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

+ **LPA 270/2016**

PURAN CHAND

..... Appellant

Through: Mr. Sourabh Ahuja, Advocate.

versus

THE MANAGEMENT OF M/S DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Fahad Imtiaz, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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12.11.2018

1. This appeal under Clause 10 of Letters Patent Appeal read with Delhi High Court Act and Rules framed thereunder is directed against the judgment dated 3rd February 2016 passed in W.P. (C) 198/2004 whereby the Learned Single Judge has allowed the writ petition and set aside the order dated 26th May 2003 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts. In allowing the writ petition, the learned Single Judge has granted approval to the management on its application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

Background

2. The brief facts relevant for disposal of the present appeal are that on 15th

July 1993, the Appellant, who was working as a conductor with the Delhi Transport Corporation ('hereinafter referred to as the 'Respondent '), was on duty on Bus No. 9069, plying on Route No. 46. A surprise check was conducted by the checking staff of the Respondent and the Appellant was found to have committed certain irregularities in issuing tickets; possession of half punched tickets; shortage of ticket earnings etc. The checking staff prepared a checking report and a **Challan**, both dated 15th July 1993, relating to the above mentioned irregularities.

3. On 3rd of August 1993, a charge sheet was served upon the Appellant alleging the following charges/irregularities:

"1. That on 15.07.1993, you were performing your duty with Bus. No. 9069, plying on Route No. 46. Your bus passengers were checked alighted by the checking staff at Police Station, Pahar Ganj Bus Stop and found a group of 15 passengers from whom you have already collected due fare @ Rs. 2/- per passenger and did not issue any ticket to them.

2. That on confrontation with the group leader you admitted your fault and on demand of 15 un-punched tickets of Rs. 2/- denomination each, by the checking staff, you tried to give the punched tickets. As such the tickets surrendered by you bearing No. 946/92423 to 37 of Rs. 2/- denomination are in half punched position.

3. That on checking of the cash by the checking staff it was found short by Rs. 27.50 paisa than the traffic earning in your possession."

4. The Appellant submitted his reply and denied all the charges. The Respondent thereafter conducted an inquiry and the Inquiry Officer vide his report dated 30.11.1993 concluded that all the three charges leveled against the Appellant were found to be proved.

5. On consideration of the Inquiry Report, management of the Respondent served a show cause notice on the Appellant, proposing to impose upon him the penalty of “removal from services”. The said show cause notice was replied to by the Appellant and on consideration of the said reply, the Depot Manager of the Respondent vide order dated 7th July 1994 confirmed the provisional opinion to impose the penalty of removal from services of corporation on the Appellant with immediate effect.

6. The Respondent filed an application under Section 33(2)(b) of the Act before the Industrial Tribunal-II, Delhi. The Appellant filed reply/written statement to the application and denied all the allegations. The Appellant inter-alia contended that the inquiry held against him was in violation of the principles of natural justice, in so much as no list of witnesses or documents were supplied to him.

7. On the basis of the pleadings of the parties, vide order dated 12th January 1996, a preliminary issue was framed to the following effect:

“Whether the applicant held a legal and valid inquiry against the Respondent”.

8. In order to prove the preliminary issue, Respondent examined witness Navtej Singh. The said witness during the cross examination admitted that the Appellant had requested for the supply of the Hindi translation of the charge sheet but could not confirm if the same was supplied to him or not. He further admitted that no passengers were examined during the inquiry to corroborate the irregularities noted in the **Challan**. He also admitted that no attempt had been made to collect the address of any of the passengers and

that no statement of the checking staff was recorded.

9. On 16th August 2002, the Industrial Tribunal gave its decision on the Preliminary issue and held that the inquiry proceedings were improper and were vitiated.

10. The matter proceeded further and then additional issues were framed to the following effect:

- "1. Whether the Respondent committed the misconduct as alleged against him?*
- 2. Whether the Appellant remitted full one month's wage to Respondent at the time of his dismissal from service?*
- 3. Relief."*

11. On the aforesaid issues, trial was conducted. Respondent examined Shri Ram Kishan (AW-1) who relied upon Ex. AW-1/1 to AW-1/4 and Shri D.K. Shukla (AW-2) who proved documents on issue No.2 .

12. The Industrial Tribunal vide order dated 26th May 2003, dismissed Respondent's application under Section 33(2)(b) of the Act. Thus denying permission for removing the Appellant from services. The said order records findings on 1st and 3rd issue, against the Respondent. Aggrieved with the dismissal of the application, the Respondent challenged the final order dated 26th May 2003, by filing W.P.(C) No. 198/2004.

13. The said writ petition has been allowed in favour of the Respondent. The Learned Single Judge has held that the allegation of misconduct qua the

Respondent-workman was proved on the basis of the evidence on record. While arriving at this finding, the Learned Single Judge has held that Ex.AW 1/3 i.e. **Challan No. 59635**, that was prepared at the time of inspection was sufficient to prove the charges against the Appellant. Appellant's signature on the aforesaid **Challan** were held to be acceptance of the allegations recorded in the said document. On this basis, Learned Single Judge believed the contents of the aforesaid document to be true and correct and allowed the petition.

Submissions

14. Learned counsel for the Appellant argues that the Learned Single Judge ought not to have re-appreciated the evidence while exercising Article 226 of the Constitution of India.

15. He submits that the Learned Single Judge failed to notice that order dated 16th August 2002 holding that the inquiry was vitiated had attained finality. The learned counsel submits that in view of the above, the writ petition ought not to have been entertained. The learned counsel argued that none of the allegations against the Appellant stood proved. He submits that the checking staff did not record the names or statements of any of the passengers mentioned in the **Challan**. Further, the said passengers were also not produced as witnesses before the Industrial Tribunal. He also argued that in the absence of any independent witnesses produced before the Industrial Tribunal, the penalty of removal from services ought not to have been inflicted. Lastly, the counsel for the Appellant pointed out the inconsistencies in the charges leveled against the Respondent, in as much as

that on the one hand it was alleged that the Appellant has collected the fare of Rs. 30 from fifteen passengers and on the other hand, Respondent alleged shortage of Rs. 27.50 paisa. His argument is that if the Appellant would have collected the fare without issuing the tickets, then the cash ought to have been surplus with the Appellant. Relying on the aforesaid contradictions, it is contended that the Appellant has been falsely framed.

16. The learned counsel for the Respondent on the other hand, argued that the signatures of the Appellant on the **Challan** (AW 1/3) are sufficient to establish the culpability of the Appellant. He submits that the Learned Single Judge has rightly come to the finding of misconduct on the part of the Appellant on the basis of the aforesaid document. He submits that the Appellant has not put any question to AW -1, during his cross-examination, relating to the aforesaid document (Ex. AW 1/3). He further submitted that the Respondent has also not denied his signatures on Ex. AW1/3 and thus, it would constitute sufficient evidence to establish that the Appellant was guilty of the charges.

Findings

17. The Learned Single Judge has reversed the findings of the Industrial Tribunal on the ground that there is sufficient evidence on record to prove his misconduct. While exercising jurisdiction under article 226 of the Constitution of India, the court normally does not venture into re-appreciating the evidence. However, it does not mean that court is precluded from doing so if it finds that the order impugned is causing grave injustice or there is miscarriage of justice. Moreover, the writ petition before the

Learned Single Judge was in the nature of appeal challenging the order of Industrial Tribunal and the court could certainly correct errors. Therefore, we do not accept the argument of the appellant that the Learned Single Judge did not have the jurisdiction to look into the evidence recorded before the Industrial tribunal. However, the question here is whether Ex. AW1/3 i.e. the **Challan**, the only piece of evidence relied upon by the Respondent, ought to have persuaded the court to reverse the findings of the Industrial Tribunal. The Learned Single Judge has held that the said document, read with statement of Ram Kishan, who exhibited the same, is sufficient evidence to prove the charges against the Appellant. Before proceeding to discuss the aforesaid document, it would be apt to refer to the law relating to proof on the subject matters relating to departmental proceedings. The Apex court in **High Court of Judicature of Bombay v. Udaysingh** reported in (1997) 5 SCC 129, held:

"The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct."

18. Further in **Nirmala J. Jhala v. State of Gujarat** reported in, (2013) 4 SCC 301 the Apex court observed:

"17. In view of the above, the law on the issue can be summarized to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply."

19. The aforesaid decisions of the Supreme Court clearly show it is well settled that the doctrine of "proof beyond reasonable doubt" has no application insofar as departmental proceedings are concerned. Courts

usually rely upon the principle of "preponderance of probabilities" to arrive at the conclusion on the charges against the delinquent. Even if the aforesaid principle is applied, there still must be cogent material on record that is sufficient to reach the conclusion of the delinquent's misconduct. In the present case, it has to be borne in mind that the misconduct arises out of grave and serious allegations. The irregularities stated in the **Challan** are based on the statements of the passengers who were travelling in the bus at the time of surprise checking. Curiously, the management has chosen not to produce a single independent witness during inquiry or even before Industrial Tribunal. In fact at the time of checking no names or statement of witnesses/passengers were recorded by the checking staff. In order to prove its case, the management produced only two witnesses, namely, the checking staff, Ram Kishan (AW-1) and Shri. D.K Shukla (AW-2). Testimony of AW-1 has been referred as "ocular statement". Shri Ram Kishan attempted to prove the allegations against the Appellant by filing an affidavit, which avers in the following terms:

"1. That I was the reporter to this case. The workman, was on duty on bus No. DL-1P 9069 on 460N route on dated 15.7.93. I along with S/o Shri Rajvir Singh, T.I. and Ramphool were on checking duty and at about 05:30 hrs. when the bus of the workmen was checked.

*2. That the workman was found for non-issuing of tickets after collected fare from a group of fifteen passengers. When confronted before the passengers he admitted his fault and surrendered 15 unpunched tickets and tried to punch them but not punched against his signatures on the back of the tickets. The cash was checked found short of Rs.27.50 paise and not signed any authority on his private cash. The Workman has signed on the **Challan** also. And given to the workman. The workman caused loss to the Corporation. The checking report was prepared. The copies of report, **Challan**, voucher, and unpunched tickets are EX. AW1 /1 to 4.*

3. That my above statement is true as per records of DTC."

20. During his cross examination, he stated as under:

"It is correct that at the time of checking I had not recorded the statement of any passenger. I cannot tell the name of the passenger who made the allegation that he was not issued ticket after taking the fare by the conductor. It is correct that the fare was not paid in my presence. I had not recorded the statement of any passenger from the bus to verify the allegation levelled against the conductor. It is wrong to suggest that in fact no passenger was found without ticket nor any passenger made any allegation against the passenger. It is wrong to suggest that I am deposing falsely."

21. We note that Ram Kishan states "**I was the reporter to this case.**" He is thus, the Complainant. On the strength of the report prepared by him, the Management has charge sheeted the workman. Thus, in our opinion, the charges leveled against the Appellant therefore, cannot be said to be proved on the basis of his testimony alone. The Respondent ought to have produced credible independent witnesses before the Tribunal to sustain the charges. The learned Single Judge has also erred in observing that Shri Ram Kishan's statement is the ocular statement which constitutes sufficient evidence. On the contrary, Shri Ram Kishan as observed above, was not a witness to the alleged acts of irregularities on the part of the workman. He is the reporter/prosecutor. The testimony of the said witness also clearly manifests that during his cross examination, he could not give any details or particulars of the passengers. The **Challan** was indeed exhibited by way of his statement, but that alone is not sufficient. During the cross examination, the witness could not give convincing reply with respect to any of its content. He also admitted that he had not recorded the statement of any of the passengers. He further admitted that he was not a witness to the act of

issuance of tickets or collection of the fare from the passengers.

22. The learned Single Judge in our opinion fell in error by holding that since the **Challan** bears signature of the Appellant, he cannot take any defense of denial qua the contents thereof. The observations of the learned Single Judge on this in para 15 and 16 are as follows:

*"15. The **Challan** No. 59365. i.e., Ex. AW-1/3, is an independent document and even if the passenger witnesses could have been examined the same would be saying so and not otherwise unless the respondent-workman takes otherwise plea of his signature on the aforesaid **Challan**. Therefore, the complainant's, i.e., Shri Ram Kishan, ocular statement along with the signed **Challan** by the respondent-workman on the record constitute sufficient evidence to show the misconduct as alleged on the part of the respondent-workman in the instant case."*

*"16. While going through the **Challan**, i.e., Ex. AW-1/3, which bears the signature of the respondent-workman, and the respondent-workman thereafter not taking any defence qua against the contents thereof, nothing else brings to the mind of this Court to believe that the contents therein are true and believable to be true, particularly in the presence of the ocular supportive statement of Shri Ram Kishan, A.T.I. The judgment relied upon by the respondent-workman."*

23. The Learned Single Judge has considered the signatures of the Appellant on the **Challan** as an admission of guilt. The **Challan** is in fact the version of the management, which has to be proved by way of independent witnesses and material. The Appellant is correct in pointing out the inconsistency in charge No.1 and 3. What would have been the deposition of the passengers cannot be assumed. Furthermore, signatures on a document cannot be considered as acceptance of its contents as held by the Supreme Court in *H. Siddiqui v. A. Ramalingam* reported in (2011) 4 SCC 240 as under:

"14. In our humble opinion, the trial court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value."

24. The Learned Single Judge has also erred in appreciating the concept of burden of proof. Section 102 and 103 of the Indian Evidence Act states:

"102. On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

"103. Burden of proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

25. It is settled law as held by the Supreme Court in ***Primal v. Veena*** reported in (2011) 3 SCC 545 that,

"19. The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue."

26. It was for the management to prove the charges. Burden of proof on the issues framed remained on the management. The onus of proof could have shifted on to the workman, if the management had adduced credible independent evidence. This did not happen in this case. The learned Single

Judge erred in observing that AW-1/3 is an independent document and the same is to be read against the delinquent even if the independent witnesses were not examined. If the observations of the Learned Single Judge in para 15 and 16 are allowed to be sustained, it would amount to shifting the burden on the Appellant to prove that he was not guilty of the alleged irregularities.

27. Therefore, we have no hesitation in holding that the findings of the learned Single Judge are erroneous and accordingly, the impugned judgment is set aside. The appeal is allowed.

28. We may note that the Appellant has superannuated on 31.12.2013. Accordingly, the Respondent is directed to pay all the retirement benefits to the Appellant and release the withheld wages, if any.

SANJEEV NARULA, J

S.MURALIDHAR, J

NOVEMBER 12, 2018

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