

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

+ **RSA No.199/2016**

% **1<sup>st</sup> August, 2016**

SHRI SUDHIR KUMAR (CONDUCTOR) ..... Appellant

Through: Mr. Ashok Gurnani, Advocate.

versus

DELHI TRANSPORT CORPORATION AND ANOTHER ..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. No.27343/2016 (exemption)**

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**+ RSA No.199/2016**

2. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit against the concurrent Judgments of the courts below; of the Trial Court dated 30.10.2012 and the First Appellate Court dated 16.3.2016; and by which concurrent judgments the courts below have dismissed the suit of the appellant/plaintiff seeking setting aside of the

disciplinary/departmental proceedings whereby the punishment of placing the appellant on his initial basic pay scale for three years and during this punishment period no pay increment be given to him.

3. The facts of the case are that a charge-sheet dated 3.1.2003 was issued against the appellant/plaintiff that the appellant/plaintiff as an advance ticket booker at the I.P. Depot, Delhi instead of charging Rs.71/- from the passengers travelling by bus no.2904 on Delhi-Kotdwar route charged Rs.75/-. This advance booking was done by plaintiff on 5.12.2002. After the bus left the Delhi depot, the same was inspected by the checking staff at Muradnagar near Ghaziabad where all the ten passengers complained to the checking staff that they have been charged excess fare of Rs.4/-. The passengers also had quarreled with the conductor with respect to excess charge. The statements of seven out of ten passengers were got recorded at the back of the challan by the checking team and thereafter the subject charge-sheet was issued. Detailed enquiry proceedings were conducted wherein the defendant no.1/employer examined four witnesses being three persons from the checking staff being Sh. Parvesh Kumar (Assistant Traffic Inspector), Sh. Balbir Singh (Traffic Inspector), Sh. Hari Parkash (Assistant Traffic Inspector) and Sh. Jasbir Singh, Conductor of the bus in question. The appellant/plaintiff cross-examined the witnesses and also gave his statement at the conclusion of the enquiry proceedings as to why the appellant/plaintiff should not

be held guilty. The enquiry officer has given his report (date not specified in the copy filed before this Court) holding the appellant/plaintiff guilty and which resulted in the Order passed by the Disciplinary Authority on 27.2.2004 imposing the aforesaid punishment upon the appellant/plaintiff. The judgments of the courts below show that it has been held that the charge against the appellant/plaintiff stands proved by the statements of the prosecution witnesses being the officers of the checking party as also the conductor of the bus. The courts below have also referred to the fact that the statements of seven out of the ten passengers in the bus were got recorded behind the challan and which statements were proved by the prosecution witnesses being the checking team officers.

4. Various arguments and contentions which were raised by the appellant/plaintiff were rejected by the courts below, and some of these are as under:-

(i) All the documents of the enquiry were given to the appellant except the copy of the log book which was an official secret document. I note that there is a difference between not giving a copy and the appellant/plaintiff not having been allowed to inspect the same inasmuch as on a specific query put to the counsel for the appellant/plaintiff, nothing could be pointed out to this Court either in the reply to the show cause notice of the disciplinary authority or in the

appeal filed that the appellant/plaintiff had complained that he was not even allowed to inspect the log book. Counsel for the appellant/plaintiff concedes that even in the plaint there is no specific averment that the appellant/plaintiff was not allowed to examine the log book.

The first appellate court notes that the mere fact that the copy of the log book was not provided cannot be termed as violation of the principles of natural justice because the appellant/plaintiff in his cross-examination before the trial court admitted about checking of passengers on the bus by the checking staff in the vicinity of Ghaziabad (U.P.)

(ii) There was no need for personal examination of the passengers, in fact to whom registered post notices were sent and they did not appear, inasmuch as the statements of the seven out of ten passengers were recorded in the presence of the checking staff at the back of the challan.

The contention that the challan and the statement of passengers was prepared and recorded at the back of the appellant/plaintiff is misconceived because the appellant/plaintiff was posted at ISBT, Delhi as advance ticket booker from where he prepared the tickets and charged the passengers extra fare whereas the checking was done when the bus had left I.P. Depot at Delhi and reached at Muradnagar/Ghaziabad where the presence of the appellant/plaintiff could not

have been as he was neither the driver nor the conductor of the bus and only posted as advance ticket booker at Delhi depot.

(iii) The appellant/plaintiff was offered the assistance of a Labour Welfare Officer which he refused and he conducted the entire proceedings himself.

5. A second appeal lies only if a substantial question of law arises. In fact, departmental proceedings cannot be allowed to be questioned before the court as if court is an appellate authority once on the basis of evidence of as many as four prosecution witnesses, appellant/plaintiff has been held guilty and which departmental proceedings are governed for decision on the basis of preponderance of probabilities. Effectively till this second appeal has come up for hearing, the appellant/plaintiff has had four opportunities to question the departmental proceedings, the present appeal being the fifth one, inasmuch as, disciplinary authority and the appellate departmental authority held against the appellant/plaintiff as also the trial court and the first appellate court. The arguments urged before this Court on behalf of the appellant/plaintiff are nothing but re-arguing the aspects which have already been held against the appellant/plaintiff in the departmental proceedings as also the courts below, and no substantial question of law arises, however, for the sake of record, I am

referring to the arguments which have been urged on behalf of the appellant/plaintiff before this Court.

6. Counsel for the appellant/plaintiff has urged the following arguments:

(i) The statements of passengers were got recorded at the back of the appellant/plaintiff and such statements recorded at the back of the appellant/plaintiff cannot be referred to. Reliance is placed upon a judgment passed by a learned Single Judge of this Court in the case of ***Rajbir Singh Vs. D.T.C. 201 (2013) DLT 279.***

(ii) The conclusions of the departmental authorities are vitiated on account of the fact that the entire findings in the facts of the present case can be said to be without necessary evidence on account of non-examination of the passengers who gave the statements to the checking staff with the factum of the statements of such passengers being recorded at the back of the appellant/plaintiff. Reliance is placed upon the Division Bench judgment of this Court in the case of ***M.L. Jindal Vs. D.V.B. & Ors. 2006 (92) DRJ 727 (DB).***

(iii) There is violation of the principles of natural justice because the copy of the log book in question was not given to the appellant/plaintiff.

7(i) The first argument urged on behalf of the appellant/plaintiff by placing reliance upon the judgment in the case of *Rajbir Singh (supra)* is on the basis of paras 16 and 17 of that judgment and which paras 16 and 17 read as under:-

“16. The scope of the jurisdiction of this Court under Article 226 of the Constitution while examining the industrial award is limited. This Court does not sit in appeal over the findings returned by the domestic enquiry tribunal or the industrial adjudicator. There are only a few exceptions to this general rule and, one of them is, where the finding is based on no evidence. Therefore, the issue which arises for consideration is whether in the facts and circumstances of the case, which were brought on record in the domestic enquiry proceedings, it could be said that there was some evidence to hold the petitioner guilty of the misconduct alleged against him. Pertinently, the statement of the passenger was recorded behind the petitioners back. The said passenger had already got down from the bus and the bus had already left the spot by the time the said statement was recorded. The members of the raiding party had also deboarded the bus after returning the way bill of the petitioner. The petitioner, therefore, had no occasion to personally know as to who had made the statement; whether the said statement had been made voluntarily, or not; whether the statement was correctly recorded, and; to record his observations or protest on the said statement. Normally, the statement of the passenger who makes a complaint against the conductor - of his not issuing a ticket after collecting the fare, or issuing used ticket, is recorded in the presence of the conductor and the signatures of the conductor taken on the said statement. At that stage, the conductor has the opportunity to witness the recording of the said statement, and to record his observations or protest while counter signing the statement.

17. It is also pertinent to note that the way bill of the petitioner/conductor was checked and returned to him. The waybill would, invariably, be retained by the checking staff if some wrongdoing or omission on the part of the conductor comes to light. The statement of the checking staff that when the waybill was demanded once again, the petitioner refused to part therewith was not recorded in the presence of the petitioner. There was no independent evidence to corroborate the said statement of the checking party. The allegation against the petitioner that he fled away with the bus does not appear to be plausible, since no action was taken by the respondent against the driver. Pertinently, the petitioner was not challaned on the spot by the raiding party. The complaint book was not closed. No independent witness or other evidence was produced in the enquiry. In these circumstances, I find merit in the petitioners plea that the present was a case of no evidence. The mere statements of the raiding party, in the absence of any other corroborative evidence, cannot be considered as "some" evidence in terms of the

judgment of the Supreme Court in *Rattan Singh (supra)*. Pertinently, the Supreme Court in *Rattan Singh (supra)* observed that the essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiates the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.”

(ii) The facts in the case of *Rajbir Singh (supra)* were that there was one lone/sole issue of re-selling the ticket already sold to only one passenger to another passenger i.e there was only a solitary incidence of misdemeanor against the concerned conductor. Also, the issue of recording of statement behind the back arose because conductor was very much present in the bus and therefore once statement of a passenger of a bus is recorded on the basis of which misdemeanor is alleged against an employee then such statement should be recorded in the presence of the conductor.

(iii) The facts of the present case are however completely different because the appellant/plaintiff could not be in the bus near Muradnagar/Ghaziabad because the appellant/plaintiff was the advance ticket booker at the ISBT depot in Delhi and checking took place of the passengers of the bus not at ISBT Depot at Delhi but when the bus was travelling from Delhi to Kotdwar in the vicinity of Muradnagar/Ghaziabad.

(iv) Also, the statements of the seven passengers recorded at the back of challan are proved by the three prosecution witnesses being the members of the

checking team who inspected the bus and before whom the passengers got their statements recorded at the back of the challan. The conductor of the bus was also examined that the passengers at spot had fought with him and some of which had questioned him as to why on the concerned date they were charged Rs.75/- instead of usual fare of Rs.71/-.

(v) Therefore, the facts of the present case are totally different than the case of ***Rajbir Singh (supra)*** inasmuch as the prosecution in this case has proved its case by deposition of as many as four witnesses and also the statement of as many as seven passengers (seven instances of extra charging and not one) recorded in the presence of the checking team behind the challan. Once the statements of witnesses are recorded in the presence of the checking team, the officials of the checking team can definitely depose with respect to such statements and merely because the passengers did not appear during the departmental proceedings cannot mean that the statements of passengers, who were charged excess fare, should not be believed. In fact, I may note that the enquiry officer has been more than fair because every endeavour was made to call the passengers by issuing them registered post notice but such passengers however did not appear.

The arguments urged on behalf of the appellant that the departmental proceedings being in violation of the principles of natural justice because reliance

is placed upon the statements of passengers recorded behind the back of the appellant/plaintiff, are misconceived arguments and are therefore rejected and also next argument is rejected that the present case is a case of no evidence or perverse finding case.

8. The second argument with respect to violation of the principles of natural justice on account of not being given the copy of log book is a misconceived argument because, as already stated above, it is not the case of the appellant/plaintiff that he was not even allowed to inspect the log book. Once log book is inspected, there cannot be violation of the principles of natural justice, more so in the facts of the case such as the present when the appellant/plaintiff himself in his cross-examination conceded that there was in fact checking of the bus by the checking staff in the vicinity of Ghaziabad (U.P.). Though learned counsel for the appellant/plaintiff sought to draw certain benefits from some statements made during the recording of evidence but it is noted that the evidence in a case has to be read as a whole and it cannot be that a conclusion has to be arrived at merely on the basis of one part of the statement made. It is also required to be noted that the conductor of the bus deposed with respect to some passengers questioning him as to why extra fare has been charged. In any case, there were sufficient primary and corroborative evidence in the form of statements of members of checking team as many as three in number who

deposed in the enquiry proceedings. This argument of the appellant/plaintiff is also therefore misconceived and rejected.

9. Reliance placed on behalf of the appellant/plaintiff in the case of *M.L. Jindal (supra)* is again misconceived because that was a case where it was held that the charged official must be exonerated because it was a case of no evidence whereas in the present case, as already stated above, as many as four prosecution witnesses, three being the members of the checking team and fourth being the conductor, were examined and also statements of seven out of ten passengers at the back of the challan taken on spot at the time of checking of the bus were proved through the checking team's witnesses. The relevant para 23 in the case of *M.L. Jindal (supra)* relied upon by the appellant/plaintiff, and which itself shows that in that case the charged employee was exonerated because it was a case of no evidence, reads as under:-

“23. From a perusal of the above statements, it is apparent that neither witness has spoken about what in fact happened on 26.12.1990 at the collection counter at Rani Bagh. The two witnesses, PWs 1 and 2, deposed nearly nine years after the incident basing their opinions on inferences drawn from certain documents shown to them by the DVB. One of the documents is the bill issued to Mr. Arun Kapoor by the DVB on which there is a figure of '7695' written by hand. This document, a photocopy of which is included in the appeal paper book nowhere indicates that the figure '7695' was in fact written by the appellant herein. No comparison of the handwriting of the appellant with what was written on the bill was under taken during the inquiry in order to show that it was in fact the appellant who wrote those figures. The Collector sheets did not have the relevant entry concerning the relevant bill at Sl. No. 33 since more pages were missing. While PW-2 generally infers that cash was collected by the appellant as per those documents, there is no specific statement that the sum of Rs. 7695/- was collected by him. The best evidence possible was that of Mr. Arun Kapoor, the complainant, who might have

spoken about his having deposited cash at the counter with the appellant towards payment of the bill in question. For some reason, Mr. Arun Kapoor, who was a material witness, was never examined. Further, his first complaint dated 24.7.1992 was not brought on record during the inquiry. In these circumstances, the only conclusion possible is that there was no evidence to establish that it was the appellant who collected the cash of Rs. 7695/- on the relevant date from Mr. Arun Kapoor. Even applying the standard of preponderance of probabilities, we are of the view that this is a case of no evidence and that the findings of the Enquiry Officer are perverse.”

10. Finally, I must note that whether the findings and conclusions which are arrived at in the departmental proceedings are correct or not depends upon the facts of each case and the evidence led in each case. As per the evidence which is led in this case being the statement of four prosecution witnesses, including the proving of the statements of the seven passengers at the back of the challan showing overcharging in the present case, clearly the departmental authorities were justified in finding the appellant/plaintiff guilty and imposing punishment. In fact, on issues such as misappropriation and defrauding public, normally a strict penalty of dismissal from service is ordered, but the appellant/plaintiff has not been given this penalty but only been given reduction in pay.

11. In view of the above, no substantial question of law arises and therefore this second appeal is dismissed, leaving the parties to bear their own costs.

**AUGUST 01, 2016**  
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**VALMIKI J. MEHTA, J**