

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 19.09.2017

Date of decision:25.10.2018

W.P.(C) 2335/2010

NATHI RAM

..... Petitioner

Through Ms.Satvinder Kaur, Advocate

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Sarfaraz Khan, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner seeks the setting aside of the impugned order and the award dated 20.5.2018 and 11.7.2018 respectively of the Presiding Officer, Labour Court (Fast Track)-XXI, Karkardooma Delhi, in ID No.570/06/97 and seeks his reinstatement in the services of the respondent with full back wages.

2. Vide the impugned order dated 20.5.2018, the learned Presiding Officer, Labour Court (Fast Track)- XXI, Karkardooma Delhi, disposed of the inquiry qua the issue:

“Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?”

against the workman i.e., the petitioner herein and in favour of the management and it was observed to the effect vide the said impugned

order that:

1) *the workman i.e., the petitioner herein had admitted his signatures on the challan Ex.WW1/M1 at point A;*

2) *he also signed the passengers' statement Ex.WW1/M2;*

3) *he received a copy of the charge sheet, along with the checking report, which are Ex.WW1/M3 and Ex.WW1/M4 which bore his signatures;*

4) *that he admitted that he participated in the inquiry proceedings which was Ex.WW1/M5 which bore his signatures at point A to R;*

5) *he submitted that the management witnesses were present during the inquiry proceedings and examined them;*

6) *he was given the option to take the help of the co-worker or Labour Welfare Inspector at the outset of the inquiry proceedings, which he declined;*

7) *the charge sheet was read over to him in verbatim and he denied the charges;*

8) *the statement of the management witnesses Rajbir Singh, Om Prakash and Hari Singh were recorded in his presence and all the witnesses have been cross-examined by him in detail;*

9) *the witness passengers were also called but they did not turn up;*

10) *the workman was given an option to bring defence witnesses which he declined.*

3. The workman was also given an opportunity to give his concluding statement for which he sought time and sufficient time was

granted to him for submitting his concluding statement and it was thus observed vide the impugned order dated 20.5.2008 that there was no violation of the principles of natural justice in conduction of the inquiry by the Enquiry Officer.

4. The learned Presiding Officer, Labour Court (Fast Track)-XXI, Karkardooma, Delhi, also observed that during the course of arguments on the issue as to whether the management had conducted a fair and proper enquiry in accordance with the principles of natural justice, it was contended by the workman that since the ticket was increased from Rs.5 to Rs.6/- there was a quarrel due to which he could not issue tickets which was however belied by the record of the petitioner and the workman admitted his guilt and signed the statement of the passengers.

5. Vide the impugned award dated 11.7.2018, the reference of the industrial dispute between the respondent herein M/s Delhi Transport Corporation, I. P. Estate, new Delhi and its workman Nathi Ram, B. No. 18312, with terms of the reference to the effect:

“Whether removal of Shri Nathi Ram from service is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?”,

was adjudicated.

6. The facts put forth through the impugned award are to the effect that the petitioner herein had been appointed as a conductor with the management i.e., the respondent on 17.11.1982 and was served with the charge sheet on 02.11.1993 for non-issuance of tickets to the passengers and a domestic enquiry was conducted against him which

he had challenged on the grounds of violation of the principles of natural justice. The petitioner also challenged the findings given by the Enquiry Officer on the ground that it did not stand the test of reasonableness and was based on surmises and conjectures. The petitioner also contended that consequent upon the findings given by the Enquiry Officer, he was removed from the services vide order dated 20.10.1994 and has been unemployed since then and thus sought reinstatement in service with full back wages, continuity of service and all consequential benefits.

7. **Qua issue no. 1** which related to the aspect of the enquiry having been conducted by the management in a proper and fair manner in accordance with the principles of natural justice vide the order dated 20.05.2008 it had already been held by the learned Presiding Officer, Labour Court-XXI that the enquiry had been conducted fairly and accordingly in accordance with the principles of natural justice.

8. **Qua issue no. 2** which was: “**as per the terms of reference**”, the allegations levelled against the petitioner herein were to the effect that after his induction into the service of the Corporation/ the respondent as a conductor on 17.11.1982 was served with a charge sheet on 2.11.93 on the allegations that on 22.10.1993 when he was on duty on bus no. 9638 from Ashram to Sohna, his bus was checked by the checking officials at 6 p.m. at Badshahpur and an irregularity had been found that he had collected Rs.36/- from a group of six lady passengers but did not issue them tickets and that his act reflected that he neglected his duties, caused financial loss and cheated the

Corporation i.e. the respondent which was a misconduct under para 19(b), (f), (h) and (m) of the DRTA.

9. It was observed by the learned Presiding Officer, Labour Court-XXI vide the impugned award that its scope for interference was very limited and restricted to exceptional cases where the punishment is not commensurate with the proved charges and whilst holding the punishment awarded was disproportionate, the Court has to consider not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances do come into the decision making process while considering whether the punishment is proportionate or disproportionate. It was further observed to the effect that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently and the misconduct in such a case has to be dealt with iron hands and where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.

10. As per the report of the Enquiry Officer, the charge of allegations as per the charge sheet dated 2.11.1993 was to the effect

“ On 22.10.93, when you were on your work in bus no. 9638 from Ashram to Sohna, the checking staff checked your bus near Badshah Pur and found the following irregularities:-

- (1) That you have not issued six tickets to six women in two groups 3 plus 3, after receiving the set fare of Rs.36.

By doing this act, you have violated your obligations and have caused loss to the corporation by cheating.”

11. The evidence led before the Enquiry Officer is to the effect that the witness Rajbir Singh, TIC No. 3379 in his statement stated that on 22.10.1993, he was on his duty at Jeep No. DDV8056 with Hari Singh, TI and Om Prakash, ATI, to check at the Haryana State on checking duty and the bus No. 9638 was plying from Ashram to Sohna on the upward side and was stopped for checking at Badshahpur village at 6 p.m. where six illiterate ladies were found travelling without ticket and on asking the leader of the first group, the leader stated that those three passengers sat from Gurgaon to Sohna and had paid Rs.18 to the conductor for ticket @ Rs.6 per ticket, but the conductor, i.e., the petitioner herein, did not issue any ticket to them and on asking the other group they also told that the conductor took Rs.18 for the tickets but did not issue any ticket to them. The conductor, i.e., the workman was confronted with the six ladies and he admitted his mistake for not giving the tickets after receiving money from them and on their asking, he gave them six unpunched ticket nos. 001-36232 to 36237 and that the ATI Om Prakash recorded the statements of both the groups and their addresses and thumb impressions were taken on which the conductor signed without any reservation and the thumb impression of the passengers was taken due to their being illiterate. Remarks were given by Om Prakash, ATI on Tabil Conductor Way Bill No. 594317 and the complaint book was closed at page No.3 by Shri R.V. Singh, TI. The Challan bearing No.

125570 was given to the conductor, i.e., the workman in the vehicle which was running from Badshahpur to T.T. Post Sohna under his signatures without any reservation from him and the copy of the same was issued to him. It was further submitted through the checking report that the cash could not be counted due to the running vehicle and Rajbir Singh made it clear that they were standing at Badshahpur Bus Stand. The fare of the DTC from Gurgaon to Sohna is six rupees and that nothing could be stated about the fare of Haryana and there no quarrel was going on and the conductor was sitting on the front seat. The workman/ conductor was confronted with the passengers and he apologized for the same and signed without any remark and gave the unpunched tickets.

12. In response to the evidence of the workman that there was a quarrel between the passengers and himself, who contended that there was a difference between the fare of the DTC and Haryana Roadways, the Enquiry Officer observed to the effect that if it was correct that the passengers were not giving the entire money, a complaint in that regard after the challan should have been given to the Depot Manager in the specified time but there was no such noting and rather the workman stated on seeing the checking staff that the lady passengers tried to give the requisite fare, but the checking staff ordered him not to give the ticket and took the hand block and tore six unpunched tickets which was not found to be true in as much as these unpunched tickets bearing the numbers 001-36232 to 36237 @ Rs.6/- per ticket were available with the petitioner/ workman.

13. Through the written submissions that have been submitted on

behalf of the petitioner, the petitioner seeks to reiterate that on 22.10.2013 at about 6.00 PM, six ladies boarded his bus from Gurgaon and asked for the tickets and the petitioner asked Rs.36/- from them but they offered only Rs.30/- as they were alleging that the fare from Gurgaon to Sohna was only Rs.5/- and that was being charged by Haryana Roadways was Rs.5/- only and that the petitioner had tried to convince them about the increase in the fare but they started quarreling with the petitioner and did not give any cash to the petitioner and just only after 10 minutes at Badshahpur, the checking staff of the respondent boarded the bus and found that those passengers were without a ticket. The petitioner reiterates that no independent witness has been examined and that the checking staff did not ask the driver anything about the incident nor was he cited as a witness. The petitioner further submits that though the checking staff had taken six unblocked tickets from the petitioner they did not count the cash within his cash bag and thus the allegation against the petitioner that he had not issued the six tickets to the passengers after collecting the due fare of Rs.36/- was false and baseless. The petitioner further submitted that there was no previous allegation of embezzlement against him and his previous past record of service was without blemish. The petitioner has further submitted that the termination of his services is too harsh in comparison to the alleged irregularity of Rs.36/- allegedly having been taken by the petitioner without issuance of tickets and the same has resulted into his entire life being ruined.

14. On behalf of the respondent/ Corporation it was contended that

there was no infirmity in the impugned award, and reliance was placed on the verdict of the Hon'ble Supreme Court in "**V. RAMANA VS. A.P. SRTC AND OTHERS**" (2005) 7 SCC 338 which refers to the law as laid down by the Hon'ble Supreme Court in "**B.C. Chaturvedi Vs. Union of India**" (1995) 6 SCC 749 wherein it has been observed to the effect:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

15. The verdict of the Hon'ble Supreme Court in "**V. RAMANA VS. A.P. SRTC AND OTHERS**" (supra) also refers to the verdict of the Hon'ble Supreme Court in "**Union of India Vs. G. Ganayutham**" (1997) 7 SCC 463 wherein it has been observed to the effect:-

"31. The current position of proportionality in administrative law in England and India can be

summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then

the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for [Article 14](#).

16. It has thus been observed by the Hon'ble Supreme Court in "**V. RAMANA VS. A.P. SRTC AND OTHERS**" (supra) vide paragraphs 11 & 12 thereof, which read to the effect:-

"11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the

sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”,

which brings forth thus categorically that the scope of judicial review in matters such as the instant is limited to the deficiency in the decision making process by the Administrator and not to the decision and that if the punishment imposed is found to be shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to re-consider the penalty imposed in the normal course.

17. Reliance was also placed on behalf of the respondent i.e. the DTC on the verdict of the Hon'ble Supreme Court in ***“U.P. State Road Transport Corporation Vs. Suresh Chand Sharma and “Suresh Chand Sharma Vs. State of Uttar Pradesh and Another”***

(2010) 6 SCC 555 to contend that it has been laid down by the Hon'ble Supreme Court thereby that as laid down in "**NEKRTC Vs. H. Amaresh**" (2006) 6 SCC 187 and in "**U.P.SRTC Vs. Vinod Kumar**" (2008) 1 SCC 115 that punishment should always be proportionate to the gravity of misconduct and the only punishment for corruption/misappropriation, held thereby, is dismissal and that in these circumstances, the punishment of dismissal from service of the petitioner herein was not in any manner disproportionate to his proved delinquency. Through the said verdict, reliance was also sought to be placed on behalf of the respondent on the observations of the Hon'ble Supreme Court in paragraphs 14 to 17 and 20 of the said verdict to contend that merely because the cash with the employee had not been checked is no ground to set aside the impugned order.

18. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "**Prem Nath Bali Vs. Registrar, High Court of Delhi and Another**" AIR 2016 SC 101 to similar effect to contend that once such discretion has been exercised by the Appointing Authority in inflicting the punishment (whether major or minor) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate cases substitutes the punishment.

ANALYSIS

19. On a consideration of the averments and contentions made on behalf of either side, it is essential to observe that the inquiry conducted by the management i.e. the respondent herein in relation to

the incident of the date 22.10.1993 for which the petitioner herein was charge- sheeted for his having not issued six tickets to six women despite having received the set fare of Rs.36/-, whilst he was working as a conductor of bus bearing No.9638 from Ashram to Sohna, has apparently been rightly held vide order dated 20.05.2008 of the Presiding Officer, Labour Court (Fast Track)-XXI, Karkardooma Delhi to have been held fairly and appropriately in accordance with the principles of natural justice. This is so inasmuch as the workman i.e. the petitioner was given a full opportunity to put forth his contentions before the Inquiry Officer through the form of production of his witnesses who despite having been called did not turn up and coupled with the factum that the petitioner did not avail the opportunity given by the Inquiry Officer to produce defence witnesses, coupled with the factum that the petitioner had also been granted an opportunity to take the help of a co-worker or Labour Welfare Inspector which he too declined, it is held that the inquiry conducted against the petitioner was in accordance with the principles of natural justice and had been fairly conducted.

20. The available record as held by the Enquiry Officer and as held vide the impugned award dated 11.07.2008 of the Court of the learned Presiding Officer, Labour Court (Fast Track)-XXI, Karkardooma, Delhi in ID No.570/06/97 establishes that on the date of the incident, the petitioner herein despite receiving the payment of bus tickets of six passengers whilst he was aboard the bus as a bus conductor failed to issue the bus ticket to these six persons and also put his signatures on the Challan Ex.WW1/M1 and he has also signed the passengers

statements Ex.WW1/M2 and the checking report Ex.WW1/M4. The record also indicates that these unpunched tickets bearing no.001/36232 to 36237 for Rs.6/- each and per ticket were available with the petitioner at the time when the checking staff had conducted the checking on the bus in question and six women had stated that they had paid Rs.6/- each which was given to two groups in the form of Rs.18/- each by their two group leaders but despite the same no ticket had been issued by the petitioner.

21. On behalf of the petitioner, it has been contended that the passengers were not called in the inquiry and the cash available with the petitioner had not been checked and counted at the time when he was challaned and it is thus contended by the petitioner that the inquiry report and the impugned order were both fallacious. It is essential to observe that the inquiry report indicates that though at the instance of the petitioner during the inquiry proceedings, the passengers had been called but they did not turn up and the petitioner had also been given an opportunity to bring forth the defence witnesses which he declined. However, the inquiry report indicates that the statements of six passengers who were present had been recorded and that the petitioner had signed their statements as per which though they had paid the fare of Rs.6/- each, no tickets had been issued to them by the petitioner and unpunched tickets as observed hereinabove of the denomination of Rs.6/- were recovered from the petitioner. In these circumstances, it is held that the petitioner having been found in possession of six unpunched tickets despite his having collected money from the passengers is wholly established.

The copies of the unpunched tickets are also borne out to be in existence as Ex.WW1/M1. The inquiry proceedings indicate that apart from the instant case, the petitioner herein was found to have previously not rendered the information of the bus tickets issued by him and had thus been directed to be placed under suspension even earlier for a period from 24.06.1993 and was then released from suspension after being censured for selling bogus tickets.

22. The verdict of the Hon'ble Supreme Court in ***"State of Haryana Vs. Rattan Singh" (1997) 2 SCC 491*** categorically lays down that merely because the statement of passengers were not recorded, the inquiry proceedings cannot held to be invalid and as laid down by this Court in ***"Delhi Transport Corporation Vs. Ishwar Singh & Ors."*** & ***"Delhi Transport Corporation Vs. N.L.Kakkar and Ors."*** that the production of passengers either in a domestic enquiry or before the Labour Court is not at all necessary and the testimony of the checking officials or Inspector was sufficient to give the information. The verdict of the Hon'ble Supreme Court in ***"U.P. State Road Transport Vs. Suresh Chand Sharma" (2010) 6 SCC 555*** also makes it apparent that merely because the cash available with the petitioner had not been checked, would not suffice to dislodge the veracity of the testimony of other witnesses of the petitioner examined. The factum that the petitioner did not issue the punched tickets to six lady passengers despite receiving the fare from the said persons, also brings forth the aspect of misappropriation of public money by the petitioner.

23. In the circumstances the contention raised on behalf of the petitioner that the disciplinary action taken against him was wholly

harsh and disproportionate, cannot be accepted in view of the verdict of the Hon'ble Apex Court in ***"V. RAMANA VS. A.P. SRTC AND OTHERS"*** (supra).

24. The verdict of this Court in ***"Delhi Transport Corporation Vs. N.L. Kakkar & Ors."*** in CW No/1485 of 1979 decided on 17.03.2004 lays down categorically to the effect:-

"... ... even if the passenger witnesses are not examined and if there was enough other evidence to prove the misconduct of the employee, the inquiry is not vitiated. In the present case also, there is a clear finding that the checking officers were examined and they gave evidence to prove the misconduct and the statement of the passenger was recorded in the presence of the petitioner. Thus, even if the statement of the passenger witness is held to be inadmissible since there was other evidence, the order cannot be held to be invalid."

25. Vide para 29 of the said verdict, it has been observed to the effect:-

"29. It is quite clear that the consistent view of this Court over the last few decades has been that the non-production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic enquiry should not be interfered with so long they are based on some evidence. The value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal."

to similar effect are the observations by this Court in Para 39 of the said verdict which reads to the effect:-

"39. A perusal of the above judgments of various High Courts clearly shows that the production of

passengers either in a domestic enquiry or before the Labour Court in an industrial dispute is not at all necessary. Indeed, I am of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the enquiry officer or the Labour Court causing them unnecessary inconvenience. One has to take a pragmatic view of the situation as well as consider the amount of effort and energy that may have to be expended in producing the passengers as witnesses. DTC carries passengers who are residents of not only Delhi but also of other States. Is it practicable to expect a passenger, who goes back to his State after a trip of Delhi, to appear before an Inquiry Officer for confirming a statement already given by him to the checking staff? As our Division Bench has cautioned us, one has to take a commonsense approach to the whole problem and not allow legal technicalities to come in the way.”

26. The observations of this Court in “**Delhi Transport Corporation Vs. N.L. Kakkar & Ors.**” (supra) in Para 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, reproduced herein below:-

“21. Finally, with regard to the third contention, the Supreme Court held that 're-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal.'”

22. Two facts are noteworthy in the decision of the Supreme Court. Firstly, the only evidence against the conductor was what was told by the passengers to the checking staff. The passengers did not enter the witness box, nor did they give written statements to the checking staff. Secondly, the co-conductor supported the conductor and apparently entered the witness box. Yet

the Supreme Court accepted the finding of the domestic inquiry and reversed the conclusion of three Courts.

23. Soon after the decision of the Supreme Court in Rattan Singh, a Division Bench of this Court had occasion to deal with a similar situation, wherein again, both the issues before me had also arisen. In Delhi Transport Corporation vs . Presiding Officer, Additional Industrial Tribunal MANU/DE/0076/1979 : 16(1979)DLT220 , the Division Bench noted two competing principles, that is, non-reviewability of a finding of fact based on evidence and violation of the rules of natural justice. The Division Bench laid down the law on page 224 of the Report and then referred to and relied upon Rattan Singh in support of its conclusions. This is what the Division Bench said:

"The alleged violation of natural justice pre-supposes that it was necessary that the passenger witness should have been made available for cross examination. This assumption is baseless. Firstly, the notice by registered post sent to the witness was received back with the remark that the witness had left the address and the notice could not, Therefore, be served on that address. This made it impossible for the Inquiry Officer to serve the passenger witness. Secondly, the question whether the hear-say evidence of the checking staff about the statement of the passenger should have been admitted in evidence by the Inquiry Officer because of the impossibility of enforcing his attendance which may arise in a suitable case did not arise in this case. Even when no such impossibility of enforcing the attendance of the passenger was proved the Supreme Court observed in State of Haryana and another v. Rattan Singh"

24. On the question of interference with a finding of fact arrived at in a domestic inquiry, it was held :

"Therefore, in the present case, the principle (sic) finding of fact of the Inquiry Officer which is based on some evidence independent of the written statement or oral evidence of the passenger witness is unassailable."

25. On page 225 of the Report, the Division Bench made an important observation, which I think should be taken serious note of. It was said:

"We may take judicial notice of the fact that the checking of the conductors of the buses of the appellant is a salutary practice. Its effectiveness cannot be defeated by technicalities. When the misconduct is proved by the common sense standards before the Inquiry Officer, legal ingenuity and technicalities should not be allowed to impugn the common sense findings and defeat the operation of the system of checking."

26. The above Division Bench decision was followed by a learned Single Judge of this Court in Sultan Singh vs. Delhi Transport Corporation 1987 1 LLN 399. In that case, grant of approval under Section 33(2)(b) of the Act was challenged by the petitioner on the ground that the passenger witness who had given a statement against the petitioner was not examined and so the petitioner did not have any opportunity to cross-examine this witness and, Therefore, the inquiry against him was vitiated. The learned Judge also referred to Mahinder Singh vs. Presiding Officer (CW No. 136 of 1975 decided on 10th February 1979) and observed that in these cases, it had been held that:

"... .. even if the passenger witnesses are not examined and if there was enough other evidence to prove the misconduct of the

employee the inquiry is not vitiated. In the present case also, there is a clear finding that the checking officers were examined and they gave evidence to prove the misconduct and the statement of the passenger was recorded in the presence of the petitioner. Thus, even if the statement of the passenger witness is held to be inadmissible since there was other evidence, the order cannot be held to be invalid."

27. Shyam Sunder vs. Delhi Transport Corporation (CW No. 922/76 decided on 5th February, 1996) dealt with an identical issue. In that case, the learned Single Judge referred to DTC vs. Presiding Officer (CW No. 7/79 decided on 16th July, 1979), the Division Bench decision mentioned above and Rattan Singh and held that since the inquiry officer based his findings on the examination of the checking staff (who were also cross-examined), there was independent evidence to link the petitioner with the charges leveled against him. Consequently, the statement of the passengers, not being the sole material against the petitioner, the domestic inquiry was not vitiated.

28. The learned Judge also held that:

"It is settled law that this court is not competent and has no jurisdiction to reappraise the evidence on record and come to a different finding from that of the Enquiry Officer."

29. It is quite clear that the consistent view of this Court over the last few decades has been that the non-production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic enquiry should not be interfered with so long they are based on some evidence. The value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal.

Law laid down by some other High Courts.

30. What is the view of some other High Courts? The view of the Karnataka High Court is clear from three Division Bench decisions. In Karnataka State Road Transport Corporation vs. Sathyanarayanan 2003 2 LLJ 301, a conductor failed to issue tickets to a group of seven passengers despite collecting the fare from them. With a view to misappropriate the amount, he also closed the waybill. After a disciplinary enquiry, the conductor was found guilty and dismissed but the Labour Court held that the charge against the conductor was not established. A learned Single Judge upheld the view of the Labour Court. The Division Bench concluded that simply because the passengers, whose statements were recorded by the checking officials, were not examined in the domestic enquiry, it cannot be said that the evidentiary value of those statements is lost. It was also found that to cover up his misdeeds, the conductor had closed the waybill. The Division Bench held that the misconduct by the conductor was proved ”,

bring forth categorically that non-production of the passengers is not fatal also as categorically observed by this Court to the effect that it is not practicable to expect a passenger who goes back to his State after a trip to Delhi, to appear before the Inquiry Officer for confirming the statement already given by him to the checking staff.

CONCLUSION

27. In the totality of the circumstances of the case, it is thus held that there is no infirmity in the impugned award dated 11.07.2008 in ID No.570/06/97 as passed by the learned Presiding Officer, Labour Court (Fast Track)-XXI, Karkardooma, Delhi. Taking the same into

account, the present petition and the accompanying application are dismissed.

ANU MALHOTRA, J

OCTOBER 25, 2018
SV/NC

