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

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*Decided on: 19.02.2020*

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**W.P.(C) 374/2010**

DELHI TRANSPORT CORPORATION ... Petitioner

Through: Mr. Sarfaraz Khan, Adv.

versus

S.P. SAGAR

..... Respondent

Through: Ms. Rashmi B. Singh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

**W.P.(C) 374/2010 & CM APPL. 784/2010**

1. Costs of Rs. 10,000/- has been paid to the learned counsel for the respondent.
2. This petition impugns the order dated 05.09.2008 of learned Labour Court in I.D. No. 564/2006, which directed reinstatement of the workman with back wages from the date of termination of services, till the date of reinstatement @ 40% on the last drawn salary, with continuity of service. The respondent was alleged to have indulged in an activity which was to the financial detriment of the petitioner/employer. The allegation was that he had issued 35 tickets for an amount of Rs. 36.50 each bearing nos. (16333-16367) but had not punched the tickets i.e. created a hole on the face of the

tickets so as to render it incapable of being used again. Instead he took the tickets back from the passengers and utilized them again. In the process, he must have pocketed extra monies. However, this allegation was never proven. An inquiry was conducted in the matter. The Inquiry Officer found that the accused was guilty of carelessness and negligence in discharging his duty in not punching the 12 tickets, as well as for receiving extra fare from other passengers and that the workman has admitted that he did not know the actual fare. The Inquiry Officer concluded: *“However, on a careful examination of the file, it is proved that the accused had not any (sic) bad intention while doing the above said irregularities due to non-availability of the required documents and facts, the accused was not found guilty of charge (sic) that he had encouraged the passengers and tried to stop them from giving their statements. On a careful examination of the case file, it is proved that the accused has been (sic) refused to hand over the complaint book to the checking staff during the course of checking”*. The charges against the workman were partly proven. The impugned order has dealt with the issue as under:-

*“.... But in the present case, the Enquiry officer in his report Ex. MW-1/5, so far charges of 12 unpunched tickets are concerned, has observed that on seeing the voucher no 547133, it was found that prior to the signatures of the checking staff on the said voucher the tickets No. 16333 to 16367 had been entered in the voucher by the claimant and the unpunched tickets were included in the same and were from in between the tickets and from this it was proved that the workman cannot sell the said tickets again, as the same had already been entered in the voucher No cutting was found in the voucher. So far as charges regarding excess fare is concerned, it has been observed by the Enquiry Officer that in*

*the voucher No. 547133, against the 35 tickets from Alwar to Jaipur, No. 16333 to 16367, the delinquent employee has shown the amount as Rs.1277.50 and as such for each ticket the price comes to Rs. 36.50. Accordingly it is not proved that the workman had some bad intention in receiving the fare as Rs. 36.50 from the passengers as against Rs. 35.50, and it has been further observed that it proves that the conductor was not having information about the correct fare and accordingly, the Enquiry Officer has observed that the workman is found guilty of negligence and he has not done the aforesaid act with ill will. So the Enquiry Officer has held the workman guilty of negligence and at the same time, he has observed that the workman has not done the aforesaid act with ill will.*

*So far as charge of instigating the passengers is concerned, as per enquiry report, the Enquiry officer has observed that it is not possible to verify the said charge and regarding the charge-refusal to give the complaint book, it has been observed in the Enquiry report that the said charge stands proved on the basis of circumstantial proofs.*

*So far the charge of issuing 12 unpunched tickets, the Enquiry officer has found the workman guilty of negligence and so far as the charges of taking excess fare is concerned, it has been observed by the Enquiry officer that it is not proved that the workman had some bad intention in receiving the fare as Rs. 36.50 from the passengers as against Rs. 35.50 and it has been further observed that it proves that the conductor was not having the information about the correct fare which is clear proof of negligence of the workman towards his duties. The workman in his voucher No. 547133 against the 35 tickets from Alwar to Jaipur bearing No. 16333 to 16367 had shown the amount of Rs. 1277.50 and as such for each ticket the price comes to Rs. 36.50. Since the workman has shown the correct amount of the tickets in the voucher, it cannot be said that the workman had bad intention in collecting excess fare. Accordingly, I am of the considered opinion that the Enquiry officer has rightly observed that the workman is found guilty of*

*negligence and the workman has not done the aforesaid act with ill will.*

*Keeping in view the aforesaid facts and circumstances of the case, I am of the considered opinion that the punishment of dismissal from service imposed upon the workman S.P. Sagar is shockingly disproportionate more particularly, when the Enquiry officer found the workman guilty of negligence and not of misconduct and has also observed that the workman has not done the aforesaid act with ill will.*

*In view of the above discussion I am of the considered opinion that the dismissal of the workman from service is unjustified and the workman is entitled to reinstatement in service. So far question of back wages is concerned, keeping in view the facts and circumstances of the case, I am of the considered opinion that the ends of justice will be served if the workman is awarded back wages at the rate of 40%. As such, the management is directed to reinstate the workman S.P. Sagar in service with back wages from the date of his termination till the date of his reinstatement at the rate of 40% of his last drawn salary with continuity of service. Award is passed accordingly and the reference is answered accordingly. Copies of the award be sent to the appropriate Government for publication. File be consigned to the record room after necessary compliance.”*

3. The learned counsel for the petitioner submits that removal of the workman was appropriate because his carelessness and negligence was of a gross variety, inasmuch as he had taken extra monies from the passengers and had not accounted for the same, and had also not given the complaint book to the Inspecting Team. He further contends that instead of absolute relief of reinstatement, some lesser relief could have been granted. The Court is of the view that the contention for a lesser relief would have been

valid if it was proven that there was doubt about the financial integrity of the workman. The impugned order clearly shows that the every rupee was duly accounted for and it was not proven that the workman had taken extra monies from the passenger. Therefore, the petitioner's contention that the workman was engaged in financial malpractice is untenable.

4. In the circumstances, logical corollary would be to reinstate the workman, albeit, with reduction of 50% back wages because of the extent of negligence.

5. The impugned order calls for no interference. The petition is without merit. Accordingly, it is dismissed.

6. The amount deposited in this Court by the petitioner be released to the respondent, along with interest accrued thereon.

**FEBRUARY 19, 2020**

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**NAJMI WAZIRI, J**