

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

Judgment Reserved on: September 21, 2015

% *Judgment Delivered on: October 05, 2015*

+ **LPA 739/2008**

GIAN CHAND

..... Appellant

Represented by: Mr.G.S.Charya, Adv.

versus

DTC

..... Respondent

Represented by: Mr.Sarfaraz Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Gian Chand was issued a charge-sheet on the following allegations:

“That on 23.1.92 while you were performing your duty with bus No.9115 on route Sahibabad – Delhi, at about 1.35 hours your bus was checked by the checking officials at Nand Nagri Depot and found that a group of 11 passengers were travelling without tickets who boarded the bus from Rajinder Nagar (Sahibabad) to Delhi from whom you had already collected the fare of ₹38.50 and did not issue any ticket to them. You admitted your fault and surrendered 11 un-punched tickets bearing Nos. 000-89379 to 89389. Your cash was also checked and found ₹15.25 in short after deducting the amount for ₹38.50 of above unpunched tickets. This shows your dishonesty in dealing with the business of the Corporation.”

Your above action tantamount to misconduct within the meaning of para 19(b)(h)&(m) of the standing orders governing the conductor of the DTC employees.”

2. Pursuant to the disciplinary enquiry conducted the disciplinary

authority awarded the punishment of removal. Since earlier litigation was pending between the DTC and its workman an approval petition was filed before the Industrial Tribunal which vide its award dated April 16, 2001 in O.P.No.203/92 granted approval under Section 33(2)(b) of the Industrial Disputes Act (in short the ID Act) for removal of Gian Chand from service. Gian Chand raised an industrial dispute on which a reference was made on the following terms:

“Whether removal of Shri Gian Chand from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The Labour Court settled two issues for determination:

“1. Whether the enquiry got conducted by the management against the workman was proper and valid?”

2. To what relief, if any, is the workman entitled from the management in terms of reference?”

4. The first issue whether the enquiry was properly and validly conducted was decided against DTC vide the order dated November 08, 2004. The second issue was also decided against the Management in view of the decision of the Supreme Court in Karnataka State Road Transport Corporation Vs. Lakshmiddevamma & Anr. (2001) 5 SCC 433 as the Management in their written statement had sought no opportunity to lead the evidence.

5. Challenging the order dated November 08, 2004 and the award dated July 04, 2005 DTC preferred a writ petition being W.P.(C) No.1265/2006 wherein the learned Single Judge vide the impugned judgment dated September 03, 2008 set aside the order of the learned Labour Court dated

November 08, 2004 holding the enquiry to be validly conducted and the finding of the Labour Court dated November 08, 2004 being perverse. Thus the order of the disciplinary authority directing removal of Gian Chand was upheld.

6. On the validity of the enquiry vide the order dated November 08, 2004 the learned Labour Court held as under:

“4. I have considered respective submissions of both the Ld.A.Rs. for the parties and perused the material on record. The enquiry proceedings are admitted by the workman as well during his cross-examination. According to Ex.WW-1/M-3, workman was granted opportunity to cross-examine of the witnesses of the management appeared during the enquiry proceedings and also Enquiry Officer granted opportunity to produce witnesses on behalf of the workman. The witnesses were cross-examined by the workman and also examined the witnesses, therefore, on this aspect, I do not find any illegality in the proceedings. Now, coming to the contentions regarding non-supply of document and list of witnesses. But there is no application moved by the workman during the enquiry proceedings regarding any prejudice or infraction of his legal rights, therefore, on this aspect, I do not find any illegality.

5. Now, coming to the contentions regarding perverse findings. In the charge sheet management alleged three articles of charges. Firstly, the workman did not issue tickets to group of 11 passengers after receiving money. Secondly, non-issuing of tickets to the passengers from starting point of the bus and third, there was less cash with the conductor. In this regard the material evidence is of one Shri Guru Dutt S/o Shri Tara Dutt which is the basis of charge sheet. In his statement, on the spot as per Ex.WW-1/M-1 on the back side of it, he had stated that they boarded in group of 11 passengers in the bus from Rajinder Nagar, Sahibabad and paid ₹35.50, to the conductor but due to rush tickets were not issued and process of issuing of tickets checking staff was boarded in the bus. The management witness Ram Chander Dahiya first, when

appeared in enquiry he reiterated these facts. He admitted that the passenger voluntarily given their statement. The other witness Balbir Singh also deposed these facts. The workman in the enquiry stated in his defence the passenger may be called and also appeared as witness. In my considered, in these circumstances, the enquiry officer is of opinion regarding proving the charges is based irrelevant consideration. The foundation of the charge-sheet or statement of the Guru Dutt passenger who, nowhere, stated that conductor voluntarily received money and did not issue tickets. The story of the workman is believable and he was issuing the tickets to group of passengers and not sitting idle, therefore, in these circumstances, the findings of the enquiry officer of the enquiry is perverse and based on irrelevant material and considerations. Hence on this aspect the enquiry is against the principles of natural justice.

6. On the basis of above observations and discussions, the enquiry issues is decided against the management and in favour of the workman."

7. The learned Single Judge vide the impugned judgment held the finding of the Labour Court to be perverse for the reason the Labour Court did not consider the evidence adduced by the management before the enquiry officer. It was held that on appraisal of the evidence of Ram Chander Dahiya, T.I. and Balbir Singh A.T.I. produced by the management before the enquiry officer, the charge against Gian Chand was adequately proved. The learned Single Judge also noted the fact that Gian Chand admitted his guilt in writing before the checking staff which bears his signature. The learned Single Judge thus held that once Gian Chand admitted his guilt no further proof was required. The testimony of the defence witness Rattan Lal was held to be of no avail to Gian Chand as the said witness had made statement in regard to non-issuing of tickets to 5/6

passengers including himself whereas Gian Chand in his statement stated that the tickets were not issued to two groups of passengers; one comprising of 11 passengers and other comprising of 5-6 passengers. The learned Single Judge also noted that the question of perversity was also examined by the Industrial Tribunal in its order dated October 16, 2001 granting approval under Section 33(2)(b) ID Act which had not been considered by the learned Labour Court. Referring to the statement of passenger Guru Dutt learned Single Judge observed that Guru Dutt had stated that Gian Chand had received the money voluntarily and had not issued the ticket; it was held that the question of voluntariness in receiving the money was out of context and it was the duty of the conductor to take the fare and issue the ticket.

8. It is well settled that a Writ Court will not re-appreciate the evidence however if the findings of the Labour Court are based on no evidence or ignores material evidence the Writ Court is bound to look into the same. Indubitably the learned Labour Court has not considered the statement of Gian Chand recorded on the same date at the time of the incident. At the same time the learned Single Judge misread the statement of Guru Dutt, the passenger whose statement was recorded on the back side of the challan and ignored the evidence of Rattan Lal the defence witness. Further before the enquiry officer DTC examined Ram Chander Dahiya, Balbir Singh and Samunder Singh whereas Gian Chand examined himself and a passenger Rattan Lal.

9. Ram Chander Dahiya, T.I. in his statement made before the enquiry officer stated as under:

“Statement of Shri Ram Chander Dahiya, T.I.

On 23.1.92, I along with my associates stopped the Bus

No.9915 for checking at Nand Nagari Depot, which was going to Delhi from Sahibabad. During the checking, I found that a group of 11 passengers, consisting three men and eight ladies, was travelling without ticket. On seeing us, the conductor tried to issue the tickets but on our stopping him to do so, he stopped. On enquiry, the passengers without ticket told that they boarded the Bus from Rajender Nagar, Sahibabad to Delhi and they paid the fare of ₹38.50 there on the demand of the conductor but no ticket in lieu of that was issued to them. 11 unpunched tickets from Sahibabad to Delhi were demanded from the conductor, which he gave. Statement of the passengers were taken at the backside of the Challan and the conductor appended his signatures thereon admitting the same as correct. The conductor himself admitted his mistake in writing on a separate sheet as the Bus started from Sahibabad Rajender Nagar and the passengers also boarded the Bus from there. It clearly reveals that the conductor did not issue the tickets to the passengers, who boarded the Bus from the departure point and the conductor had issued the tickets to the passengers, who boarded from the stands of the cities in between but he did not issue the tickets to these 11 passengers despite the fact of receiving fare from them. It clearly reveals that the intention of the conductor was not honest and he had not issued the tickets to the said passengers. On reaching at the Bus stand, the cash of the conductor was checked in the empty Bus, which was found short by ₹15.25 after taking the unpunched tickets of ₹38.50. Thus, the cash of the conductor also proves that he had received the fare from the passengers and had not issued the tickets. Complete details may kindly be seen from the report. Conductor has been challaned. I have nothing else to state.”

10. In cross-examination Gian Chand asked Ram Chander Dahiya whether there was crowd or not in the bus which he boarded on which Ram Chander Dahiya replied that the vehicle was under-loaded. Thus even as per the statement of Ram Chander Dahiya it is evident that there were a large

number of passengers in the bus thought it could not be termed as a over-loaded bus. Gian Chand asked a specific question from Ram Chander Dahiya as to on which side the passengers without tickets were sitting, which answer he ducked and said they were sitting on the seats in vehicle. The defence of Gian Chand was that since the vehicle was over-loaded he had started giving the tickets from the front and was in the process of issuing the tickets when the raiding team checked the bus.

11. The fact that there was crowd in the bus is also fortified by the statement of Guru Dutt the passenger which was recorded on the spot on which reliance was placed to prove the charge against Gian Chand. Since statement of Guru Dutt was recorded on the spot instantly, the question of manoeuvring does not arise. Guru Dutt in his statement so recorded stated:

“Today on 23rd January 1992 we eleven passengers boarded bus No. 9915 from Rajinder Nagar Sahibabad. We gave ₹35.50 paise to the conductor who was giving us tickets, due to lot of crowd in the meantime A.T.I. Saheb came into the vehicle. While he was giving tickets to the passengers and was about to give ticket to him the tickets were taken by the checking staff who issued the ticket to us.”

12. Further the learned Single Judge erroneously rejected the evidence of defence witness Rattan Lal on the ground that issue was not with regard to the batch of 5/6 passengers failing to note that the same was relevant to show that there were a large number of passengers in the bus. Statement of Rattal Lal assumes importance in view of the fact that even this witness stated that they had boarded from Rajinder Nagar around 10.25 AM when the bus started the conductor started issuing the ticket from the front side when the checking staff boarded the bus and the checking staff snatched the

tickets from the hand of the conductor, he gave ₹3.50 paise but was given ticket only of ₹2.50 paise and it was stated by the checking staff that they were giving benefit to him.

13. Gian Chand in his statement which was heavily relied upon by the learned Single Judge, stated that on January 23, 1992 he was on duty in bus No.9115 on Sahibabad-Delhi route and when at 10.15 they started the bus 11 passengers boarded whom he did not give the ticket knowingly and that was his fault. This statement of Gian Chand has to be read along with the other evidence which would show that from 10.15 when the bus started and to 10.25 when the checking staff entered into there were at least 16-17 passengers and the conductor was in the process of issuing tickets from the front.

14. It is well-settled that evidence has to be appreciated holistically and not piecemeal as done by the learned Labour Court and by the learned Single Judge as well. Though the learned Labour Court noted the statement of Guru Dutt, it forgot to take note of the statement of Gian Chand, whereas learned Single Judge did not appreciate the statement of Gian Chand in the proper perspective and also ignored the statements of Guru Dutt and the defence witness Rattan Lal. Considering the evidence on record before the enquiry officer it cannot be held that in the circumstances of the case the charge of mis-conduct as noted above was proved against Gian Chand.

15. Consequently, the finding of the learned Single Judge that from the facts proved in the enquiry the charge stands proved against Gian Chand is set aside. The learned Single Judge decided the writ petition only by setting aside the order dated November 08, 2004. However we note that after holding the enquiry to be vitiated since no opportunity to lead evidence was

sought by the management before the Labour Court, the award was passed against the management in terms of the decision in Karnataka State Road Transport Corporation (supra). We find no infirmity even in the award dated July 04, 2005.

16. The appeal is accordingly allowed. The punishment of dismissal from service of Gian Chand is set aside. Gian Chand would be entitled to all consequential benefits.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 05, 2015
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