

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

% *Judgment Reserved on : January 06, 2016*
Judgment Delivered on : January 14, 2016

+ **LPA 117/2015**

DELHI TRANSPORT CORPORATION Appellant
Represented by: Ms.Avnish Ahlawat, Advocate with
Ms.Latika Chaudhary, Advocate

versus

OM KANWAR Respondent
Represented by: Mr.R.R.Ahlawat, Advocate

LPA 118/2015

DELHI TRANSPORT CORPORATION Appellant
Represented by: Ms.Avnish Ahlawat, Advocate with
Ms.Latika Chaudhary, Advocate

versus

OM KANWAR Respondent
Represented by: Mr.R.R.Ahlawat, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA
PRADEEP NANDRAJOG, J.

1. It was the sixth day of January, 1993. Bus No.990 belonging to the Delhi Transport Corporation was plying on the route : Chandigarh – Delhi.

Om Kanwar, the respondent in the two captioned appeals, was the conductor. The bus was intercepted by a checking squad of DTC at the Karnal Bye-Pass. The squad claimed that five passengers were caught while de-boarding at the Karnal Bye-Pass and failed to produce tickets; and claimed that each told having paid ₹12/- to Om Kanwar for travelling from Shahbad with the destination being Karnal. Their statements were recorded. In spite of being directed to hand over the complaint book, Om Kanwar refused to do so. A report was prepared.

2. Om Kanwar was served with a charge-sheet on January 18, 1993 containing the memorandum of the charge listing the gravamen as per para 1 above. Om Kanwar denied the charge and this necessitated the appointment of an Inquiry Officer. Serving Om Kanwar with the notice of conducting the inquiry and completing the preliminaries such as insuring that Om Kanwar had received the charge memorandum, the relied upon documents and the list of witnesses through whom the charge was intended to be proved, the Inquiry Office commenced recording the statements of the witnesses of the Delhi Transport Corporation. The Record of the Inquiry shows that Sh.Nathu Ram, Ticket Inspector and Jagdish Chandra, Assistant Ticket Inspector were examined as the witnesses on March 26, 1993. Before examining the witnesses, obtaining Om Kanwar's signatures, the Inquiry Officer recorded that there was no need for any presenting officer to represent DTC and Om Kanwar did not desire to be defended by any friend of the charged officer. Nathu Ram and Jagdish Chandra deposed in harmony as per the charge and stated that they had intercepted five passengers who de-boarded the bus of which Om Kanwar was the conductor and none produced a ticket and claimed having paid the fare of ₹12/- each to

Om Kanwar to travel from Shahbad to Karnal and that Om Kanwar did not issue any ticket to them. The two further proved that in spite of being called upon to produce the complaint book Om Kanwar did not do so. They proved the statements of the passenger, the report prepared by them at the spot and other documents. The Inquiry Officer asked some questions from the two witnesses seeking clarifications. Given an opportunity to cross-examine the two witnesses, Om Kanwar refused to do so. His signatures were obtained at the bottom of the deposition of the two witnesses. Recording that the evidence of the management was closed, the Inquiry Officer recorded that Om Kanwar desires to examine witnesses, being the five passengers who were allegedly intercepted by the checking squad. The Inquiry Officer recorded that the witnesses may be produced on May 11, 1993.

3. Om Kanwar examined one Paphu Ram S/o Netra Ram on May 11, 1993 who deposed that on the day in question they de-boarded a bus belonging to Haryana Roadways and were accosted by a checking squad of DTC which required them to produce the ticket issued by the conductor of the DTC bus but since they had not travelled by any DTC bus, telling so to the checking squad, they did not produce any ticket.

4. The Inquiry Officer submitted a report holding that the charge was proved resulting in the Disciplinary Authority imposing the penalty of removal from service upon Om Kanwar. Application was filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval to the order imposed by the Disciplinary Authority resulting in ID No.219/1994 being registered.

5. On November 20, 1994 the Presiding Officer of the Industrial

Tribunal framed the issue : Whether DTC had held a valid inquiry against Om Kanwar complying with principles of natural justice. The learned Industrial Tribunal thereafter directed DTC to lead evidence and since none was led, vide order dated September 18, 1996 dismissed the application filed by DTC under Section 33(2)(b) of the ID Act, 1947 against which W.P.(C) No.6093/1999 filed by DTC was allowed on December 05, 2007 directing the Industrial Tribunal to decide the application afresh on merits.

6. In the meanwhile Om Kanwar raised an industrial dispute concerning he being removed from service. The appropriate Government made a reference to the Labour Court whether the removal was legal and justified resulting in ID No.53/97 being registered. The learned Presiding Officer of the Labour Court returned a verdict on September 24, 2004 holding that in view of the order passed by the learned Industrial Tribunal on September 18, 1996, the reference had to be decided in favour of the workman. Removal from service was held to be illegal and Om Kanwar was directed to be reinstated. Said order was set aside by this Court on February 27, 2008 when W.P.(C) No.19533/2005 filed by DTC was allowed. The learned Single Judge held that since the order dated September 18, 1996 passed by the Industrial Tribunal had been set aside by this Court on December 05, 2007, the basis for the order dated September 24, 2004 was no longer available. The matter was remanded to the learned Labour Court for decision afresh on merits.

7. At the remanded proceedings in ID No.219/1994 i.e. the application filed by DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947, the Inquiry proceedings were proved as Ex.AW-1/8 and considering the same vide order dated August 12, 2008 the learned Presiding Officer of the

Industrial Tribunal held as under:-

“3. Ex.AW-1/8 which is the inquiry proceedings conducted by the Inquiry Officer Mr.Sushil Jacob. Perusal of the proceedings dated 12.05.1993 reveals that on the said date on the request of the workman a passenger, namely, Paphu Ram S/o Naik Ram was called by the Inquiry Officer to make a statement. After recording his examination in chief, the Inquiry Officer himself cross examined that witness. The said witness was not cross examined by the representative of the management nor an opportunity was given to the workman to cross examine him after he had been cross examined by the Inquiry Officer. On that very day, the workman was also cross examined by the Inquiry Officer himself. He was not cross examined by the representative of the management. Perusal of the inquiry proceedings further reveals that no representative of the management was present before the Inquiry Officer on any of the dates of the inquiry. The proceedings further reveal that the Inquiry Officer Mr.Sushil Jacob acted as Prosecutor for the management. He also acted as representative of the management when he cross examined the workman during the proceedings conducted on 12.05.1993. He also did not afford an opportunity to the workman to cross examine the passenger Paphu Ram after he had himself cross examined that witness on behalf of the management. Thereby the workman was deprived of an opportunity to cross examine a material witness and a serious prejudice has been caused to the workman. In view of the fact that the Inquiry Officer Mr.Sushil Jacob acted as Prosecutor for the management during the inquiry proceedings, it amounts to violation of principles of natural justice by the Inquiry Officer himself. In other words, the Inquiry Officer did not follow the principles of natural justice nor he afforded reasonable and sufficient opportunity to the workman to defend himself and to prove the defence.”

8. From a perusal of the reasoning of the learned Industrial Tribunal it is apparent that the inquiry was held to be vitiated because : (i) Paphu Ram was called by the Inquiry Officer and after recording his examination-in-

chief the Inquiry Officer put questions to the witness who was not tendered for cross-examination by Om Kanwar; (ii) No representative of the management was present on any date of the inquiry and that the Inquiry Officer acted as the prosecutor; and (iii) He acted as the representative of the Management when he cross-examined the workman. Laying emphasis on the first violation i.e. Paphu Ram not being permitted to be examined by Om Kanwar, the learned Industrial Tribunal concluded the reasoning that the inquiry was vitiated. On the same day the Industrial Tribunal settled the issue : Whether the workman had committed the misconduct as per the charge-sheet dated January 18, 1993?

9. Before the Tribunal one Chander Prakash and Jagdish Chandra were examined as witnesses by DTC, the former proved the charge-sheet Ex.AW-1/6 and other documents concerning the inquiry held, the latter deposed as per the indictment. Jagdish Chandra, apart from deposing facts pertaining to what transpired on January 06, 1993 proved copy of the challan, way bill, report, unpunched tickets and statement of passengers as Ex.AW-1/1-5. Om Kanwar appeared as his own witness.

10. Vide award dated August 29, 2009, finding fault with the inquiry conducted, the learned Industrial Tribunal held as under:-

“12. I may point out at the outset that it is not a case where checking team is alleged to have entered the bus of charged conductor and found group of passengers sitting inside the bus without tickets. MW-3 in his testimony has stated that on 6.1.93 when the workman was on duty on DTC bus enroute Chandigarh Delhi he and Nathu Ram ATI were on checking duty on Karnal Bye Pass and checked bus of the workman at 0955 hours and found that he did not issue tickets to group of five passengers who had boarded the bus at Shahbad for Karal and had paid ₹60 to him as fare. He has not stated in his

affidavit that checking team had entered the bus and passengers were found sitting inside the bus.

13. In his cross examination, MW-3 has specifically stated that he had not seen any passengers getting down from the bus as they had already got down from the bus when they were checked. He has denied that passengers had told him that they got down from Haryana Roadways bus. It is, therefore, clear that MW-3 had not entered the bus but had checked the passengers when they had already got down from the bus and were on the road. MW-3 has not seen them getting down from the bus. It is important to note that Inquiry Officer Sh.S.K.Jacob was examined as AW-1 on the point of inquiry. During the course of inquiry, he had specifically admitted that passengers concerned were summoned during the course of inquiry and one of them Paphu Ram had accepted before him. He has even admitted that he had made a statement that it was a group of six passengers and not of five passengers and that they were travelling in roadways bus and had not stated about DTC bus. If it was so, then it is all the more important that during the course of inquiry, one out of the group of passengers allegedly travelling without ticket had not supported case of the Management.

14. I have perused statement of Paphu Ram S/o Sh.Net Ram, passenger of the bus who had given statement on 11.5.93. In his statement, he had stated that on the day of alleged incident he alongwith his colleagues had got down from the Haryana Roadways bus and that at that place 2 buses were standing. He had deposed that he along with his colleagues were coming from Nakhar. According to him, DTC staff was standing and they insisted that he along with his colleagues had got down from DTC bus and asked for tickets. He is stated to have told him that he along with his colleagues had got down from roadways bus, however, they obtained his thumb impression on a writing on some paper. He is stated to be illiterate and did not know as to what was written on that paper. Surprisingly this witness was cross examined by the Inquiry Officer himself

and he gave very pertinent answer to the question put to him. According to him they were six passengers out of them one was a woman and they were travelling in a white bus number of which he did not know because he is illiterate and that that was a roadways bus. He has explained that he put his thumb impression on the writing because STC staff had insisted that he along with his colleagues had got down from DTC bus and that they obtained his thumb impression forcibly. He has even explained that DTC and Roadways bus had come near simultaneously. Reasons given by Inquiry Officer to disbelieve this witness are that he did not produce tickets to the checking staff, therefore, they had got down from DTC bus and were travelling without tickets.

15. If he did not produce ticket, it is no evidence that he was travelling in DTC Bus. Secondly, if he was not having ticket of roadways, it is possible that he was travelling ticketless on Roadways bus. The benefit of doubt should have gone to the workman. On the basis of evidence on record, there is nothing on the basis of which it can be said that a group of 5 passengers was found without tickets or they were travelling in the bus of the workman. It is not even the case of the Management that MW-3 had seen them sitting in the bus. Passengers had appeared during the course of inquiry and had stated that he and his colleagues had got down from Haryana Roadways bus. When MW-3 had not seen the passengers getting down from the bus, there is hardly any evidence on record that that group of passengers was travelling in DTC bus. It is not the case where passengers had not been examined. It is a case where alleged ticketless passenger had appeared during the course of inquiry. Therefore, it cannot be said that there is any evidence on record prima facie to support the conclusion that group of five passengers was travelling in the bus of workman or had got down from his bus.”

11. From the reasoning of the Industrial Tribunal it is apparent that the Tribunal held that Jagdish Chandra could not be believed because he

admittedly did not enter the bus of which Om Kanwar was the conductor of and that he had not seen the passengers de-boarding the bus. Notwithstanding Paphu Ram not being examined before the Industrial Tribunal, the Industrial Tribunal referred to the deposition of Paphu Ram during inquiry on May 11, 1993 and considering the same additionally held that it could not be said that the five passengers had de-boarded the DTC bus of which Om Kanwar was the conductor of.

12. The said award was challenged by DTC vide W.P.(C) No.759/2011 which has been dismissed by the learned Single Judge vide order dated December 01, 2014; impugned in LPA No.117/2015.

13. The industrial dispute raised by Om Kanwar terminated in the award dated April 13, 2010 giving somewhat same reasons as are to be found in the award dated August 29, 2009, which was challenged by DTC by way of W.P.(C) No.2578/2011, which has been dismissed by the learned Single Judge vide order December 01, 2014; challenged by DTC in LPA No.118/2015.

14. The main decision on which we have to focus is the decision dated December 01, 2014 in W.P.(C) No.759/2011 for the reason the learned Single Judge has discussed the issue concerning the evidence against Om Kanwar in said writ petition and on account of the writ petition being dismissed has disposed of W.P.(C) No.2578/2011 with the simple reasoning that because W.P.(C) No.759/2011 was dismissed, said writ petition had to be dismissed as a consequence thereof.

15. While dismissing W.P.(C) No.759/2011 the learned Single Judge has concurred with the reasoning of the Tribunal in the order dated August 12, 2008 wherein it was held that the inquiry was vitiated, which reasoning of

the Tribunal we have noted in paragraph 7 above and have succinctly culled out its three features in paragraph 8 above.

16. Before advertng to the facts of the case it would be appropriate to note the legal position in relation to the scope of adjudication of an application for approval under Section 33(2)(b) of the ID Act, 1947 which provides as under:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

17. In the decision reported as AIR 1959 SC 389 M/s.G.Mckenzie and Co. Ltd. Vs. Workmen & Ors. the Supreme Court laid down that Section 33 of the Industrial Disputes Act, 1947 does not confer any jurisdiction on the Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute; in deciding whether permission should or should not be granted the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen, the employer makes out a prima facie case. The nature and scope of proceedings under Section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. As the purpose of Section 33 of the Act is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under Section 33 would not operate as res-judicata and bar the raising of an industrial dispute.

18. Dealing with the scope of Section 33(2)(b) of the Industrial Disputes Act, 1947 the Supreme Court in the decision reported as AIR 1978 SC 1004 Lalla Ram Vs. Management of D.C.M. Chemical Works & Anr. held:

“12. The position that emerges from the above quoted

decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15], Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the

domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

19. It is trite law that strict rules of evidence are not applicable to the proceedings before the Industrial Tribunal/Labour Court and they are free to devise rules of procedure in accordance with principles of natural justice. Thus in an application under Section 33(2)(b) ID Act, it is not the requirement of law that the Tribunal will insist proof of the enquiry conducted in accordance with Indian Evidence Act by examining the Inquiry Officer and exhibiting the report. Suffice it is that the enquiry report and the proceedings conducted by the Inquiry Officer are produced before the Industrial Tribunal/Labour Court. The Constitution Bench in the decision reported as JT 2010 (5) 553 Union of India Vs. R. Gandhi, President, Madras Bar Association after noting the distinction between a Court and Tribunal, held that while Courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and Evidence Act requiring an elaborate procedure in decision making, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of Evidence Act.

20. It is trite that findings of fact returned by a Tribunal would not be interdicted by a Writ Court unless there is perversity or material evidence or circumstance is overlooked or irrelevant material or circumstance is relied upon by the Tribunal.

21. The order dated August 12, 2008 passed by the Tribunal, reasoning whereof has been concurred by the learned Single Judge overlooks the proceedings conducted by the Inquiry Officer on March 26, 1993, which show that before commencing recording statements of the witnesses of the management, under signatures of Om Kanwar, he recorded his consent for the inquiry to proceed without a Presenting Officer and Om Kanwar not wanting to be defended by a defence assistant. The Tribunal and the learned Single Judge have overlooked the fact that the Inquiry Officer did not act as the prosecutor but merely asked clarificatory questions from the witnesses. The perversity in the order dated August 12, 2008, which has permeated into the reasoning of the learned Single Judge, is to treat clarificatory questions put by the Inquiry Officer as akin to the Inquiry Officer acting as a prosecutor. We do not find any violation of the principles of natural justice in the conduct of the inquiry for the reason, before the Inquiry Officer commenced recording statement of the witnesses on March 26, 1993, Om Kanwar had received the charge memorandum, the documents which the management wanted to prove before the Inquiry Officer and the list of witnesses. On the date of the inquiry i.e. March 26, 1993 Om Kanwar consented for the inquiry to proceed without a Presenting Officer and he not wanting to be defended by a defence assistant. In his presence the Ticket Inspector and the Assistant Ticket Inspector i.e. Nathu Ram and Jagish Chandra were examined. He refused to cross-examine the witnesses. The

order dated August 12, 2008 has ignored the aforesaid aspects and has not even considered the order sheet concerning the proceedings held on March 26, 1993. The Tribunal as also the learned Single Judge have overlooked the fact that before the Inquiry Officer the statements of the five passengers recorded at the spot by Nathu Ram were proved. In the decision reported as (1977) 2 SCC 491 State of Haryana & Anr. Vs. Rattan Singh the Supreme Court held that such statements of passengers recorded by the Checking Squad were admissible evidence without summoning the passengers. The Tribunal overlooked that Paphu Ram was not the witness of the management but had been summoned by Om Kanwar and after he made the statement, in which he tried to save Om Kanwar, some clarificatory questions were put by the Inquiry Officer to the witness. The Inquiry Officer was not to give an opportunity to Om Kanwar to cross-examine the witness. If Om Kanwar wanted to re-examine his witness, he ought to have exercised said right. The learned Single Judge has erred in overlooking said features.

22. Since the order dated August 12, 2008 does not suffer from any infirmity, in view of the law noted hereinabove, DTC was entitled for approval to be granted to its application under Section 33(2)(b) of the ID Act, 1947, leaving it open to Om Kanwar to challenge his removal from service.

23. Since Om Kanwar raised an industrial dispute and the appropriate government made a reference to the Labour Court resulting in ID No.53/97 being registered and for the reason in the proceedings under Section 33(2)(b) of the Industrial Disputes Act, 1947, albeit contrary to law, evidence was recorded and since proceedings under Section 33(2)(b) were decided on merits and said decision on merits became the basis for disposal of ID

No.53/97, it would be appropriate for us to deal with other aspects of the matter as well.

24. It is trite that an industrial dispute raised by a workman concerning a penalty imposed upon the workman post inquiry proceedings would first require the Industrial Fora to decide whether the inquiry was valid. If the inquiry held is found to be invalid and if the management has opted to lead evidence on merits, then the Industrial Fora has to record evidence and decide the matter in light of the evidence led.

25. Because we have found that the inquiry against Om Kanwar does not suffer from any infirmity our first reasoning in favour of DTC would be that proceeding subsequent to the order dated August 12, 2008, which we have already opined to be faulty and illegal, would fall. But that apart we find that before the Industrial Tribunal Jagdish Chandra proved the statement of the passengers as AW-1/5. He categorically deposed that as the five passengers de-boarded the bus of which Om Kanwar was the conductor they were accosted by him and Chander Prakash and not only did they fail to produce tickets but even said that they had paid ₹12/- each as fare to Om Kanwar. The reasoning of the Tribunal in the award dated August 29, 2009 is to say the least, perverse. It is irrelevant that the checking team did not enter the bus and accosted the passengers when they de-boarded. No suggestion has been given to Chander Prakash that at that point of time another bus of Haryana Roadways had also stopped at the bus stop and there was thus a possibility of the five passengers de-boarding said bus. That apart, if that was so, the natural reaction of the five passengers would be to tell the checking squad of DTC that they have not travelled by the DTC bus and have travelled by a bus belonging to Haryana Roadways and produce a

ticket each issued by the conductor of the said bus. The further error in the order dated August 29, 2009 is the reliance by the Tribunal on the statement of Paphu Ram recorded during inquiry because admittedly Paphu Ram did not appear as a witness before the learned Industrial Tribunal. That apart, the manner in which the Tribunal has discussed this aspect in paragraphs 14 and 15 of its award, which have been reproduced by us in paragraph 10 above, shows perversity. The first perversity is to record that the witness was cross-examined by the Inquiry Officer. There is no cross-examination. Questions put by the Inquiry Officer are merely clarificatory. The second perversity is to overlook the fact that if what Paphu Ram said before the Inquiry Officer was correct and not what was recorded by the checking squad on the day of the incident, the natural conduct of Paphu Ram would be to produce a ticket issued to him by the conductor of the Haryana Roadways bus in which he claimed to have travelled when he appeared before the Inquiry Officer.

26. The award dated August 29, 2009 has been upheld by the learned Single Judge without analyzing the features of the case and without noting the law which we have noted hereinabove and thus we allow LPA No.117/2015 and quash the judgment dated December 01, 2014 dismissing W.P.(C) No.759/2011. The said writ petition is allowed. The award dated August 29, 2009 is set aside and we grant permission to DTC as sought under Section 33(2)(b) of the Industrial Disputes Act, 1947.

27. As a sequitur we also allow LPA No.118/2015 and set aside the impugned order dated December 01, 2014 dismissing W.P.(C) No.2578/2011. Said writ petition is allowed and the award dated April 13, 2010 passed by the learned Labour Court is set aside. The reference sought

by Om Kanwar concerning his being removed from service is answered against him for the reason entrusted with a fiduciary duty to collect the revenue by issuing tickets to passengers travelling by a DTC bus he has not only breached the fiduciary duty but has made illegal gain for himself and has fraud the employer.

28. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 14, 2016
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