

\$~43

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

+ **LPA 84/2019**

SURESH KUMAR Appellant

Through: Ms.Rashmi Priya with Mr.Nishant
Shokeen, Advocates.

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Mr.Avnish Ahlawat with Mr.Nitesh
Singh, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **06.02.2019**

CM APPLs. 5599/2019 (exemption) & 5600/2019 (exemption)

1. Allowed, subject to all just exceptions.

LPA 84/2019 & CM APPLs. 5598/2019

2. This appeal is directed against the order dated 31st October 2018 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) 17655 of 2004 whereby the Appellant had challenged an Award dated 17th January 2001 of the Industrial Tribunal upholding the punishment awarded to the Appellant of reduction to the "initial stage in the time scale" as driver.

3. The charge against the Appellant was that on 16th June 1989 while he was driving the bus on the Delhi-Jaipur route he failed to stop the bus despite being signalled to do so by the checking staff. As it turned out, when ultimately the bus was stopped by the checking staff after giving chase in a

jeep, 24 passengers were found to be travelling without tickets. It was found that the conductor had collected the fare from the said passengers but had not issued the tickets. As far as the Appellant is concerned, the charge against him was that he was in league with the conductor in such cheating.

4. The learned Single Judge has in the impugned order carefully noted the proceedings in the enquiry which held the Appellant guilty of the charge. The evidence has also been discussed in detail by the learned Single Judge. Even before the Tribunal, evidence was led. The Tribunal, on an analysis of the evidence, came to the conclusion that the Enquiry Officer was justified in holding the Appellant guilty of the charge and imposing the punishment.

5. As rightly noted by the learned Single Judge, the scope of interference with an Award is limited. Unless it is tainted with arbitrariness or perversity, interference with an Award is not called for. On this legal position, the impugned order of the learned Single Judge cannot be faulted.

6. As far as the procedural aspects are concerned, the learned Single Judge found that the Appellant has been given a full opportunity of defending himself in the enquiry proceedings and to cross-examine the management witnesses, which he availed. He was unable to get defence witnesses to appear in the enquiry despite being given an opportunity in that behalf.

7. On merits, on the aspect of the Appellant being in league with the conductor, the learned Single Judge observed as under:

“21. Whether, in fact, the driver did not stop the bus, because of this reason, or not, may be a moot question. The authorities below i.e. the Inquiry Officer, Disciplinary Authority and the learned Tribunal, have, however, concurrently held that this was so. The rationality of this finding, in my view, cannot be questioned, as, given the fact that 24 passengers were found not carrying tickets, though they had paid fares, the omission, on the part of the driver, to stop the bus, when signalled to do so, could be attributed, to a reasonable person conversant with the facts, to an attempt to evade detection of the extra collection of fare by the checking staff. Such a conclusion can hardly be said to be perverse, in the given facts. Neither can it be said to be such as would not appeal to any reasonable man conversant with facts.”

8. Learned Counsel for the Appellant then argued that the punishment was disproportionate. It must be recalled that in the present case the punishment imposed upon the Appellant was that of reduction to the initial stage in the time scale as driver. Having heard the learned counsel for the Appellant and having considered the impugned award of the Tribunal and the order of the learned Single Judge, the Court is not persuaded to hold that the punishment awarded to the Appellant, in the facts and circumstances of the case is disproportionate.

9. No interference is called for with the impugned order of the learned Single Judge. The appeal and application are dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 06, 2019 / tr