

\$~7

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

Decided on : 30.07.2015

+ LPA 157/2013

DELHI TRANSPORT CORPORATION

..... Appellant

Through: Mrs. Avnish Ahlawat, Advocate
alongwith Mr.Nitesh Kumar Singh,
Advocate.

versus

DHOJ PAL

..... Respondent

Through: Mr. G.S. Charye, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The present appeal is filed against the judgment and order of the Ld. Single Judge dated 22.01.2013 dismissing W.P.(C) No. 21176/2005. The petition had questioned an order dated 22.12.2004 and award dated 02.02.2005 of the Industrial Tribunal.

2. The brief facts are that the respondent/workman was employed as a Conductor on 15.11.1979. While on duty, the bus in which she was functioning was checked on 01.06.1985 after which allegations were levelled that she had collected the excess fare from the passenger i.e. Rs.2.20/-and issued him a ticket of Rs. 2/- which was valid from Ashram to Faridabad. On the basis of these

allegations, the respondent was dismissed. This led to demand for his reinstatement. Since, an industrial dispute was pending in the establishment, permission was sought under Section 33(2) (c) of Industrial Disputes Act which was refused by the impugned award. The award was questioned before the Ld. Single Judge who after considering the conspectus of circumstances and especially the evidence led before the Enquiry Officer and the Labour Court was of the opinion that there was no infirmity in that order and accordingly dismissed the petition.

3. We have heard the learned counsel for the parties and also considered the grounds urged. Ld. Single Judge noticed the facts in the following terms.

“5. The facts giving rise to the filing the present petition are that the Respondent was engaged by the Petitioner as a conductor on 15th November, 1979. On 1st June, 1985 on checking it was found that the Respondent had collected Rs.2.20 from the passenger and issued him a ticket of Rs.2 which was valid from Ashram to Faridabad through he had boarded the bus from Lajpat Nagar. A charge sheet was issued to him and since his explanation was not found satisfactory an inquiry was conducted. Pursuant to the report of the inquiry officer the Disciplinary Authority removed the Respondent from service from 30th September, 1991. He was simultaneously sent one month wages by money order and an application under Section 33 (2) (b) of the ID Act was filed for grant of approval before the learned Trial Court. On 19th April, 2001 the Industrial Tribunal granted approval for the termination of the Respondent and thereafter the Respondent raised an industrial dispute on which the following terms of reference were sent for adjudication:

“Whether the punishment imposed upon Sh. Dhoj Pal S/o Tota Ram by the management vide its order dated 30.09.91 is illegal and unjustified and if so, to what relief along with consequential benefits in terms of existing law/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?”

6. xxx xxx xxx

7. xxx xxx xxx

8. *In the present case even as per the version of the checking inspector only allegation against the Respondent is that he gave one passenger ticket from Ashram through he boarded from Lajpat Nagar. In the cross-examination this witness has stated that there were 57 passengers in the bus and except one passenger all other were having proper tickets. Further the said passenger also had the ticket. It is not stated that due to the ticket being given from Ashram instead of Lajpat Nagar less money was charged. Further the checking inspector admits that he did not count the cash with the Respondent as he was in a hurry. It is further stated that the Respondent admitted his guilt in the challan. The acceptance of guilt by the Respondent is under protest. Thus, the present is clearly a case of no evidence and the learned Trial Court committed no error in coming to the conclusion that the finding of the enquiry officer was perverse. Hence the same could not have been treated as a fair admission and the finding is thus perverse. I find no illegality much less any infirmity in the impugned order dated 22nd December, 2004. As regard the non grant of permission to the Petitioner for adducing additional evidence, it may be noted that the Petitioner neither raised this plea in the written statement nor made an application subsequently. Thus having not sought the liberty to lead additional evidence, the learned Trial Court was not required to grant permission to the Petitioner to lead evidence."*

4. The facts itself disclosed that there was no evidence – much less clear evidence, pointing to the petitioner's culpability. The witness i.e. the checking Inspector stated that except one passenger all were having proper tickets and that he was not able to say that the ticket was given from Ashram instead of Lajpat Nagar or that there was less cash.

5. In these circumstances, we are of the opinion that there was no infirmity of the approach or order of the Ld. Single Judge.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

V.K. SHALI
(JUDGE)

JULY 30, 2015
sapna

