

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

+ **LPA No.255/2015**

% **Reserved on:** 12th July, 2016
Date of Decision: 14th September, 2016

M/S DELHI TRANSPORT CORPORATION Appellant
Through Ms. Bhakti Pasrija, Advocate.

versus

MOHINDER SINGH Respondent
Through Ms. Rashmi B. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

The Delhi Transport Corporation in this Letters Patent Appeal impugns the judgment dated 9th September, 2014, whereby W.P.(C) No. 1462/2011 filed by the appellant challenging and assailing the Award dated 1st April, 2010 passed by the Labour Court has been dismissed.

2. The respondent-Mohinder Singh was appointed as a conductor with the appellant Corporation with effect from 1st April, 1979. On 16th December, 1992, he was charge-sheeted for failure to issue tickets to 15 passengers on 25th November, 1992 who had paid the full fare, onboard Bus No. No.D.S.P. 9439 from Delhi to Tanakpur route,. The respondent was removed from service on 14th November 1994. Reference dated 11th November, 1996 was made to the

Labour Court on the question whether the respondent's removal from service was illegal and unjustified and, if so, what relief and directions could be granted.

3. By the order dated 2nd June, 2009, on the preliminary issue, the Labour Court held that non-supply of documents pertaining to the charge had caused serious prejudice and had prevented the respondent from putting forth an effective defence. Accordingly, the appellant- Corporation was granted the liberty to lead evidence to prove and establish misconduct on merits.

4. The management then led evidence by way of affidavits filed by Rajbir Singh and Satish Kumar, who were both members of the checking team that found 15 passengers on board the bus who had paid the full fare but were not issued tickets by the respondent while on duty as a conductor on Bus No. D.S.P. 9439.

5. Rajbir Singh, MW1 in his affidavit deposed that he, along with the checking team of Jaichand, Sohan Lal and Satish Kumar, had checked the bus No. D.S.P. 9439 at Nawab Ganj and found 15 passengers to be ticketless despite having paid the full fare. Further, the respondent had informed them that 44 passengers had boarded the bus from Bareilly and 29 passengers had been issued tickets. The passengers were confronted with the respondent, who had then admitted his fault and surrendered 15 unpunched tickets. He denied the suggestion that the respondent was in the process of issuing tickets to the

remaining passengers. To the suggestion that there was a considerable distance of 14 kilometres between Office Ganj and Nawab Ganj, Rajbir Singh had voluntarily stated that stage for issuing tickets was over. He, however, accepted as correct that no one from the checking team had made any endorsement on the waybill as to which stage or at what point they had boarded the bus. However, such endorsement had been made by the members on their own sheet. Rajbir Singh accepted that statements of two of the passengers were not recorded on the overleaf of the challan, but on a separate paper and affirmed that the respondent-conductor had signed the said statements. He denied the suggestion that the respondent had signed blank papers or that the vigilance team had torn 15 unpunched tickets from respondent's handbook of the tickets, voluntarily adding that the respondent had surrendered the unpunched tickets. He had testified that the statements of the passengers were written by the passengers themselves and not by Sohan Lal. He reiterated that the way voucher was incomplete. Copies of the challan, unpunched tickets, passengers' statements and the report of the vigilance team were exhibited.

6. It may be noted that a similar affidavit was filed by Satish Kumar, who had also appeared as a witness in the Labour Court on 16th September, 2009, but his cross-examination was deferred at the request of the counsel for the respondent. The subsequent order dated 9th October, 2009 records that Satish Kumar was dropped by the management as a witness. P.K. Rao, the disciplinary

authority, had also appeared as a witness on behalf of the management in the Labour Court and given the details of the enquiry against the respondent. Sohan Lal was not examined as a witness as he was no longer in service of the appellant-Corporation.

7. The respondent had tendered evidence by filing an affidavit and had appeared as a defence witness. The respondent, in his affidavit, had accepted that on 25th November, 1992, he was performing his duty as a Conductor on bus No.9439 on route from Delhi to Tanakpur, and at about 16:45 pm, the bus was checked by the checking team 22 kilometres ahead of Nawab Ganj. It was his claim, that there was no irregularity or misconduct on his part, for he had issued tickets to all the passengers who had paid the fare. He denied the claim that on being confronted by the checking team, he had admitted his mistake in front of the passengers or surrendered the unpunched tickets in his possession. The respondent deposed that the cash in his possession was correct and was not checked in spite of repeated requests made to the checking officers. The respondent had contended that his prior record in service was clean and this was the only case against him, wherein the checking officers had not followed the instructions and guidelines as prescribed and had wrongly challaned him for misconduct. He had accordingly written a protest letter to the Depot Manager.

8. We have noted the aforesaid material evidence as they are both relevant and important. We also find that the handwritten statements of four passengers

were duly recorded on the overleaf of the challan (Ex.PW-1/2) and bear the signature of the respondent-workman.

9. The aforesaid discussion would reveal the following: (i) the respondent had not disputed and had accepted that the bus in question was checked and that Rajbir Singh MW-1 was one of the members of the checking team. (ii) the respondent had accepted that at the relevant time, 44 passengers were travelling in the said bus, of which 15 had not been issued tickets. (iii) The respondent had admitted that the bus was checked by the vigilance team 22 kilometres ahead of Nawab Ganj.

10. The Labour Court, while examining the said evidence referred to the fact that Rajbir Singh, MW-1 had stated that 15 passengers travelling on Bus No. No.D.S.P. 9439 from Delhi to Tanakpur were found to be ticketless. The two passengers travelling from Bareilly to Tahirpur had paid Rs.32/-, one passenger travelling from Bareilly to Manda had paid Rs.17.50/-, 10 passengers travelling from Bareilly to Pilibhit had paid Rs.120/- and the other two passengers had paid Rs.40/-. However, the Labour Court disbelieved the testimony of Rajbir Singh MW-1, recording that the witness had not given any particulars or description of the starting point and the destination of ticketless passengers in his examination-in-chief, or proved the applicable fare, and in the absence of specific details, his testimony could not be relied upon. The Labour Court held that the statement of Rajbir Singh MW-1 was given in a 'blanket manner'

without adequate details and elaboration of facts. The actual amount of cash in possession of the respondent was not checked by the checking staff and, on the basis of a preponderance of probability, cheating by the respondent was rather doubtful. The antecedent record of service did not show any wrongful conduct or adverse remarks regarding integrity. The second reason given by the Labour Court was that 29 passengers, out of 44, who had boarded the bus from Bareilly, were issued tickets and an inference could, therefore, be drawn, and it was equally probable, that the remaining 15 passengers were yet to be issued tickets by the respondent. The Labour Court also observed that Sohan Lal, who had recorded the statements of passengers, was not examined, despite having filed an affidavit for he was no longer in service. The respondent had endorsed the statements of three passengers but had not endorsed the last part of one group of passengers' statements. Accordingly, the appellant -Corporation was directed to reinstate the respondent with continuity of service for the purpose of seniority, pension, gratuity and other benefits. The appellant was directed to pay Rs.40,000/- towards litigation expenses borne by the respondent.

11. In the impugned order dated 9th September, 2014, the learned Single Judge has referred to several judgments on the scope of judicial review and thereafter, has recorded his conclusion and findings in the following words:-

“22. Though the respondent/workman had admitted that the checking staff had checked his bus. However he denied the allegations. It is the outset duty of the

disciplinary authority to establish their case in four corners and if there is no strong evidence against the respondent/workman, then whatever the admitted facts, he cannot be punished for the same.

23. The petitioner/Corporation had to take all care in the departmental enquiry. Though the departmental enquiry was against the respondent, he participated in the same. Further, on perusal of the enquiry report, Ld. Labour Court finds no strong evidence against the respondent/workman and in favour of the petitioner.

24. Accordingly, the Ld. Labour Court allowed the petition filed by the respondent/workman and consequently directed the petitioner/corporation to reinstate the workman with continuity of service of the purpose of seniority, pension, gratuity and other benefits.”

12. We have gone through the reasoning given by the Labour Court and observe that the said reasoning *per se* and *ex facie* is unacceptable. Rajbir Singh (MW1) had clearly stated that the respondent had collected the ticket fare from 15 passengers, the details of which were mentioned in the checking report, and had not issued tickets to them. The checking report was marked and exhibited. The report records full details of the amounts paid as ticket fare by the said passengers, as well as the fact that they, i.e. the passengers, had affirmed that tickets were not issued to them. In such circumstances, when the checking report exhibited was itself specific and detailed, it would be incongruous to doubt and reject the engraved evidence given by Rajbir Singh on the ground that it was incomplete or make belief. The contemporaneous documents executed at

the relevant time and the recordings therein carry weight and should not be discarded and overlooked on the ground of false implications. It was not the case of the respondent that he had prior enmity with the members of the checking team or that any of them were inimical. The reasoning put forth by the Labour Court for rejecting the submission of Rajbir Singh cannot be countenanced and accepted. Similarly, the other ground, of the preponderance of probability that the respondent-workman was yet to issue tickets, cannot be accepted. It is not as if the respondent had collected the fare from one or two passengers and not issued them tickets. The ticket fare, in the present case, was collected from as many as 15 passengers boarding from various stops and tickets were not issued to them. Moreover, Rajbir Singh, MW-1, had deposed that the respondent-conductor had admitted his mistake to the passengers and the members of the vigilance team, and had then handed over the unpunched tickets which were taken into custody.

13. The respondent in his statement had professed that he had issued correct tickets to all of the passengers, who had paid the fare. In his affidavit, the respondent did not aver or state that he was yet to issue or was in the process of issuing tickets to the 15 passengers, though in the cross-examination of Rajbir Singh MW-1, it was suggested to the said witness that the respondent was in the process of issuing tickets to the remaining passengers.

14. This Court is conscious that while exercising the power of judicial review and sitting as an appellate Court in an intra-Court appeal, caution is to be exercised before reversing the findings recorded by the Labour Court and the order passed by the Single Judge. However, in the factual matrix of the present case, we find that there is an error apparent in the decision-making process by the Labour Court. The error was on account of the fact that the Labour Court did not follow the principles applicable to the appreciation of evidence, both ocular and documentary. Contemporaneous documents prepared at the time of occurrence or soon thereafter, have fundamental sanctity attached to them unless there are reasons and grounds to suspect that they were prepared at some other time or that there was a fabrication of the documents. In the present case, there is no material and for that matter, not even an allegation that Rajbir Singh, MW-1 or other members of the checking team had any ulterior motive or reason to falsely implicate the respondent. Malafides and false implication are not even remotely established. The checking by the vigilance department itself is not questioned and challenged. The fact that there were 15 passengers who had not been issued tickets has been accepted by the respondent-workman during the cross-examination of Rajbir Singh, MW-1. The charge was that the said passengers had paid the ticket fare to the respondent but tickets were not issued to them. The statements of 6 passengers were recorded on the spot and without any delay, on the overleaf of the challan and on a separate sheet of paper, and

the said statements were also countersigned by the respondent. In these circumstances, to ignore and disbelieve the account of the incident and evidence given by Rajbir Singh, MW-1 would result in perversity and distortion. The innocent and gullible are to be protected, but to disregard and overlook improbity, unfaithfulness and venality would be unjust and amount to a wrong verdict.

15. Misconduct on account of misappropriation of fare by Conductors has been examined by the Supreme Court in several cases. We would like to refer to two such decisions in ***Regional Manager, U.P. SRTC, Etawah & Ors. vs. Hoti Lal & Anr.*** (2003) 3 SCC 605 and ***V. Ramana vs. A.P. SRTC and Ors.*** (2005) 7 SCC 338. These decisions elucidate on the effect of misconduct and it has been observed that failure to issue tickets, or issuing tickets of a lower denomination to passengers who have paid the requisite fare, would constitute gross misconduct, for the conductor holds the post and position of trust and acts in a fiduciary capacity viz. the employer. Punishment of removal from service awarded in such cases was not disturbed observing that the courts would hesitate to interfere on the ground of proportionality unless the punishment awarded is outrageous. In the present case, there is no good reason or ground to interfere with the punishment of removal from service on the principle of proportionality.

16. A similar view has been taken by a Division Bench of this Court in LPA Nos.117 & 118 of 2015 titled ***Delhi Transport Corporation vs. Om Kanwar***, decided on 14th January, 2016. This judgment observes and holds that the management witness could prove the statement of the passengers to the effect that they had paid the fare to the Conductor but were not issued tickets. The Division Bench held that the finding of the Labour Court was perverse as it had discarded the documents establishing that the checking team had entered the bus and accosted the passengers when they were deboarding. The manner in which the evidence had been discussed in the Award disclosed misconsideration and misappreciation and the Single Judge had erred in upholding the Award without noticing the law which should have been applied. This view finds reiteration in the judgment written by one of us (Sunita Gupta, J.) in W.P.(C) 6810/2002, ***Vikram Kumar vs. Delhi Transport Corporation***, (2015) 222 DLT 438.

17. Learned counsel for the respondent-workman has relied upon the decision in the case of ***D.T.C. vs. Anup Singh***, 133 (2006) DLT 148 (DB). In the said case, a Division Bench of this Court had affirmed the view of the Labour Court and the Single Judge on facts. Specific lapses and errors were pointed to hold that the charge itself was not fully proved. The decision in the said case is, therefore, distinguishable.

18. In view of the aforesaid discussion, we would allow the present appeal and set aside the impugned order dated 9th September, 2014 passed by the

Single Judge dismissing W.P.(C) No.1462/2011. The writ petition would be treated as allowed. We set aside the Award dated 1st April, 2010 passed by the Labour Court in case ID No.235/08/96 titled Delhi Transport Corporation vs. Mohinder Singh. It is pointed out that the respondent has retired. In these circumstances, it is directed that the payments already made to the respondent would not be recovered. However, from the date of pronouncement of this judgment, the appellant-Corporation would not be liable to pay any further amount, except the amount, if any, payable in case of an employee, who is removed from service. The payments made by the appellant to the respondent post the aforesaid impugned Award would be adjusted. In the facts of the case, there would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(SUNITA GUPTA)
JUDGE

SEPTEMBER 14th, 2016
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