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

+ **LPA 484/2017**

SHIRANI DEVI & ORS.

..... Appellants

Through: Mr. Anuj Aggarwal, Advocate.

versus

THE MANAGEMENT OF M/S DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr. U.N. Tiwary, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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10.01.2019

Dr. S. Muralidhar, J.:

1. This appeal is directed against the order dated 19th April 2017 of the learned Single Judge of this Court allowing W.P.(C) 5590/2013 filed by the Delhi Transport Corporation (DTC), the Respondent herein, and holding that the charge against late Shri Ambika Ram, who worked as a Conductor with the DTC, stood proved and the punishment of removal from service imposed upon him was justified.

2. It requires to be noted that late Shri Ambika Ram expired during the pendency of the writ petition and by order dated 8th November, 2010, his legal representatives (LRs) were brought on record. They have filed the

present appeal. For the sake of convenience, however, hereafter in this order the term 'Appellant' will be used to refer to late Shri Ambika Ram.

3. The background facts as mentioned in the charge sheet issued to the Appellant on 7th August 1992 by the Depot Manager (Pataparganj Depot), are that whilst the Appellant was on duty as Conductor on Bus No.9211 on Route No. 328 on 27th July 1992, the checking staff [which comprised Shri Khacheru Singh, Ticket Inspector (TI) later examined as Management Witness AW-I and Shri Roop Chand TI (AW-2)] stopped the bus at Karkardooma stand. During checking they found that one passenger was in possession of a Rs. 1/- ticket. On being asked, the said passenger told the checking staff that he had given the Appellant Rs.2/- but the conductor had issued him only a Rs. 1/- ticket. On that basis, an inquiry was conducted against the Appellant.

4. To understand the proceedings in the proper perspective, it requires to be noted that the precise charge against the Appellant was that despite taking the full fare of Rs. 2/- from the passenger, the Appellant had issued him a ticket of lesser denomination i.e. Re. 1/-, thus pocketing Re. 1/- and that this amounted to misconduct in terms of para 19 (b) & (m) of the Standing Orders applicable to DTC employees.

5. In the inquiry proceedings, as noted by the Inquiry Officer (IO), the passenger in question was called three times by sending letters but he did not appear. In the inquiry proceedings, apart from the aforementioned two TIs, one Shri Murari Lal was also examined. Even in the inquiry proceedings, all

three TIs clearly stated that the cash bag with the conductor was not checked and further there was no independent witness to speak as to what transpired. The Appellant took the stand that the charges against him were erroneous. He claimed that the passenger in question was below twelve years of age and therefore he had issued a Rs. 1/- ticket instead of Rs. 2/- ticket as per the existing rule. The IO, on the basis of the statements of the three TIs, concluded in his report dated 29th January, 1993 as under:

“The accused did not sign the statement of the passenger but the claim of the accused that the passenger was below twelve years of age when the complainant and his colleagues have told his age to be between 40-45 years of age, is not acceptable. Un-punched ticket was also issued, in view of this and also the complainant’s and his witness’s statements, the facts verify that the charge laid on the accused is found true and proved.”

6. On the basis of the above inquiry report, a show cause notice was served on the Appellant proposing the penalty of removal from service and granting him an opportunity to make a representation against the charge leveled against him. Subsequently, by an order dated 30th April 1994, the Appellant was removed from service.

7. The Appellant thereafter preferred an application under Section 33(ii) (b) of the Industrial Disputes Act, 1947 before the Industrial Tribunal-II Karkardooma (‘Tribunal’) seeking approval of the removal order. A preliminary issue was framed by the Tribunal whether the domestic inquiry held by the DTC was legal. The said preliminary issue was decided by the Tribunal by an order dated 5th May 1997 in favour of the Appellant holding the inquiry to be illegal and in violation of the principles of natural justice.

The DTC did not challenge this order and it became final. The DTC applied to the Tribunal to lead evidence to prove the misconduct of the workman. An issue was then framed by the Tribunal on 5th May 1997 “whether the Respondent committed the misconduct for which he was charge sheeted”.

8. To prove the above issue, DTC examined two witnesses i.e. Shri Khacheru Singh as AW-1 and Shri Roop Chand as AW-2. Both of them filed their respective affidavits by way of evidence and were cross examined. In neither affidavit was the name of the passenger who informed these witnesses about having been charged Rs. 2/- by the conductor while being issued a ticket worth Rs. 1/- was mentioned. In his cross examination, AW-1 admitted that he did not know the name of the passenger who had complained and that he did not inquire from the passenger about his age. He however denied that the passenger was around twelve years of age. What is significant is his admission that “it is correct that we did not check the cash of the Respondent”. He denied the suggestion however that the Appellant had requested them to check his cash bag. He then stated as under:

“It is wrong to suggest that the respondent had not admitted his mistake. The respondent had not given in writing about the admission of his mistake but he had given us unpunched tickets. It is correct that we had not taken way bill and hand bill from the conductor immediately after entering into the bus. It is wrong to suggest that we had taken unpunched ticket from the conductor after we came out from the bus. It is incorrect to suggest that the concerned passenger was not confronted with the conductor. It is wrong to suggest that I prepared a false report to implicate the respondent in a false case.”

9. As far as Roop Chand (AW-2) was concerned, he too was unable to name

the passenger who had complained against the Appellant. He stated “the Respondent did not give in writing that he committed mistake. No independent witness of the incident was examined nor a statement was recorded.” He also admitted as under in his cross examination:

“It is correct to suggest that Ambika Ram told me to check cash, but we did not do so.”

10. Therefore, the admitted position according to AW-2 is that the Appellant did ask that his cash bag be checked but the Inspectors did not do so.

11. Given the charge that the Appellant had collected Rs. 1/- in excess of the ticket he had issued, the logical step would have been to check the cash with him as that would have been immediately demonstrated whether he had in fact collected more cash than the tickets issued as per their various denominations. It is strange that neither of the TIs thought it necessary to check the cash bag carried by the conductor. It has also come in the evidence of AW-2 that they declined to do so despite the conductor asking them to.

12. The Tribunal in its order dated 18th December 2002 found that there was no statement of the passenger or any corroborative evidence to support the case of the DTC and therefore concluded that the charge against the Appellant was not proved.

13. The said order of the Tribunal was challenged by the DTC before this Court by filing a W.P.(C) 5590/2013, which was allowed by the learned Single Judge by the impugned order dated 19th April 2017. The learned Single Judge gave the following reasons for overturning the order of the

Tribunal:

“This Court is conscious of the parameters which govern the exercise of powers under Article 227 of the Constitution of India. In Sunil Kumar (supra), non-checking of the cash was held to be fatal, but in the instant case it is not fatal for the reason that the un-punched ticket was handed over by respondent to checking staff without any protest. The factum of handing over/collection of un-punched ticket from respondent to checking staff itself provide corroboration and dispenses with the requirement of checking of cash. Even non-recording of evidence of passenger concerned, is not fatal in the instant case as respondent in his evidence is silent on this aspect. It is not the case of respondent that he was compelled or pressurized to hand over the un-punched ticket to the checking staff. The handing over of un-punched ticket by respondent to checking staff amply proves the charge against respondent and in view of past record of respondent, this Court finds that the punishment of dismissal from service inflicted upon respondent is well justified.”

14. In other words, the learned Single Judge primarily went by the fact that the Appellant handed over one unpunched ticket to the checking staff voluntarily, and this should be taken to be an admission by him of his guilt.

15. From the evidence brought on record, which has been extracted hereinbefore, it is not possible to conclude that the Appellant had in fact handed over one unpunched ticket voluntarily. Instead, what comes across clearly is that a punched ticket was in fact issued by the Appellant to the passenger but the passenger claimed that he had paid Rs. 1/- extra for such ticket. This was not a case of failure by the Appellant to issue a ticket. It was merely a question of the Appellant allegedly collecting Rs.1/- in excess. His bag was never checked by the inspecting staff to confirm that fact despite the Appellant offering it for checking. With the Appellant consistently taking

the stand that he had done no wrong, there was no question of his voluntarily giving the checking staff an unpunched ticket. Nothing in either the affidavit of evidence of the two management witnesses or their depositions before the Tribunal suggests this.

16. The learned Single Judge did not discuss the evidence at all. In one line, it was simply stated that the failure to check the cash bag with the conductor was not fatal “for the reason that the unpunched ticket was handed over by Respondent to checking staff without any protest.” There was no basis in the evidence for this conclusion.

17. Learned counsel for the Appellant has referred to the decision of this Court in *DTC v. Anup Singh 2006 (133) DLT 148* where in similar circumstances this Court set aside the order of the Tribunal upholding the finding of the IO of DTC with respect to the guilt of a conductor who was charged with having collected a fare of Rs. 36/- from four passengers without issuing them tickets. In that case too, the cash with the conductor was not checked.

18. Learned counsel for the DTC sought to distinguish the above judgment by referring to para 16 thereof which reads as under:

“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. We are, in the facts of this case, unable to accept the plea of the learned Counsel for the appellant that there is enough evidence on record to prove the guilt of respondent. Accordingly, we see no reason to interfere with the award of the Tribunal or the impugned order of the learned Single Judge.”

19. In the present case, there were two management witnesses examined by the DTC to prove the misconduct of the Appellant. Neither of them could categorically prove that the Appellant had indeed collected an excess of Rs. 1/- from the passenger. The statement of the passenger which was purportedly recorded was not able to be proved by either of the witnesses. As already noticed, that passenger himself was issued a ticket, only it was alleged to be of a lesser value than the amount he had paid. The factum of issuance of the unpunched tickets having been handed over to the TIs by the Appellant voluntarily was also not able to be proved. In the circumstances, the failure to check the cash bag of the conductor despite his offering the same should be held fatal as far as the case of the DTC was concerned. The Tribunal, therefore, rightly concluded that the DTC had failed to prove the charge against the conductor. This aspect of the evidence has not been appreciated by the learned Single Judge.

20. Learned counsel for the DTC then relied on the decision in ***Delhi Transport Corporation v. Mohinder Singh*** 213 (2016) DLT 628 which again was a case of removal from service of a conductor. There, the charge

was that the conductor had failed to issue tickets to 15 passengers who had paid the full fare. There again the cash was not checked. Yet, this Court upheld the removal order.

21. However, what distinguishes the said decision as far as its applicability to the case in hand is concerned is that in that case there was an admission by the conductor that of the 44 passengers who were travelling in the bus, 15 had not been issued tickets. There is no admission by the conductor in the present case that he had collected excess cash of Rs. 1/- from one passenger. Clearly that decision does not help the DTC.

22. Learned counsel for the DTC then sought to suggest that there were past instances of misconduct of the Appellant which justified the punishment of removal from service. With the DTC not having been able to prove the misconduct of the Appellant, the question of quantum of punishment does not arise. The instances of past misconduct would be relevant only if the misconduct in the present case is proved. The past instances cannot constitute proof of misconduct in the present instance. That had to be proved by leading credible evidence which the DTC failed to do.

23. In any event, the Court finds that the affidavits of evidence of AW-1 and AW-2, the two witnesses examined by the DTC, make no reference to the past misconduct of the conductor.

24. Recently in the judgment dated 5th December 2018 in LPA No.33/2017 (*Maninder Pal v. DTC*), this Court set aside an order of the Labour Court

which upheld a DTC conductor's removal from service again on a charge of not issuing tickets to 4 to 5 passengers from whom the conductor had allegedly collected the fare. There too the Court found the evidence led by the DTC to be totally inadequate to prove the charge.

25. Consequently, the Court finds that the order of the Tribunal in the present case did not call for any interference by the learned Single Judge. The impugned order dated 19th April 2017 passed by the learned Single Judge is accordingly set aside and the order dated 18th December 2002 of the Tribunal is restored.

26. On account of the death of Shri Ambika Ram, the only relief that can now be granted to his LRs is that the entire back wages with all other consequential benefits which were to be paid to him will be paid to them by the DTC within a period of eight weeks from today. The amount will be paid together with Simple Interest at the rate of 6 percent per annum from the date of the order of the Tribunal i.e. 18th December 2002 till the date of payment. Further DTC will pay to the LRs of Shri Ambika Ram, within the same period, Rs. 20,000/- towards the cost of litigation.

27. The appeal is allowed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 10, 2019/nk