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

Reserved on: 22nd November 2018

Decided on: 5th December 2018

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LPA 533/2017

MAHENDER PAL

..... Appellant

Through: Mr. Ravindra S. Garia, Advocate.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. Purvesh Buttan with Mr. Fahad
Imtiaz, Advocates

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

JUDGMENT

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 5th May 2017 passed by the learned Single Judge of this Court dismissing the Appellant's W.P.(C) 2914/2007 and thereby upholding an award dated 11th July 2006 by the Labour Court holding the Appellant's removal from service of the Respondent, the Delhi Transport Corporation ('DTC'), to be legal and justified.

2. The Appellant was employed as a Conductor with the DTC on 22nd June 1985. He was on duty as Conductor on Route No.304 (Mela Special) on 23rd November 1992. The bus started from Pragati Maidan and upon reaching National Stadium, a group of five passengers boarded the bus and sat on the front seats. According to the Appellant, when he approached

them for tickets, they said that they would buy them in due course. The bus had then hardly moved 100-150 metres ahead when near the Zoo bus stop, a Checking Team signalled the bus to stop and found that the aforementioned five passengers did not have tickets. The Team then seized un-punched tickets from the Appellant and got the five passengers to pay Rs.3/- each (total Rs.15/-) to the Appellant.

3. A report dated 24th November 1992 was made by the Checking Team against the Appellant alleging that he had deliberately omitted to issue tickets to the passengers in question. Thereafter, on 15th December 1992, making reference to the report of the Checking Team, a charge sheet was issued to the Appellant wherein, *inter alia*, it was alleged as under:

“That on 23.11.1992, while performing duty with bus No. 9467 of Route No. 304 Ext. (Mela Spl) from Pragati Maidan to Lajpat Nagar. You did not issue tickets to a group of 5 passenger.

You were not sitting on your seat.

The Checking officials while checking the bus found the irregularity on your part and not paid Rs. 15/- to you against unpunched ticket Nos. 506-17316 to 17320, five tickets @ Rs. 3/- each.

It appeared a malafide intention of stealing of Govt. revenue of your part. The above act thus, constitutes mis-conduct within the meaning of para 19 (h) & (m) of the standing orders the conduct of D.T.C. employees.”

4. In a reply dated 23rd December 1992, in response to the charge sheet issued against him, the Appellant pointed out that despite apprising the

Checking Team of the correct factual position, they did not listen to him. He claims therein that as he reached near the five passengers in question, the bus had travelled only around 100-150 metres when the Checking Team boarded the bus at the Zoo bus stop and snatched the ticket book from him. He further states that even though the passengers' objected to their actions and the Appellant asking them to, the Checking Team did not record any of the passengers' statements. He pointed out that as per the rules of the DTC, the Checking Team could take un-punched tickets "only after third fare stage". Further, the checking staff had given the Appellant "the fare itself after recovering the same from the passengers". This meant that he did not misappropriate the revenue of the DTC. He submitted that the allegations made against him were false and baseless.

5. The Appellant then points out that the DTC purportedly sent him intimation about inquiry proceedings which were to take place on 26th April 1993 by UPC even though the norm was that the workman on duty was to be informed of such proceedings by the Depot Manager. He claims that said intimation never reached him and, as a result, he did not attend the proceedings on 26th April 1993 during which two witnesses of the management were examined in his absence.

6. Thereafter, upon receiving intimation of the inquiry proceedings, the Appellant appeared before the Inquiry Officer ('IO') on 26th May 1993. However, he states that he was not informed that two witnesses of the management had already been examined on the previous date. He was also not supplied with copies of the statements made by said witnesses thus

depriving him of the opportunity to cross-examine them in aid of his defence. The charges were read to the Appellant and he was asked to produce witnesses in his defence which he was unable to do. It was then noted that the Appellant had “stated that whatever allegations levelled against him are correct”. The Appellant’s explanation of what had transpired was immediately set out thereafter in the report itself. Nevertheless, the IO concluded that the allegations against the Appellant were true and correct because he “had already admitted the allegations levelled against him in his statement without any undue pressure or influence”.

7. In the statement made by him during the inquiry proceedings, the Appellant had insisted that despite him repeatedly asking them to buy tickets, the passengers in question, who boarded the bus at National Stadium bus stop, did not do so. He then stated that the Checking Team which boarded the bus at Zoo bus stop, which is 100-150 metres down the road, seized the ticket book from him and issued five un-punched tickets to the passengers in question and issued a *challan* against the Appellant.

8. The Appellant pointed out that this was the first *challan* issued against him in eight years of service. He further stated that the passengers in question, so as to save themselves from further inquiry, did not give anything in writing or even their addresses to the Checking Team. He states that when the Checking Team had failed to collect such details from those passengers, “how could I, who is merely a conductor?”

9. The Disciplinary Authority (‘DA’) considered the inquiry report and the

explanation of the Appellant and, by an order dated 19th January 1994, inflicted the penalty of removal from service upon the Appellant with effect from 20th January 1994.

10. The Appellant then approached the Labour Court in Industrial Dispute No.679/1996. In his affidavit dated 14th October 1998, he pointed out, *inter alia*, that during the course of inquiry proceedings, the IO did not even bother to call for any of the defaulting passengers or the particulars of these passengers were never informed to him so that at least a few of them could have been called before the IO. He maintained that the inquiry was illegal and arbitrary. In his deposition, he maintained that he had not received intimation about the inquiry on 26th April 1993. He further points out that even MW-1 admitted in his cross-examination that no preliminary inquiry appeared to have been conducted before entrustment of the matter to the IO.

11. The Labour Court pronounced its decision on 22nd May 2006, upholding the order of removal of the Appellant from service by holding that there was no perversity in the report of the IO. In the order itself, there was no discussion of any of the contentions of the Appellant.

12. The Appellant then filed W.P.(C) 2914/2007 which came to be decided by the impugned judgment dated 5th May 2017. The learned Single Judge observed:

“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.”

13. As for the Appellant’s purported admission of guilt, the learned Single Judge found that “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”. Nevertheless, the learned Single Judge held 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.”

14. According to the learned Single Judge, the Appellant had failed to show what prejudice was caused to him “on account of the 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”.

15. The learned Single Judge observed that the version of the Appellant about the passengers refusing to take the tickets “is highly improbable and unacceptable in view of reliable version of the Checking Team”. Further, it was held that considering his past record, the penalty inflicted on the

Appellant was fully justified.

16. This Court has heard the submissions of Mr. Ravinder S. Garia, learned counsel for the Appellant, and Mr. Purvesh Buttan, learned counsel for the DTC.

17. At the outset, it requires to be noticed that there is a fatal flaw in the charge sheet itself which has been completely overlooked by the Labour Court as well as the learned Single Judge. The charge sheet alleged that the Appellant harboured a “*mala fide* intention of stealing Government revenue”. This was a case where the allegation was that the Appellant had failed to issue five tickets. This was not a case where he had collected money and not issued tickets or even that he had issued tickets but had not collected money for the same. How the Appellant could then have been accused of intending to steal Government revenue is not explained. The other stark facts are that the distance between the National Stadium bus stop, where the five students boarded the bus, and the Zoo bus stop, where the Checking Team got onto the bus, is hardly 100 metres. Therefore, it could hardly be said that the Appellant deliberately failed to issue tickets to the five passengers. Therefore, in the considered view of this Court, the entire charge sheet itself was fatally flawed to begin with.

18. The further factor to be noticed was that those five passengers were issued tickets by the Checking Team itself and they paid Rs.3/- each which was collected by the Checking Team and given to the Appellant. There was, therefore, no loss of revenue whatsoever. This was not a case where the

Appellant was found with money in excess of what should have been collected against the tickets issued by him. It was also not a case that the money in his possession was less than what should have been collected against tickets issued by him. In other words, this is not an instance where any loss of revenue to the DTC was detected. The question of the Appellant harbouring an intention of stealing Government revenue was, therefore, not made out even from the demonstrated facts.

19. The next factor to be noted was the purported admission of guilt by the Appellant which is wholly inconsistent with the explanation offered by him, both in his reply to the charge sheet at the first instance and again in his final statement made before the IO. If all the facts set out by the DTC itself do not show any intention on the part of the Appellant to steal Government revenue, the question of him admitting any such guilt simply does not arise. Therefore, the recording by the IO of the admission of guilt by the Appellant is perverse and ought to have been ignored by the Labour Court as well as the learned Single Judge.

20. The Court has also perused the counter affidavit filed by the DTC before the learned Single Judge and finds that there is no mention therein of any past instance of the Appellant being found guilty of any charge. Therefore, the observations of the learned Single Judge that “considering the past record of Petitioner”, the penalty inflicted upon him was “amply justified” is plainly without basis. The DTC has not come forward in the present proceedings to show any past record of the Appellant that justifies this extreme penalty of termination of service.

21. In its counter affidavit filed in the writ proceedings before the learned Single Judge, the DTC relied on a number of Supreme Court judgments with regard to the conduct of bus conductors. Although the facts in the present case are clearly distinguishable, this Court nevertheless proposes to discuss the case law hereafter.

22. In *State of Haryana v. Rattan Singh* (1977) 2 SCC 491, the Supreme Court dealt with a case where a bus conductor was proceeded against because it was found that four passengers had alighted without tickets and 11 passengers on the bus were found without tickets although they claimed to have paid the fare. While upholding the termination of employment, the Supreme Court found it fit to direct that “the State shall pay the Respondent all that is due to him under the industrial law as an employee when his services are terminated without penal consequences”. Here, the passengers found without tickets had not paid any fare. They had boarded the bus only in the previous stop. No extra cash was found on the Appellant. The passengers were issued tickets by the checking team. Their statements were not recorded. Consequently, the decision in *Rattan Singh* (*supra*) is distinguishable on facts.

23. The decision in *Rattan Singh* (*supra*) has been followed by this Court in *Delhi Transport Corporation v. Mohinder Singh* 16 (1979) DLT 220 which was a case involving the dismissal of a bus conductor on account of an alighting passenger being found with no ticket issued to him. In that case, unlike the present case, the statement of the defaulting passenger was recorded wherein he stated that he had paid the bus fare to the conductor but

was not issued a ticket. In his written reply to the charges, the conductor in that case admitted that he had not issued the ticket to the passenger because “there was a rush in the bus”. Furthermore, the conductor in that case was one who had a chequered record having been found guilty of this malpractice on multiple occasions in the past. Thus, the punishment of dismissal was imposed on him. This case too is clearly distinguishable from the present case with there being no statement of the defaulting passengers herein that would corroborate the checking team’s claim that the Appellant had failed to issue tickets with an intention to steal Government revenue.

24. The DTC also cites the decision of this Court in LPA 90/2007 dated 15th May 2007 (***Ramesh Kumar v. Delhi Transport Corporation***), wherein the statements of the passenger witnesses were recorded by the checking staff, which is not the case herein. Further, that was a case in which, when the checking staff sought to verify the amount of money with the conductor, he threw money out of his bag. No such allegation is made against the Appellant herein. Thus, on these two key aspects, the present case is clearly distinguishable on facts.

25. In ***Karnataka State Road Transport Corporation v. B. S. Hullikatti (2001) 2 SCC 574***, the Supreme Court was dealing with a case where the conductor had issued tickets with Rs.1.75/- face value to 35 passengers instead of tickets with Rs.2.25/- face value. Further, the conductor therein had previously been found guilty of misconduct on as many as 36 separate instances. Thus, reliance upon this decision is of little help to the DTC.

26. Reliance is further placed on the decision of this Court in LPA 2269/2006 dated 19th January 2007 (*Ishwar Singh v. Delhi Transport Corporation*). This case too concerns the issuance of tickets with Re.1/- face value instead of tickets with Rs.2/- value. The conductor in this case admitted this fact and claimed that he had done so by mistake on account of the rush of passengers on the bus. Here too the statements of the passengers were recorded and the conductor was confronted with the same. This is clearly not the case presently as is evident from the absence of any evidence on the record from the passengers to whom the Appellant herein had failed to issue tickets.

27. The case in *Regional Manager, UPSRTC v. Hoti Lal (2003) 3 SCC 605* pertained to a conductor who, in addition to failing to issue tickets to 16 passengers, was also found in possession of old tickets which he intended to re-use. The decision primarily dealt with the question of whether the High Court was justified in interfering with the quantum of punishment awarded to the conductor by directing the employer to award any punishment except for removal, termination, or compulsory retirement. The Supreme Court allowed the appeal against such interference on the ground that the High Court had failed to provide any reasons in its order for why it saw fit to interfere with the quantum of punishment.

28. Thus, the decisions relied upon by the DTC are not of particular relevance to the present case. Here, there is no written statement of the defaulting passengers and no recoveries from the Appellant which would lend credence to the finding of guilt against him. There has been a failure to

take into account the circumstances surrounding the incident in question where the defaulting passengers boarded the bus only very shortly before the checking team intervened. The finding of guilt against the Appellant in the present case appears to be on the basis of non-existent evidence.

29. In *DTC v. Anup Singh 2006 (133) DLT 148*, the conductor concerned was removed from service on the charge that he had collected Rs. 36 from four passengers but had not issued them tickets. The Industrial Tribunal found that the order of removal was illegal since during the enquiry DTC had failed to examine the concerned passengers or any independent passenger to confirm the above charge. Affirming the order of the Industrial Tribunal, this Court held:

“16. We may add here that we may not be understood as holding that in every such case the passengers will have to be examined as witnesses. We are aware that it may not always be possible to examine the passengers themselves. We are also conscious of the decision of the Hon'ble Supreme Court in this regard in *State of Haryana v. Rattan Singh*. But, surely, there are other forms of evidence which can go to prove that fare charges were collected without tickets being issued. For instance, it should have been possible for the checking staff to tally the cash in the conductor's hand with the tickets issued and record this contemporaneously in writing in any known and acceptable form which can be proved in the enquiry by the author of the document. This is only one possible method, there might be others too.”

30. In the present case again, the explanation offered by the Appellant was completely ignored. No attempt was made by DTC to lead any evidence of a credible nature to prove the charges. The enquiry proceeded on the basis that the Appellant had admitted his guilt when the explanation offered by him on

two occasions in writing clearly indicated to the contrary. The Court is of the view that, beginning with the thoroughly flawed charge sheet, the proceedings against the Appellant which culminated in the IO's finding of guilt against him was perverse. The inquiry report ought to have been set aside by the Labour Court.

31. For the aforementioned reasons, the report of the IO, the order of the DA, the order of the Labour Court, and the impugned judgment of the learned Single Judge are set aside.

32. The question that next arises is the consequential relief that should be granted to the Appellant. In this context, there are a large number of judgments of both the Supreme Court and the High Courts. However, for the purposes of the present appeal, a reference to a few of them should suffice.

In *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. (1979) 2 SCC 80* the case concerned the termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the petitioner. The Award went in favour of the employees who were asked to be reinstated with full back wages. A three Judge Bench of the Supreme Court, in discussing whether reinstatement with full back wages was justified held:

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of

mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the

workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.”

33. In *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court New Delhi (1980) 4 SCC 443* another three Judge Bench considered the same issue and observed:

“Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back

wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

34. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) (2013) 10 SCC 324* after discussing the above decisions and many others, the Supreme Court summarised the legal propositions emanating therefrom including the following which is relevant for the present appeal:

“In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra)*.”

35. In the present case, the Appellant has not reached the age of superannuation and the Court sees no reason why an order of reinstatement in service should not be passed in his favour. He has suffered for 24 long

years in his quest for justice. His removal from service was as a result of an unfair and unjust enquiry. In circumstances such as these, it would not be justified to deny full relief to the workman who has succeeded in contesting the finding of guilt against him. Accordingly, a direction is issued to the DTC to reinstate the Appellant in service with full back wages and all consequential benefits within a period of eight weeks from today.

36. The appeal is allowed in the above terms with costs of Rs.20,000/- which will be paid by the DTC to the Appellant within four weeks from today.

S. MURALIDHAR, J.

SANJEEV NARULA J.

DECEMBER 05, 2018

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