

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

Date of Decision: April 27, 2017

+ **W.P.(C) 20683/2005 & C.Ms.13569/05, 6160/17**

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms. Bhakti Pasrija Sethi and Mr.
Moksh Pasrija, Advocates

versus

JASMER SINGH & ANR Respondents

Through: Mr. Ashwani Kumar and Mr.
Puneet Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Petitioner's application under Section 33 (2) (b) of *the Industrial Disputes Act, 1947* stands dismissed vide impugned order of 6th August, 2005 by Industrial Tribunal-II, Karkardooma Courts, Delhi (*hereinafter referred to as the Tribunal*) while holding that the alleged misconduct against respondent-workman herein does not stand established. The facts already noted in impugned order need no reproduction. Suffice to note that respondent-conductor was proceeded against departmentally on account of non-issue of tickets to two passengers although he had collected the fare. On the aforesaid misconduct, respondent was charge-sheeted on 3rd October, 1991 and in the inquiry conducted, he was found guilty of the aforesaid misconduct, and respondent-workman was

removed from service vide order of 5th March, 1992. On the strength of evidence of Inquiry Officer (AW-1), Checking Officer (AW-2), petitioner's Depot Manager (AW-3), who has proved the past record of respondent, and evidence of *Samundar Singh*, one of the members of the Checking Team, impugned order has been rendered.

The precise submission of petitioner's counsel is that the Tribunal has erred in not appreciating the evidence of Inquiry Officer (AW-1) and of Checking Officer (AW-2) and petitioner's Depot Manager (AW-3), who has proved the past record of respondent, and has solely relied upon evidence of *Samundar Singh*, one of the members of Checking Team, to hold that respondent-workman's mis-conduct is not proved and infact from the evidence of *Sant Lal* (AW-2), it stands proved that the Inquiry against respondent was not vitiated. So, it is submitted by petitioner's counsel that impugned order deserves to be set aside and the approval to removal of respondent from service ought to be accorded.

On the contrary, learned counsel for respondent-workman supports the impugned order and submits that even from the evidence of remaining witnesses, it becomes clear that the principles of natural justice have been violated and so, impugned order deserves to be maintained as respondent was not granted any opportunity to defend himself in the Inquiry conducted against him. So, dismissal of this petition is sought by respondent-workman's counsel. In support of his submissions, reliance is placed by respondent-workman's counsel upon Supreme Court's decision in *M.D. Tamil Nadu State Transport Corporation v. Neethivilangan Kumbakonam*, AIR 2001 SC 2309. Reliance is also placed upon Supreme

Court's decision in *J.H. Patel (Dead) by Legal Representatives and Others v. Nuboard Manufacturing Company Limited and Others*, (2014) 11 SCC 371 to submit that even after retirement of the employee, back wages were awarded and so, respondent ought to be granted retiral benefits with back wages. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned order, evidence on record and the decisions cited, I find that it becomes quite apparent from the cross-examination of *Samundar Singh*, one of the members of the Checking Team, that on the basis of his evidence alone, approval to removal of respondent from service cannot be refused. However, I do find from the cross-examination that of Inquiry Officer that respondent had sent an application for adjournment on 19th December, 1991 on account of his sickness and the Inquiry proceedings were adjourned, and so, it cannot be said that inquiry was held in violation of principles of natural justice because respondent-workman was well aware of inquiry proceedings and he did not deliberately participate in it.

On merits, it is evident from the evidence of *Sant Lal* (AW-2) that he had placed on record copy of evidence of concerned passengers, which was countersigned by respondent-conductor and was exhibited as Ex.AW2/2 and the unpunched tickets as Ex.AW2/1, which were given by respondent-conductor to Checking Team at the spot and there is no cross-examination of this witness (AW-2) on the vital aspect of handing over of unpunched tickets by respondent-conductor to the Checking Team and about statement of passengers being recorded and being countersigned by respondent-conductor.

Faced with evidence of *Sant Lal* (AW-2), which is primary evidence, the evidence of *Samundar Singh*, another member of Checking Team, cannot be solely relied upon as it does not dilute the version put forth by *Sant Lal* (AW-2). Rather, the so-called short-comings in the evidence of *Samundar Singh* gets diluted in the face of clinching evidence of *Sant Lal* (AW-2), who has proved on record the statement of passengers recorded at the spot, which is also countersigned by respondent-workman herein. In such a situation, it cannot be said that the misconduct against respondent-conductor does not stand proved. Infact in the Inquiry conducted, the misconduct is proved, and the only question is of adherence to principles of natural justice. As already observed above, respondent-workman was very much aware of the pendency of the Inquiry against him and infact respondent had filed an application on 19th December, 1991 to seek adjournment on the ground of his sickness and so, violation of principles of natural justice cannot be alleged.

Considering the fact that respondent-workman had not cared to find out the next date of hearing, I have no hesitation to hold that respondent had no intention to participate in the Inquiry. Had it been so, then as a prudent person, he would have made efforts to find out the next date of hearing from his representative, who was defending him in the Inquiry. Thus, this Court finds that the Inquiry against respondent does not stand vitiated. Since the version of two passengers recorded at the spot (which is countersigned by respondent-workman) has gone un rebutted, therefore, there is no basis to hold that respondent had not mis-conducted himself or that the Inquiry against him stood vitiated and

so, reliance placed upon decisions in *Neethivilangan Kumbakonam (supra)* and *J.H. Patel (supra)* is of no avail to the case of respondent-workman.

So far as quantum of punishment is concerned, I find that it is commensurate with the misconduct and is amply justified in view of the past record of respondent as is reflected from the extract of respondent's service book on record. The past conduct of respondent reveals that respondent was visited with the penalty of stoppage of increment on one occasion and was suspended on another occasion and was given warning on short deposit in the past. Not only this, respondent was put off duty five times and was undisciplined as he remained absent from duty for 61 days and had availed of excess leave of 64 days without any justification.

In view of aforesaid, impugned order cannot be sustained and is accordingly set aside and petitioner's application under Section 33 (2) (b) of the *Industrial Disputes Act, 1947* is allowed by granting approval to removal of respondent from service. This petition and the pending applications are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 27, 2017

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