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

+ **Date of Decision: 09.07.2015**

% **RSA NO. 98 OF 2011**

DTC & ANR. Appellants

Through: Mr. Sarfaraz Khan, Advocate

versus

SURAJ MAL Respondent

Through: Mr. D.L.Sahni, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This second appeal has been preferred under Section 100 CPC to assail the judgment dated 05.02.2011 passed by Shri Vimal Kumar Yadav, Additional District Judge – II (North), Delhi, in R.C.A. No. 13/2010 titled, ‘DTC and another Vs. Sh. Suraj Mal’. By the impugned judgment, the first appeal preferred by the appellant-DTC, who was the defendant in the suit preferred by the respondent, was dismissed.

2. The respondent was appointed as a conductor with effect from 01.04.1979 and was confirmed in the year 1979 itself. He was placed under suspension by the appellant-employer on 04.01.2001 while he was posted at Hari Nagar Depot. He was issued a charge-sheet dated 12.01.2001 by the

appellant through the Depot Manager (impleaded as defendant No.2). The substance of the allegation was that on 23.12.2000, while the respondent/plaintiff was on duty on Bus No. 6447 running on route No. 8, at 7.50 p.m. the checking staff checked the bus at Sirhol Border. Two passengers were found without ticket. On being questioned, the said passengers stated that they had paid a sum of Rs. 20/- to the plaintiff at Dhaulakuan itself, but he did not issue tickets by accepting less fare than standard. On this, checking staff took unpunched tickets bearing Nos. 52252 and 52253, along with a tax of Rs. 4/- vide ticket bearing No. 54854 and 54855, along with a tax of Rs. 4/- and ticket bearing Nos. 80026 and 80027 along with a tax of Rs. 3/-. The plaintiff was charged of violation of Section 19(b), (h), (m) of rules & regulations of DTC which are applicable to DTC employees.

3. The plaintiff denied the charge-sheet vide his reply dated 15.01.2001. Since the same was not found satisfactory, a departmental inquiry was conducted. The inquiry officer gave his report dated 24.09.2001 proposing penalty to be imposed on the plaintiff as stoppage of one increment with cumulative effect. The plaintiff replied to the said memo vide his letter dated 28.05.2001, which was rejected, and the said punishment was imposed on him vide order dated 07.06.2001.

4. The first appeal preferred to the Regional Manager was also rejected. He also approached the Grievance Cell, DTC on 18.09.2001, which too was rejected. He then preferred an appeal before the CMD vide representation dated 13.12.2001. The same was partially accepted, to the extent that the punishment was reduced to stoppage of one increment without cumulative

effect. In the meantime, the suspension of the plaintiff was revoked on 15.01.2001. The plaintiff then filed the civil suit in question, to assail the disciplinary action taken against him. The inquiry was challenged by the plaintiff primarily on the grounds: (i) the passengers who had claimed that they had not been issued tickets despite their paying Rs. 20/- to the plaintiff, had not been summoned by the inquiry officer for the reason that the addresses given were incomplete. The plaintiff claimed that the whole case of the department was based upon the testimonies of these passengers and by not calling the witnesses, the case was substantially defeated; (ii) no presenting officer was appointed and there was no presenting officer in the inquiry; (iii) the inquiry officer cross-examined the charged officer i.e. the plaintiff. Thus, the inquiry officer acted as the Judge and as the prosecutor; (iv) the list of witnesses or list of documents was not supplied to the plaintiff during the inquiry and the inquiry report was not supplied to the plaintiff; (v) the cash with the plaintiff had not been checked and, thus, it was possible that the two passengers had falsely claimed to have made payment of Rs. 20/- to the plaintiff, in order to save themselves from the punishment of ticketless travel. The plaintiff sought a declaration that the order of suspension dated 04.01.2001; the charge-sheet dated 15.01.2001, and; the punishment imposed vide order dated 13.02.2002 by the appellant authority, are null and void, and illegal.

5. The appellant-defendant filed his written statement denying the claim of the plaintiff.

6. The Trial Court decreed the suit. The reasoning adopted by the trial court in the judgment is as follows:

“11. The appraisal of the evidence led by the parties and the admissions of the defendants’ witnesses including the evidence of the enquiry officer unerringly pinpoint to the fact that there is gross violation of the principles of natural justice. No passengers upon whom the complete case was based were examined and that goes to the root of the whole enquiry and even the cash which was said to be exceeding was not counted. The enquiry officer himself became the presenting officer by asking questions and the admission of the said defendant’s witness that no presenting officer was appointed during the enquiry coupled with the fact that no list of witnesses or documents were supplied to the delinquent officer/plaintiff clearly shows that enquiry was not conducted fairly and is in gross violation of the principles of natural justice. The said report of the enquiry officer is therefore vitiated and arbitrary and any subsequent order and the punishment is therefore also illegal and is declared null & void. The issue is decided in favour of the plaintiff and against the defendants.”

7. The first appeal preferred by the appellant met the same fate. The submission of learned counsel for the appellant is that it was not the obligation of the appellant-DTC to summon the passengers as their witnesses. He submits that the respondent-plaintiff did not cross-examine the first prosecution witnesses i.e. Shri Tek Chand and the second witness was cross-examined only on limited aspect, namely, who has written the statements of the passengers; in whose hand, they were written and a suggestion was given that the checking staff had detached ticket from the hand block of the plaintiff.

8. It is submitted that the Supreme Court in the case of ***State of Haryana Vs. Rattan Singh*** 1977 (2) SCC 49 has held that the passengers are not required to be chased and brought before the domestic tribunal. Learned counsel submits that this decision has been followed by this Court in several

decisions including in *Dayal Singh Vs. DTC* 2013(7) SLR 4 (Delhi). Learned counsel further submits that merely by asking some questions to the delinquent, the inquiry officer does not become the presenting officer, and the proceedings are not vitiated on that occasion. In this regard, reference is made to *Mahavir Singh Vs. Delhi Transport Corporation* (2007) 139 DLT 569, wherein this Court has held that there is no rule that an enquiry cannot proceed without a presenting officer. It was held that witnesses can depose before the inquiry officer of his own, without the help of presenting officer and it does not tantamount to violation of principles of natural justice, if no presenting officer is appointed, or if he is not present.

9. Learned counsel for the respondent has supported the judgment of the courts below. He submits that without checking the cash available with the conductor at the time of the raid, it could not be concluded that the respondent-plaintiff had collected the fare-either fully or reduced, from the passengers and allowed them to travel without a ticket. He submits that the mere statement of the passengers that they had made payment of Rs. 20/- to the plaintiff-conductor, and that he had not been issued tickets could not be accepted as the gospel truth, as they were likely to tell a lie to save their own skin. Learned counsel submits that in these circumstances, it was essential to produce the said passengers as department's witnesses.

10. Having heard learned counsels and perused the impugned judgment as well as the judgment of the trial court, in my view, there is no merit in this appeal and the trial court, as well as the first appellate court, have rightly held in favour of the respondent-plaintiff, and quashed the inquiry.

11. Even if the other submission of learned counsel for the appellant – with regard to the enquiry not being vitiated because the enquiry officer questioned the appellant, were to be accepted, (and I am inclined to accept the same because the enquiry officer only conducts the enquiry, and unless he is also the disciplinary authority, the fact that he questions the delinquent does not vitiate the enquiry), there is no answer to the respondents plea that the cash in hand of the respondent was not counted, and only upon it being counted it could have been reasonably be inferred that the respondent had indeed collected the fare from the two passengers of Rs.20, and allowed them to travel without tickets.

12. In this case, though the respondent-plaintiff was charged with having collected the discounted fare without issuance of the tickets to the two passengers in question, the cash of the plaintiff was not checked at the spot. Without checking the same, it could not have been concluded whether he had accepted any money from the two passengers in question. The mere statements of the two passengers could not have been accepted as the gospel truth. The possibility of those two passengers stating falsely that they had made payment of the fare to the plaintiff, only to save their own skin cannot be ruled out. This aspect is to be viewed in the light of the fact that the address given by them, admittedly was found to be incorrect. In these circumstances, the decision in *Rattan Singh* (supra) cannot be pressed into service by the appellant. It has also come in the cross-examination of DW2, A.K.Srivastava, Sr. Manager (Personnel), DTC, that the plaintiff was not provided with the list of witnesses or documents before initiation of inquiry.

13. For all the aforesaid reasons, the question of law framed on 23.07.2012 is answered in the affirmative. It is held that the courts below have correctly found that the inquiry had not been conducted fairly, and was in violation of the principles of natural justice. The appeal, accordingly, stands dismissed leaving the parties to bear their own costs.

VIPIN SANGHI, J

JULY 09, 2015

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