

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

+ Judgment delivered on: September 23, 2015

% **W.P.(C) No. 3587/2004**

SHRI OM KANWAR Petitioner

Through: Mr. S.N. Sharma, Adv.

versus

DELHI TRANSPORT CORPORATIONRespondent

Through: Ms. Arati Mahajan Shedha and Manoj
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Shri Om Kanwar (*hereinafter referred to as the 'petitioner-workman'*) has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India assailing the validity of impugned Award dated 28.04.2003 passed by the Presiding Officer, Labour Court No. IX, Karkardooma, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. No. 477/91 (old No. 477/91 – 64/89).
2. The brief facts as stated are that the petitioner-workman, i.e., Shri Om Kanwar was appointed as conductor w.e.f 18.05.1975 at a monthly

salary of Rs 1300/- per month. The petitioner-workman was on duty in bus No. DL-P-1064 plying on Machiwara-Delhi route. On 12.04.1984, the checking officers of the respondent-management intercepted the said bus at Ambala Cantt. at about 08.15 hours and detected a group of six passengers alighting from the bus without tickets. It is alleged that the said passengers had already paid the fare @ Rs 5.70 each to the petitioner-workman but the petitioner failed to issue the tickets to them. Similarly, it is further alleged that two more passengers had also paid the fare @ Rs 16.90 each but they were also not issued tickets.

3. The petitioner-workman on being asked for an explanation denied the allegations and stated them to be false. Thereafter, an enquiry was entrusted to one Shri Ashcharj Lal, ATC of Okhla I Depot and the respondent-management despite being given opportunity, failed to examine the witnesses. Consequently, the enquiry officer exonerated the petitioner-workman from the charge on 03.01.1986. The said order of the enquiry officer was quashed by the G.M. (S) vide order dated 12.02.1987 who directed that *de novo* enquiry be conducted by Depot Manager, Ambedkar Nagar Depot. Thereafter, a show cause notice was issued against the petitioner-workman and the Depot Manager, Okhla proceeded against the workman and passed the removal order dated 19.06.1987.

Consequently, the petitioner raised an industrial dispute vide reference No. F.24(692)/89-Lab/675-61 dated 20.02.1989. After

completing the pleadings and evidence, the Presiding Officer, Labour Court No. IX, Karkardooma, Delhi passed the impugned Award dated 28.04.2003 whereby the petitioner-workman was held not entitled to any relief.

Aggrieved from the said Award, the petitioner-workman has preferred the present Writ Petition.

4. The learned counsel appearing on behalf of the petitioner-workman draws the attention of this Court to the enquiry proceedings, which concluded on 03.01.1986, in which the respondent-management could not prove the charge of misconduct against the petitioner-workman. The first enquiry proceedings initiated against the petitioner-workman by the management resulted in exoneration of the petitioner-workman by the enquiry officer's report dated 03.01.1986 and subsequently, a *de novo* enquiry was conducted without issuing the notice and the same is bad in law.

The learned counsel for the petitioner-workman further pointed out that in the instant case, the disciplinary authority was the Depot Manager, and he himself acted as the enquiry officer while he was acting as the disciplinary authority. So, the enquiry proceedings are bad in law.

The learned counsel for the petitioner-workman further pointed out that if at all, the *de novo* enquiry was to be initiated against the workman, then it was mandatory on the respondent-management to engage the

enquiry officer and file the enquiry report and only on the basis of that, removal order could have been passed against the petitioner-workman.

The learned counsel for the petitioner-workman has further pointed out that once the issue of enquiry is decided in favour of the workman before the Industrial Adjudicator, there is no misconduct in the eyes of law.

Further, the learned counsel for the petitioner-workman submitted that the present case is a case of 'no evidence'. The statement of Shri Nirmal Singh *ipso facto* is not sufficient to prove the charges against the workman in absence of the passenger-witnesses and other witnesses and placed reliance on the judgement of the Apex Court in the case of ***Sher Bahadur v. Union of India and Ors., AIR 2002 SC 3030.***

On the other hand, the learned counsel appearing on behalf of the respondent-management, i.e., Delhi Transport Corporation, has pointed out that the management examined Sh. Nirmal Singh as MW-1, as the author of the complaint, consequently, there is no perversity or illegality in the impugned Award dated 28.04.2003.

5. Misconduct as per the *Oxford English Dictionary, Vol 1, 6th Edition*, is improper or wrong behaviour. However, in legal parlance, it implies failure to act honestly and reasonably either according to ordinary and natural standard, or a conduct in violation of a definite rule of action.

It otherwise means failure to do what is required of a person to be done

even though the person has not acted wilfully or maliciously against the institution/management to which he belongs.

6. In the instant case, the incident took place on 12.04.1984 in Bus No. DL- P-1064 which was intercepted at Ambala Cantt. at 08:15 hours, by Shri Nirmal Singh and Shri Harbhajan Singh, TIs, i.e., the checking officials of the respondent-management, and six passengers alighting from the bus were found without tickets who had already paid fair @ Rs. 5.70 each to the petitioner-workman and the petitioner-workman failed to issue tickets to them and similarly, two more passengers had also paid fare @ Rs. 16.90 each but they were also not issued tickets by the petitioner-workman.

7. The plea taken by the petitioner-workman, i.e., first enquiry proceedings initiated against the petitioner-workman resulted in exoneration of the petitioner-workman by the enquiry officer's report dated 03.01.1986 and the *de-novo* enquiry was conducted without issuing the notice and the same is bad in law, is not helpful to the petitioner-workman as the first enquiry report dated 03.01.1986 was set-aside by G.M. (S) vide order dated 12.02.1987 who directed a fresh enquiry. The petitioner-workman after receiving the notice participated in the enquiry proceedings before Shri Mohd. Yusuf, i.e., enquiry officer, who found the petitioner-workman to be guilty of charge and the Depot Manager of Okhla Depot – I passed the order of removal dated 19.06.1987. Therefore,

the plea taken by the petitioner-workman that the disciplinary authority and the enquiry officer are the same person is factually incorrect.

8. It is open to the Labour Court to assess the domestic enquiry and reach to a different conclusion in the event of the enquiry being vitiated or the same being found perverse. It is then open to the Industrial Adjudicator to give the management an opportunity to lead evidence in order to prove the charges/misconduct before the Industrial Adjudicator. The reliance is placed on the judgment rendered by this Court in the case of *D.T.C vs. Sukhbir Singh and Ors.*, 2015 LLR 741.

9. The contention raised by the learned counsel for the petitioner-workman that the present case is a case of 'no evidence' does not seem to be correct. The petitioner-workman has not disputed the fact that he was on duty on 12.04.1984 in Bus No. DL-P-1064, at 08:15 hrs at Ambala Cantt. It is not the case of the petitioner-workman that the checking officials namely Shri Nirmal Singh and Shri Harbhajan Singh, TIs, did not board the aforesaid bus and they were not checking the passengers, rather, the plea taken by the petitioner-workman before the Industrial Adjudicator is that while the petitioner-workman was issuing the tickets, the checking staff boarded the bus and snatched from his hand the hand-blocks of tickets as well as the way bill and gave unpunched tickets to the passengers. The checking officials gave him a challan at Pipli Bus Stand after stopping over there. The statement recorded before the Industrial

Adjudicator is of complainant-eyewitness, i.e., Shri Nirmal Singh, TI, who himself is a material witness to the incident and he is not the enquiry officer in the instant case nor is his statement is based on superficial documentary or hearsay evidence which is not connected to the incident. Therefore, the statement of Shri Nirmal Singh, TI being a witness to the incident is a direct material evidence of the incident qua against the workman in the instant case. Reliance is placed on the judgment rendered by the Hon'ble Supreme Court of India in the case titled as ***Sher Bahadur vs. Union of India and Ors., AIR 2002 SC 3030.***

10. The plea taken by the petitioner-workman before the Industrial Adjudicator that unpunched tickets were snatched from the petitioner-workman and issued to the passengers is contrary to the record in existence of unpunched tickets i.e., Ex. MW-1/3 to Ex. MW-1/10 on record. Therefore, such plea of the petitioner is hit by the principle of *res ipsa loquitur*.

11. Moreover, this Court while exercising its power of judicial review shall not ordinarily interfere with the finding of the Industrial Adjudicator unless such finding is found to be erroneous or perverse. Reliance is placed on judgment rendered by this Court in the case of ***Indira Gandhi National Open University vs. Union of India and Ors., [W.P.(C) 901, 902, 903, 904, 905, 912, 916, 917, 919, 921, 922, 923 and 991/2014, decided on 05.08.2015]***

12. In the instant case, the respondent examined Shri Nirmal Singh, TI before the Industrial Adjudicator, who is a witness to the incident of misconduct and the author of the complaint and who proved the material records of the incident on the record. The statement of Shri Nirmal Singh against the petitioner-workman and other material records available on record were to be rebutted by the petitioner-workman before the Industrial Adjudicator but nothing on merit in favour of the workman has emerged in the finding of the Industrial Adjudicator in the impugned Award dated 28.04.2003 to show that the said Award is erroneous or perverse. Reliance is placed on the judgment rendered by the Apex Court in the case of *State of Haryana and Anr. vs. Rattan Singh, AIR 1977 SC 1512.*

As discussed above, this Court finds no merit in the present Writ Petition and the same is hereby dismissed. No order as to costs.

I.S.MEHTA, J

SEPTEMBER 23, 2015

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