

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

**Reserved on 27<sup>th</sup> September, 2016**

**Decided on 24<sup>th</sup> October, 2016**

+ **LPA 601/2010**

LOCHAN SINGH ..... Appellant

Through: Mr Atul T.N., Advocate

Versus

HARYANA ROADWAYS ..... Respondent

Through: Mr Devender Kr. Saini,  
Additional AG, Haryana

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**CORAM:**

**HON'BLE MR.JUSTICE SANJIV KHANNA**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

### **J U D G M E N T**

**: SUNITA GUPTA, J.**

1. This Intra Court appeal has been preferred by the appellant (hereinafter referred to as 'the workman') being dissatisfied with the judgment dated 01.07.2010 passed by the Ld. Single Judge in W.P.(C) No.8983/2013. – *Haryana Roadways v. Lochan Singh*.

2. The appellant herein was employed as a conductor in the respondent – Haryana Roadways (hereinafter referred to as 'the management'). While he was working as such, he was served with a charge-sheet on the allegations that on 16.05.1987, the bus was checked by inspectors of the management at Ambala Cantt and it was found that the appellant - workman had charged Rs.25/- only from 4 of the passengers against the prescribed fare of Rs.35.50p and issued

tickets to them of Rs.18/- only. Two other passengers were found sleeping on the roof and claimed to be there with the permission of the appellant - workman. The appellant – workman was as such charged with causing loss to the respondent - management of the fare of a total sum of Rs.75.50p and having embezzled the same. The explanation of the workman having not been found satisfactory, an Inquiry Officer was appointed. The workman participated in the inquiry. The Inquiry Officer submitted a report finding the charges to have been made out. The Disciplinary Authority of the management imposed the punishment of dismissal from service on the workman. Being aggrieved and dissatisfied of the aforesaid order of dismissal from service, the workman raised an industrial dispute which was referred for adjudication to the Labour Court by the Appropriate Government on the following terms:

*“Whether the termination of the services of Lochan Singh is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”*

3. The statement of claim was filed by the workman alleging therein that the enquiry was vitiated due to non-compliance of the principles of natural justice as he was not even given the opportunity to defend himself, the day to day proceedings of the enquiry were not given to him; and the copy of the enquiry report was not supplied to him as such his dismissal is illegal, unjustified and arbitrary.

4. The claim was controverted by the management wherein except for admitting that the workman was their employee, in the statement of

defence all allegations of the workman were denied. It was submitted that there was a charge of fraud of Rs.75.50p against the workman while working as a conductor for which the domestic enquiry was held and on the basis of findings of the Enquiry Officer, the services of the workman were terminated. The enquiry was held in a fair and proper way after observing the principles of natural justice. It was also submitted that the copy of the enquiry report was duly supplied to the workman alongwith the show cause notice. No reply to the show cause notice was submitted by the workman, hence he was given personal hearing on 31.07.1990. It was only thereafter that the order for termination of service was passed. It was also alleged that the workman was earlier awarded as many as 25 punishments. Besides that, 5 more cases pertaining to absence from duty and embezzlement of amounts were pending.

5. On the aforesaid pleadings, following issues were framed by the Labour Court:

- (i) Whether the domestic enquiry conducted by the management was fair and proper and in accordance with the principles of natural justice?
- (ii) As per the terms of reference.

6. Both the parties led their respective evidence. The issue pertaining to the enquiry was treated as preliminary issue. Vide order dated 27.04.2002, the Labour Court decided the enquiry issue against the management on the ground that the workman was not provided list of documents and the list of witnesses. Moreover, the Enquiry Officer

acted as presenting officer. That being so, the management failed to observe the principles of natural justice.

7. After the enquiry issue was decided against the management, an application was moved by the management for leading evidence in order to prove the misconduct of the workman. However, the said application was dismissed vide order dated 28.10.2002 relying upon the decision of the Supreme Court in *Karnataka State Road Transport Corpn.v Smt. Lakshmiddevamma & Another*, 2001 LAB 1-C 1722 relying on *Shambu Nath Goyal vs. Bank of Baroda & Others*, (1984) 1 SCR 85 that such a plea should have been taken by the management in the written statement itself. Having not done so, the management cannot be permitted to lead further evidence. As regards the issue no.2, the parties led their respective evidence and vide the award dated 17.01.2003, the same was decided in favour of the workman. The management was accordingly directed to reinstate the workman with full back-wages and continuity of service.

8. The management, aggrieved from the award preferred a writ petition being W.P.(C) No.8983/2003. The writ petition was allowed and the award dated 17.01.2003 was set aside. The domestic enquiry conducted prior to the order of termination of the workman was found to be valid and legal and in compliance of the principles of natural justice by observing that strict rules of pleadings and evidence do not apply to the proceedings before Industrial Adjudicator. The plea regarding non-furnishing the list of documents and list of witnesses was taken for the first time during the writ petition and not prior thereto at any stage of proceedings. As regards list of witnesses, it was observed

that the charge-sheet itself contained the list of witnesses at the bottom. In the notice sent by the enquiry officer to the workman also, the names of the witnesses were mentioned. Moreover, the workman not only cross examined the witnesses of the management but produced his own witness before the Enquiry Officer and he could not have done all this had he not been fully aware of the scope of the enquiry and the case / charge against him. As regards the submission that the Enquiry Officer also acted as a presenting officer, the same also did not find favour with the Ld. Single Judge by observing that principles of natural justice are not violated when the Enquiry Officer ask questions, elicit answers and clarifications from the witnesses. There was no plea of bias against the Enquiry Officer who was also a colleague of the workman and had fraternity affiliations to the workman. Therefore, mere fact that the Enquiry Officer was acting in both the capacities does not vitiate the inquiry. Having held so, the Ld. Single Judge found the domestic enquiry to be valid and legal and in compliance of the principles of natural justice. Resultantly, the termination of the service of the workman was found to be legal and justified and the workman was held not entitled to any relief.

9. As against the aforesaid judgment, the present appeal is preferred on which we have heard learned counsel for the parties.

10. Learned counsel appearing for the appellant – workman has mainly raised four issues. The first contention that was made was that the workman was not provided with the list of witnesses and list of documents which vitiated the enquiry. The second contention raised before us was that the Enquiry Officer in the present case acted both as

a prosecutor and as a Judge which was not permissible and, therefore, the entire proceeding was vitiated. The other submission made before us was that the management was not allowed to lead any evidence to prove the misconduct of the workman, that being so, there was no occasion for holding the termination of the workman to be valid. Lastly, the punishment imposed was disproportionate to the alleged misconduct.

11. We have considered all the submissions in the light of the record including the Trial Court record.

12. So far as the first issue taken before us which pertains to violation of principles of natural justice by not supplying the list of witnesses and the list of documents, this aspect was meticulously considered by the Ld. Single Judge. The workman raised dispute regarding non-supply of list of witnesses and list of documents for the first time before the Ld. Single Judge and not prior thereto at any stage of proceedings. Record reveals that after termination of the service, the workman sent a demand notice Ex.WW1/5 dated 05.12.1990. The only plea taken in the said demand notice was that the enquiry has not been done in accordance with the principles of natural justice as he was not afforded proper opportunity to defend himself; the day-to-day proceedings of the enquiry were not given to him; and the report of the Enquiry Officer was not supplied to him. Thereafter, the workman preferred an appeal before the Transport Commissioner, Haryana, Chandigarh Ex.WW1/10, wherein also similar plea was taken. After the matter was referred to the Labour Court by the Appropriate Government, the workman filed statement of claim wherein also

similar pleas were taken. In the affidavit filed by the workman by way of examination-in-chief before the Labour Court, the position remained the same. In none of these proceedings, there is any grievance of non-supply of list of documents and list of witnesses accompanying the charge-sheet. Had the list of documents and list of witnesses accompanying the charge-sheet were not supplied to the workman or the workman considered himself to be prejudiced in any manner, he would have made a grievance to that effect. Since the workman has neither in his pleadings nor in his evidence complained regarding non-supply of list of documents and list of witnesses accompanying the charge-sheet, the Labour Court ought not have held the enquiry to be vitiated on the said ground.

13. A perusal of the charge-sheet rather reflects that the same has been received by the workman as the same has been signed by him at the bottom in token of receipt. The list of witnesses is contained at the bottom of the charge-sheet as such the question of non-furnishing thereof to the workman does not arise. The notice of hearing sent by the Enquiry Officer to the workman contained the names of witnesses. A perusal of enquiry proceedings goes to show that the workman not only cross-examined the witnesses of the management but also produced his own witnesses before the Enquiry Officer. In case he was not aware of the scope of enquiry / charges against him, he would not have been able to effectively cross examine the witnesses and lead his own evidence.

14. As regards the list of documents, at no point of time, the workman took the plea that he was not supplied with the list of documents or was in any manner prejudiced by the same. A perusal of

the charge-sheet accompanied by memorandum Ex.WW1/2 reflects that the workman was called upon to furnish his explanation in writing within a period of 15 days from the receipt of memorandum. At the same time, he was afforded the opportunity to inspect the relevant official record. If the workman did not avail this opportunity, now he cannot take the plea that due to non-furnishing of documents, he was prejudiced in any manner.

15. As regard the second ground taken before us that the enquiry was vitiated in absence of Presenting Officer and that the Enquiry Officer acted as a Presenting Officer as well, the same was considered in *Workmen in Buckingham and Carnatic Mills, Madras v. Buckingham and Carnatic Mills, Madras*, reported in 1970 (1) LLJ 26 SC wherein it has been held by the Supreme Court that principles of natural justice are not violated when the Presiding Officer asks questions, elicits answers and clarifications from witnesses. This decision was relied upon in *Ramesh Chand v Delhi Transport Corporation*, 2007(96) DRJ 399, in which one of us (Sanjiv Khanna, J) was a member. The Division Bench found that no such contention was ever raised at any stage prior thereto before the Labour Court or before the Ld. Single Judge and that the plea being factual and no foundation therefore having been made could be permitted to be taken at the stage of argument of the appeal. In the instant case also, no such plea was taken in the pleadings before the Labour Court. It was raised for the first time during the arguments, without raising a factual dispute and foundation. That being so, this plea is not tenable.

16. The enquiry proceeding was completely fair and impartial. There was no plea of bias or victimization on the part of the management. Even after the enquiry report was submitted by the Enquiry Officer having held the workman to be guilty of charges, a show cause notice dated 22.06.1990 Ex.MW1/16 was served upon the workman to show cause as to why his services be not terminated. He failed to furnish any reply. Vide notice Ex.MW1/17, he was called for personal hearing on 23.07.1990 but he failed to appear. Another opportunity of personal hearing was afforded to him by sending another letter Ex.MW1/ 18, thereupon the workman appeared before the Competent Authority on 31.07.1990. After hearing the workman and perusing the entire record, punishment of termination from service was imposed upon the workman. That being so, the Ld. Single Judge was justified in holding that the findings of the Enquiry Officer against the workman cannot be disturbed particularly when the principles of natural justice was found to have been complied with.

17. As regards the submission of learned counsel for the appellant - workman that in the absence of any evidence led by the management to prove the misconduct of the workman, the punishment as awarded could not have been imposed, the submission is bereft of merits as it is now well settled by a number of decisions that in case the enquiry is defective or if no enquiry is held by the management, the entire case would be open before the Tribunal and the employer would have to justify on facts as well as that its order of dismissal or discharge was proper. However, if the finding on preliminary issue regarding the

validity of domestic enquiry is in favour of the management, then no additional evidence needs to be adduced by the management.

18. In *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* [1973(3) SCR 29] the Supreme Court held as follows:

*"When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the*

*management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct."*

**(Emphasis added)**

19. Similar view was taken in *Workmen of Fire Stone Tyre Rubber Company v. Management* [1973(1)LLJ 78] it was inter alia held as follows:

*"(4). Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.*

*(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged*

*is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.*

*(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

*(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

*(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

***(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization."***

20. Since the domestic inquiry conducted prior to the order of termination of the appellant workman is found to be valid and legal and in compliance of the principles of natural justice, no additional evidence was required to be adduced by the management to prove the misconduct of the appellant – workman which was already proved during the domestic enquiry.

21. Coming to the last plank of his submission that the punishment imposed upon the petitioner is highly disproportionate, we do not find any merit in this submission.

22. In ***Karnataka State Road Transport Corporation v B.S. Hullikatti*** (AIR 2001 SC 930), conductor had issued tickets of Rs.1.75 instead of Rs.2.25 but it was not proved that he had collected the amount of Rs.2.25 from the passenger. Labour Court set aside the punishment of dismissal and directed reinstatement with full back wages. Writ petition filed by the Corporation and LPA was dismissed. SLP was preferred. It was held:

*"5. The principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.*

*6. It is misplaced sympathy by the labour courts in such cases when on checking, it is found that the bus conductors have either not issued tickets to a large*

*number of passengers though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.”*

23. ***Ghanshyam Sharma v Regional Manager, Rajasthan State Road Transport Corporation***, [(2000) 33 LLJ 588 Raj.] was again a case where conductor was held guilty of misconduct of carrying passenger without ticket. On a reference being made, the Labour Court invoked its jurisdiction under Section 11(A) and while upholding the finding that the respondent was guilty of misconduct, it directed the respondent's reinstatement with continuity of service but without back wages. The learned Single Judge set aside the award which decision was reversed by the Division Bench of Rajasthan High Court. Reiterating the observations made in ***Hullikatti*** (supra), it was held:-

*"Furthermore, we agree with the observations of the single judge in the present case that the labour court was not justified in interfering with the punishment of dismissal. Though under section 11(A), the labour court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the road transport corporation and when a conductor fails to do so, then*

*it will be misplaced sympathy to order his reinstatement instead of dismissal."*

24. Again in ***North West Karnataka Road Transport Corporation v H.H.Pujar***, AIR 2008 SC 3060 conductor was found guilty of carrying ticketless passengers by Inquiry Officer. Punishment of dismissal was imposed on him. Delinquent conceded to fairness of domestic enquiry. He also admitted that he has not issued ticket to some passengers. Interference with punishment on ground that ticket-less passengers were not examined was held inappropriate.

25. The matter was also considered by Delhi High Court in ***Subhash Chander v Presiding Officer Labour Court*** (2013 LLR 567), in that case the amount involved was only 30 paisa and plea was taken that lenient view be taken. Reliance was placed on a Division Bench judgment of this Court in Sheo Raj Singh vs. DTC in LPA No. 243/2007 decided on 10.10.2007 where Court observed as under:-

*"Besides the aforesaid, notification issued on 3.1.1966 also enables the disciplinary authority to impose the extreme penalty of dismissal or removal from service in a case of repetition of punishment. We have already referred to one of the past incident where the appellant was given the punishment of stoppage of increment and, therefore, the offence of misconduct of misappropriation for which action is taken was in the nature of repetition of punishment and, therefore, the said circular does not in any manner come in assistance or protection of the appellant. We may also, at this stage, mention that there is a guideline issued by the corporation dated 26.5.2000 which justifies the quantum of punishment imposed on the appellant. In*

*any case, the contention of the counsel appearing for the appellant that the quantum of punishment is disproportionate to the offence alleged against the appellant cannot be accepted. The punishment imposed keeping in view the offence cannot be called as shocking the judicial conscious of the court. It is not the quantum of the amount but the nature, type and character of the misconduct which is relevant and the determinative factor".*

*Reliance was also placed on Supreme Court decision in **Depot Manager, AP, SRTC v. B.Swamy**, (2007) 12 SCC 40 where Court dealt with a similar plea of the act of cheating by a bus conductor being a first time act. The Supreme Court held that even one act of dishonesty amounts to breach of faith and may invite serious punishment. In that case, the bus conductor was found guilty of misappropriating ticket money. He had charged higher fare from 16 illiterate persons, but had issued tickets for a lower fare. Merely because it was the first occasion when the respondent conductor was caught, was held not to be a ground to conclude that it was accidental. It was held that the bus conductor enjoys the faith reposed in him. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimised by the fact that he was not earlier caught indulging in such dishonest conduct. The judgment of the High Court interfering with the punishment on the ground of it being disproportionate was set aside.*

*Following these judgments, it was held that:-*  
*"9. ....The amount involved may appear to be very small in today's time. The incident is of the year 1985 when even 30 paise had purchasing power as is*

evident from the fact that a passenger ticket of the DTC was available for 30 paise. The issue is not about cheating of only 30 paise. One cannot lose sight of the fact that the petitioner was found in possession of excess cash of Rs. 1.90. He may have been caught cheating the respondent employer in one instance, but the presence of excess cash of Rs.1.90/- shows that he could have been involved in similar acts of cheating on the same day before the checking party caught him red-handed in the act of cheating. The petitioner has not sought to explain as to how he was possessed of excess cash of Rs.1.90/-. Even if one were to accept that 30 paise and Rs.1.90/- are small amounts, what is of significance is the act of cheating and not the amount involved. The petitioner was a bus conductor. Obviously, if he was habitual and morally oriented to cheat the respondent- employer, he would cheat in the discharge of his official duties as a bus conductor. His acts of cheating, therefore, would involve such amounts only. When such acts are viewed in the light of the fact that hundreds of passengers travel in a public transport buses of the kind in which the petitioner was performing his duties as a bus conductor, the magnitude of the loss that the petitioner may have caused, or could cause in a day; in the month; in a year or in his entire tenure would translate into a significant amount. If the argument about the money involved being small were to be accepted, no person involved in cheating having a small monetary value would ever get caught or punished. Pertinently, this was the second instance when the petitioner was caught in the act of cheating and punished there for. He did not learn his lesson even after the first act when

*he was caught and punished. The fact that that he was caught the second time does not mean that this was the second time that he indulged in such act of cheating."*

26. In view of the aforesaid decisions, it cannot be said that the punishment inflicted upon the appellant was not commensurate with the misconduct. We do not find any reason to disagree with the findings of the Ld. Single Judge. The appeal, being devoid of any merit, is accordingly dismissed.

27. There shall be no orders as to costs.

**SUNITA GUPTA  
JUDGE**

**SANJIV KHANNA  
JUDGE**

**OCTOBER 24, 2016/rd**

