

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

Date of Decision: May 05, 2017

+ **W.P.(C) 2914/2007**

MAHENDER PAL Petitioner

Through: Mr. Ravindra S. Garia, Advocate

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Ms. Manisha Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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Impugned Award of 11th July, 2006 holds that petitioner's removal from service is legal and justified. It is noted in the impugned Award that petitioner was employed as a Conductor by respondent on 22nd June, 1985 and was issued charge-sheet on 15th December, 1992 on the allegation that on 23rd November, 1992 while he was on duty, he had not issued tickets to a group of five passengers and when the bus was intercepted by the Checking Team, then only, petitioner had started issuing tickets on seeing the Checking Team. In the Departmental Inquiry, three members of the Checking Team had deposed that five passengers in the bus in question were found without tickets and when petitioner was confronted about it, petitioner admitted his guilt. On the basis of Inquiry Report, petitioner's service stood terminated. Before trial court, *Mr. B.P. Nigam (MWI)* had deposed about the Inquiry conducted

and petitioner had also deposed before trial court. On the basis of evidence led, trial court has returned the finding that the Inquiry conducted against petitioner was fair and his service has been legally terminated.

The challenge to impugned Award by learned counsel for petitioner is on the ground that departmental Inquiry was not fairly conducted because intimation of the Inquiry was given to petitioner by UPC, which was not received by him and despite being on duty, he was not orally informed about the Inquiry and when on the next date of hearing, he had appeared, the evidence was already recorded and that the evidence recorded was not supplied to him and he was not allowed to cross-examine the witnesses.

Regarding the termination of petitioner's service, it is submitted by learned counsel for petitioner that the charge-sheet issued was vague as it merely states that the intention of petitioner was *mala fide* i.e. to steal. Learned counsel for petitioner submits that the cash in the hands of petitioner was not checked and so, there is no basis to hold that petitioner had in any way cheated and no statement of passenger was recorded and that the admission made by petitioner was not incriminatory as there was no admission of guilt by petitioner. Lastly, it is submitted by petitioner's counsel that the so-called admission of petitioner is self-explanatory and it does not in any way implicate petitioner and so, the penalty imposed deserves to be set aside and petitioner ought to be reinstated in service with consequential benefits.

On the contrary, learned counsel for respondent supports the

impugned Award and submits that in view of petitioner's admission of guilt, termination of his service is justified and that the past service record of petitioner justifies the penalty awarded to him and so, this petition deserves to be dismissed.

Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that there is nothing on record to suggest that petitioner had filed any application for seeking permission to cross-examine the witnesses (whose evidence was recorded on earlier date) before Inquiry Officer on the next date of hearing. There is no material on record on the basis of which, it can be said that petitioner was not allowed to cross-examine the witnesses.

If a notice for appearance is sent under Postal Cover by UPC, then there is a presumption of service unless it is shown that the address at which it is sent is incorrect. So, there is no basis to conclude that the Inquiry conducted against petitioner is vitiated. So far as the stand of petitioner's admission of guilt is concerned, I find that petitioner's version of passengers in question refusing to take bus tickets and of his informing the Checking Team at the next stop, does not incriminate petitioner. So, on the basis of petitioner's so-called admission, the order terminating his service cannot be justified as the so-called admission made by petitioner, is not self-incriminating. However, I find that evidence recorded during the Departmental Inquiry clearly proves that petitioner was found to be sitting with ticketless passengers in question by the Checking Team and when the said passengers had informed the

Checking Team that petitioner had not issued the tickets to them, then petitioner had simply admitted his fault and thereafter had issued unpunched tickets to the Checking Team, who then handed over those tickets to ticketless passengers and had collected the fare from them. In such a situation, non-checking of cash in hands of petitioner is of no consequence. It is not shown as to what was the prejudice caused to petitioner on account of so-called vagueness of the charge levelled against him in the Inquiry, as he was well aware of the case set up against him in the departmental proceedings.

Judicial notice can be taken of the fact that passengers seldom come forward to depose in such department proceedings. The version of petitioner regarding passengers refusing to take the tickets is highly improbable and unacceptable in view of reliable version of the Checking Team. It is pertinent to note that petitioner has nowhere disputed that he was found sitting with the ticketless passengers in the bus, when the Checking Team had boarded the bus in question. Considering the past record of petitioner, this Court finds that the penalty inflicted upon petitioner is amply justified and that impugned Award does not suffer from any error apparent on the face of record.

Consequently, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

MAY 05, 2017

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