs. H.H. Pujar*, AIR 2008 SC 3060; *Subhash Chander vs. PO Labour Court*, (2013) 138 FLR 281; *DRTA (Conditions of Appointment & Service) Regulations 1952 Clause 15(2)*; *Standing orders governing conduct of DTC Employees para 19(b)(h) & (m)*; *Copy of memo (gyapan)-show cause notice-original Hindi Version*.

9. Countering the submission of learned counsel for respondent regarding authority of depot manager to inflict the punishment, counsel for petitioner submits that judgment of **Raghunndan Sharma**(supra) was delivered in 1994 whereas in the instant case, penalty of removal was imposed on the petitioner in the year 1993. Therefore, this judgment does not help the respondent as it has no retrospective effect.

10. Coming to the first limb of argument of counsel for petitioner regarding inquiry being perverse and non-examination of passenger as witness by management, this issue is squarely covered in favour of DTC by several decisions including a decision of Supreme Court, a Division Bench decision of this Court followed by a single Judge of this Court. All the decisions were extensively dealt by the single Judge of this Court in **N.L.Kakkar**(supra) by observing as under:-

*"13. In a similar fact situation, a Full Bench of the Punjab & Haryana High Court in **State of Haryana vs. Ram Chander**, 1976 (2) SLR 690 laid the foundation for its discussion in paragraph 3 of the Report. It was held that a domestic tribunal is not bound by the strict rules of evidence and can evolve its own procedure as long as it is in accordance with the principles of natural justice. It was said:-*

"The first question for consideration is, whether the evidence of the checkers as to what they were told by the passengers was not legal evidence in the domestic enquiry against the respondent. Time and again, it has been repeated by the Supreme Court that domestic tribunals in the absence of statutory guidance, have the right to regulate their own procedure and are also not bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in Courts are often misplaced in domestic enquiries. A Domestic tribunal whose procedure is not regulated by a statute is free to adopt a procedure of its own so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source if it is 'logically probative'."

14. Thereafter, the Full Bench considered earlier decisions of the Supreme Court and also referred to cases from England to lay down the law in paragraph 4 of

the Report with regard to the value to be attached to hearsay evidence. It was held :

"... .. where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the Checker that he found passengers travelling without tickets and (2) the statements made by the passengers to the checker at the time of checking. The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstance that statements were made in the presence of the conductor and on the spot. In such a case, it cannot be said that the enquiry officer's findings are based on pure hearsay or hearsay of unreliable nature."

15. The most important judgment on the subject is **State of Haryana vs. Rattan Singh**, (1982)ILLJ46SC. The facts of that case are similar to the facts of the present case. What must be mentioned, however, is that in Rattan Singh the Civil Court declared the domestic inquiry a nullity. The appellate Court affirmed this conclusion and the High Court dismissed a second appeal. Yet, the Supreme Court entertained a petition for special leave to appeal and upset the conclusions of three Courts.

16. The contentions urged before the Supreme Court are also of some importance. They are:

(i) None of the passengers traveling without tickets were examined in the domestic enquiry.

(ii) The checking inspectors had violated a departmental instruction by not recording the statements of the passengers.

(iii) The co-conductor in the bus had affirmed the innocence of the conductor.

17. The Supreme Court held in paragraph 4 of the Report that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It was said that the passengers are not required to be chased and brought before the domestic tribunal.

18. On the scope of permissible interference with the conclusions of a domestic inquiry, the Supreme Court said in the same paragraph that what has to be seen is whether there was some evidence or was it a case of no evidence. As long as there is some evidence, sufficiency thereof in proof of a finding by a

domestic tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer and, therefore, the order passed in the domestic inquiry could not be held invalid.

19. *I think it is worth quoting the view of the Supreme Court as reflected in paragraph 4 of the Report. This passage really answers both the issues before me. This is what the Supreme Court says:*

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence -- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

11. ***Mahesh Kumar Mishra*** (supra) relied by petitioner is distinguishable as in that case instead of charging a fare of Rs.1.80, respondent had charged

a fare of Rs.1.50 from the passenger. There was a dispute as to from where the passenger boarded the bus because the fare varied with the place of boarding the bus. Under those circumstances, it was held that this fact could have been established beyond doubt if any of these persons were examined at the domestic inquiry or the Transport Inspector, who checked the bus, could have recorded their statement. But this was not done and reliance was placed only upon the report of the Transport Inspector which was signed by the respondent. It was not a case where the passenger was allowed to travel without ticket so that the amount of fare charged from the passenger could be pocketed by him.

12. Things are entirely different in this case. Immediately after the inspection, TI recorded statement of passenger which is to the following effect:-

“Mai aaj dinank 11.5.1992 ko bus no. 9434 route no. 429 mein railway station se baitha to conductor ko kiraye ke liye 10 Rs. ka note diya aur 4 Rs. lekar mujhe ticket nahin diya. 6 Rs.waapas kiye. Main ye bayaan apne haath se likh raha hu.”

13. This statement is countersigned by the petitioner.

14. In his reply, petitioner took the plea that the passenger did not give any money to him. During the course of inquiry, respondent examined as many as 5 witnesses. Jhaman Lal TI, Prabhu Dayal Traffic Supervisor, Sudanshu Kumar ATI, Jagram ATI and Sohan Dev ATI, all of whom stated that on checking the bus, one passenger was found without ticket who told that he boarded the bus from railway station and handed over a ten rupee note to the conductor who refunded Rs.6/- to him but did not give him ticket. The accused was challaned after getting one unpunched ticket bearing no.170/24271 valued at Rs.4/-. The passenger was called by

respondent on 28.09.1992, 09.11.1992 and 08.12.1992 but he did not appear. The witness was produced by petitioner. During enquiry proceedings, he stated that on demand of ticket, he showed his ticket to the checking staff but they did not return the same to him and enquired as to what articles were kept in the bag. Rs.20/- was demanded but he was having only Rs.6/-. He was threatened and was made to sign some papers. His stand was rightly not believed by the enquiry officer which finding was upheld by the Labour Court.

15. The scope of interference with a finding of fact arrived at in a domestic inquiry and upheld by the Industrial Tribunal was also dealt with in *N.L.Kakkar's* case where reliance was placed on *Delhi Transport Corporation v. Presiding Officer, Additional*, XVI(1979) DLT 200, where the Division Bench noted two competing principles, that is, non reviewability of a finding of fact based on evidence and violation of the rules of natural justice. On the question of interference with a finding of fact arrived at in a domestic inquiry, it was held:

"Therefore, in the present case, the principle (sic) finding of fact of the Inquiry Officer which is based on some evidence independent of the written statement or oral evidence of the passenger witness is unassailable."

16. On page 225 of the Report, the Division Bench made an important observation. It was said:

"We may take judicial notice of the fact that the checking of the conductors of the buses of the appellant is a salutary practice. Its effectiveness cannot be defeated by technicalities. When the misconduct is proved by the common sense standards before the Inquiry Officer, legal ingenuity and technicalities should not be allowed to impugn the common sense findings and defeat the operation of the system of checking."

26. The above Division Bench decision was followed by a learned Single Judge of this Court in *Sultan Singh vs. Delhi Transport Corporation*, 1987 1 LLN 399. In

that case, grant of approval under Section 33(2)(b) of the Act was challenged by the petitioner on the ground that the passenger witness who had given a statement against the petitioner was not examined and so the petitioner did not have any opportunity to cross-examine this witness and, Therefore, the inquiry against him was vitiated. The learned Judge also referred to **Mahinder Singh vs. Presiding Officer** (CW No. 136 of 1975 decided on 10th February 1979) and observed that in these cases, it had been held that:

"... even if the passenger witnesses are not examined and if there was enough other evidence to prove the misconduct of the employee the inquiry is not vitiated. In the present case also, there is a clear finding that the checking officers were examined and they gave evidence to prove the misconduct and the statement of the passenger was recorded in the presence of the petitioner. Thus, even if the statement of the passenger witness is held to be inadmissible since there was other evidence, the order cannot be held to be invalid."

27. **Shyam Sunder vs. Delhi Transport Corporation** (CW No. 922/76 decided on 5th February, 1996) dealt with an identical issue. In that case, the learned Single Judge referred to **DTC vs. Presiding Officer** (CW No. 7/79 decided on 16th July, 1979), the Division Bench decision mentioned above and **Rattan Singh** and held that since the inquiry officer based his findings on the examination of the checking staff (who were also cross-examined), there was independent evidence to link the petitioner with the charges leveled against him. Consequently, the statement of the passengers, not being the sole material against the petitioner, the domestic inquiry was not vitiated.

28. The learned Judge also held that:

"It is settled law that this court is not competent and has no jurisdiction to reappraise the evidence on record and come to a different finding from that of the Enquiry Officer."

17. Following these judgments in **N.L.Kakkar**(supra), it was observed:-

"29. It is quite clear that the consistent view of this Court over the last few decades has been that the non-production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic enquiry should not be interfered with so long they are based on some evidence. The value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal."

18. In **Rattan Singh**(supra) also, Supreme Court observed as under:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.....

The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny”

19. In the instant case, there was ample evidence which had relevance to the charge levelled against the petitioner, therefore the order cannot be held invalid on that ground.

20. Coming to the next limb of the argument of learned counsel for the petitioner that the depot manager was neither competent or authorized to pass order of removal from service, this submission has no force in view of the judgment pronounced by the Division Bench in **Raghunandan Sharma** (supra) where it was held that the power conferred on the depot managers by virtue of resolutions passed by the DTC Board deriving source from the provisions of Section 12(1)(c) of the Road Transport Corporation Act is valid exercise of statutory powers and the initiation of disciplinary action and issuance of the show cause notices, as the case may be, by the Depot Managers in these various cases, is valid. The initiation or taking of disciplinary action by the Depot Managers cannot be faulted on the ground of lack of power or authority in the officer concerned.

21. The submission of learned counsel for the petitioner that this judgment was pronounced on 19th April, 1994 whereas disciplinary action was taken by the depot manager in the year 1993 and the judgments had no retrospective effect again deserves rejection as para 2 of the judgment

reflects that a similar controversy as in this case regarding the competence of the depot manager to initiate disciplinary action including action for removal/dismissal and reduction in rank against the employees who are generally working as drivers and conductors in DTC falling in the category of Class III/Class IV employees had arisen. Earlier when learned Single Judge had quashed the disciplinary action initiated against the petitioner in those cases holding that in case of persons employed between April 1973 and March 2, 1974, it is only the Transport Corporation or the General Manager who could initiate and take disciplinary action. The said judgment of the learned Single Judge was reversed in *L.P.A. No.6 of 1976, D.T.C. vs. Surinder Kumar*, decided on 30th September 1977. That being so, the competence of depot manager to initiate the disciplinary action against Class III/Class IV employees was upheld as far back as 30th September, 1977 and, therefore, it cannot be said that this judgment in *Raghunandan Sharma*(supra) does not help the respondent.

22. Coming to the next submission of learned counsel for the petitioner regarding applicability of Regulation 15A, it will be relevant to produce this Regulation which is as under:-

“15A:- Action against conductors for committing shortage.

1. A conductor who commits shortage of more than Rs.5/- in a day or more than Rs.15/- in aggregate during a month shall be put off duty until he deposits the amount of shortage. In the event of his depositing the shortage the “Off Duty” period shall be treated as leave without pay. If the conductor concerned does not deposit the amount of shortage due within 48 hours of the intimation of the shortage to him, he shall also be liable to such disciplinary action as may be deemed necessary by the General Manager. A conductor who commits shortage repeatedly, shall also be liable to disciplinary action including termination of service, at the discretion of the General Manager.

2. *The permissible aggregate amount of Shortage in a month can be increased from Rs.15/- to Rs.20/- at the discretion of the Traffic Superintendent under special circumstances if the Traffic Superintendent is satisfied that the circumstances justify this increase. Where this increase is sanctioned by the Traffic Superintendent the conductor concerned will become liable to action as indicated in sub-clause (1) above only when the shortage committed by him exceeds Rs.5/- in a day or Rs.20/- in aggregate during the month.*

3. *In case a conductor does not deposit the amount of shortage committed by him, it will be recovered from his salary on the next day or from his security deposit, if he is discharged from service or he quits service."*

23. This regulation is not applicable as it speaks about taking action against conductor for "committing shortage" which is not the case in hand. Present is a case of "non-issuance of ticket even after taking money". The respondent/DTC have laid down standing order governing the conduct of DTC Employees. Para 15(2) of the said regulation prescribes various violations as misconduct. Relevant violations applicable in this case are (b), (h) and (m) which reads as under:-

"b) Theft, fraud or dishonesty in connection with the authority business or property;

h) Habitual negligence of duties and lack of interest in the authority's work;

m) Any other activity not specifically covered above, but which is prima facie detrimental to the interests of the organisation."

24. The mere fact that the amount involved is Rs.4/- or it was deposited by the petitioner within 48 hours, under the circumstances, is of no consequence.

25. As regards the submission that although the Competent Authority had recommended only termination of the petitioner but the petitioner was removed from service and, therefore, this order deserves rejection is bereft

of merit, inasmuch as, counsel for the respondent has placed on record the copy of the show cause notice (*gyapan* in hindi) and a perusal of the same goes to show that the Competent Authority has recommended “*hata diya jaye*”. The counsel for the petitioner based his submission regarding ‘termination’ on the basis of translated copy of the show cause notice where he has used the word ‘termination’ whereas the use of the word “*hata diya jaye*” in the show cause notice itself goes to show that the recommendation was for removal from service.

26. Coming to the last plank of his submission that the punishment imposed upon the petitioner is highly disproportionate, I do not find any merit in this submission.

27. In ***Hullikatti*** (supra), conductor had issued tickets of Rs.1.75 instead of Rs.2.25 but it was not proved that he had collected the amount of Rs.2.25 from the passenger. Labour Court set aside the punishment of dismissal and directed reinstatement with full back wages. Writ petition filed by the Corporation and LPA was dismissed. SLP was preferred. It was held:

“5. The principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

6. It is misplaced sympathy by the labour courts in such cases when on checking, it is found that the bus conductors have either not issued tickets to a large number of passengers though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

28. **Ghanshyam Sharma** (supra) was again a case where conductor was held guilty of misconduct of carrying passenger without ticket. On a reference being made, the Labour Court invoked its jurisdiction under Section 11(A) and while upholding the finding that the respondent was guilty of misconduct, it directed the respondent's reinstatement with continuity of service but without back wages. The learned Single Judge of this Court set aside the award which decision has been reversed by the division bench. Reiterating the observations made in **Hullikatti**(supra), it was held:-

"Furthermore, we agree with the observations of the single judge in the present case that the labour court was not justified in interfering with the punishment of dismissal. Though under section 11(A), the labour court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the road transport corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

29. Again in **H.H.Pujar**, conductor was found guilty of carrying ticketless passengers by Inquiry Officer. Punishment of dismissal was imposed on him. Delinquent conceded to fairness of domestic enquiry. He also admitted that he has not issued ticket to some passengers. Interference with punishment on ground that ticket-less passengers were not examined was held inappropriate.

30. In **Subhash Chander**(supra), the amount involved was only 30 paise and plea was taken that lenient view be taken. Reliance was placed on a Division Bench judgment of this Court in **Sheo Raj Singh vs. DTC in LPA** No. 243/2007 decided on 10.10.2007 where Court observed as under:-

"Besides the aforesaid, notification issued on 3.1.1966 also enables the

disciplinary authority to impose the extreme penalty of dismissal or removal from service in a case of repetition of punishment. We have already referred to one of the past incident where the appellant was given the punishment of stoppage of increment and, therefore, the offence of misconduct of misappropriation for which action is taken was in the nature of repetition of punishment and, therefore, the said circular does not in any manner come in assistance or protection of the appellant. We may also, at this stage, mention that there is a guideline issued by the corporation dated 26.5.2000 which justifies the quantum of punishment imposed on the appellant. In any case, the contention of the counsel appearing for the appellant that the quantum of punishment is disproportionate to the offence alleged against the appellant cannot be accepted. The punishment imposed keeping in view the offence cannot be called as shocking the judicial conscious of the court. It is not the quantum of the amount but the nature, type and character of the misconduct which is relevant and the determinative factor”.

31. Reliance was also placed on Supreme Court decision in ***Depot Manager, AP, SRTC v. B.Swamy***, (2007) 12 SCC 40 where Court dealt with a similar plea of the act of cheating by a bus conductor being a first time act. The Supreme Court held that even one act of dishonesty amounts to breach of faith and may invite serious punishment. In that case, the bus conductor was found guilty of misappropriating ticket money. He had charged higher fare from 16 illiterate persons, but had issued tickets for a lower fare. Merely because it was the first occasion when the respondent conductor was caught, was held not to be a ground to conclude that it was accidental. It was held that the bus conductor enjoys the faith reposed in him. 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. The judgment of the High Court interfering with the punishment on the ground of it being disproportionate was set aside.

32. Following these judgments, it was held that:-

“9.The amount involved may appear to be very small in today’s time. The

incident is of the year 1985 when even 30 paise had purchasing power as is evident from the fact that a passenger ticket of the DTC was available for 30 paise. The issue is not about cheating of only 30 paise. One cannot lose sight of the fact that the petitioner was found in possession of excess cash of Rs. 1.90. He may have been caught cheating the respondent employer in one instance, but the presence of excess cash of Rs.1.90/- shows that he could have been involved in similar acts of cheating on the same day before the checking party caught him red-handed in the act of cheating. The petitioner has not sought to explain as to how he was possessed of excess cash of Rs.1.90/-. Even if one were to accept that 30 paise and Rs.1.90/- are small amounts, what is of significance is the act of cheating and not the amount involved. The petitioner was a bus conductor. Obviously, if he was habitual and morally oriented to cheat the respondent-employer, he would cheat in the discharge of his official duties as a bus conductor. His acts of cheating, therefore, would involve such amounts only. When such acts are viewed in the light of the fact that hundreds of passengers travel in a public transport buses of the kind in which the petitioner was performing his duties as a bus conductor, the magnitude of the loss that the petitioner may have caused, or could cause in a day; in the month; in a year or in his entire tenure would translate into a significant amount. If the argument about the money involved being small were to be accepted, no person involved in cheating having a small monetary value would ever get caught or punished. Pertinently, this was the second instance when the petitioner was caught in the act of cheating and punished there for. He did not learn his lesson even after the first act when he was caught and punished. The fact that that he was caught the second time does not mean that this was the second time that he indulged in such act of cheating.”

33. In the instant case, it was not the solitary incident when the petitioner was found guilty of misconduct. Reference has been made to the past conduct of the petitioner submitting that during his service in the corporation, he was twice imposed the punishment of stoppage of next two increments with cumulative effect, he was administered written warning once, he was awarded advice once, administered verbal warning once, in the year 1989 also he was challaned for non-issue of tickets and was placed under suspension and he was awarded the punishment of stopping of two increments in that case. Things did not improve. On the date of incident, he was again found guilty of misappropriating ticket money. Under the

circumstances, it cannot be said that punishment inflicted upon the petitioner was not commensurate with the misconduct.

34. Various judgments relied upon by the counsel for the petitioner were on the peculiar facts and circumstances appearing in those cases. In ***Om Prakash A. Singh*** (supra) before Supreme Court the employer/corporation suggested that having lost confidence in the appellant/conductor instead of reinstatement, it would be willing to pay some compensation to him, as such, compensation was awarded.

35. ***U.A. Malik***(supra) was a case where the respondent/conductor was in service in the establishment of the corporation for number of years pursuant to the award of the Labour Court. Under the circumstances, the Apex Court did not deem it appropriate to upset the state of affair and, therefore, appeal was dismissed.

36. In ***Shri Ganpati Bus Service***, the Subordinate Court had directed reinstatement of conductor. The Labour Court held that non-payment of salary during suspension period was sufficient punishment to first conductor for not issuing tickets whereas no case was established against second and third conductor. Under those circumstances, it was held that the dismissal was not justified.

37. In ***Ramphal*** (supra), the workman was removed from service on the ground that he had failed to issue three tickets of the value of 50 paise to three passengers. Departmental inquiry was held in which the workman was found guilty. Since industrial dispute was pending, the petitioner/DTC moved an application u/s 33(2)(b) of ID Act for grant of approval of the

punishment imposed upon the respondent/workman. The Industrial Tribunal noticed that the petitioner had failed to lead any evidence to show that domestic inquiry was conducted in accordance with law. As such, the application was dismissed. Under those circumstances, the writ petition was dismissed.

38. Again in ***Brahm Prakash***(supra), on facts, it was found that there was no corroboration of the statements of the checking staff who were examined as management witnesses. As such, benefit of doubt was given to the respondent/conductor. As such, in all these cases, judgments were rendered on peculiar facts and circumstances appearing in those cases from which the petitioner does not get any assistance.

39. In the light of the aforesaid discussion, it becomes clear that neither the enquiry suffers from any perversity nor the award of Labour Court. That being so, no interference is called for. The writ petitions are accordingly dismissed leaving the parties to bear their respective costs. Pending application, if any, also stand disposed off. TCR be sent back forthwith.

(SUNITA GUPTA)
JUDGE

AUGUST 06, 2015

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