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

Date of decision: 14th October, 2020

+ **W.P.(C) 13744/2009 & CM APPL. 15333/2020**

CHANDER RATTAN

..... Petitioner

Through: Mr. Ankit Singh, Advocate.
(M:9310255162)

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms. Bhakti Pasrija Sethi, Advocate.
(M:9711354028)

With

+ **W.P.(C) 3139/2010 & CM APPL. 6295/2010**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Bhakti Pasrija Sethi, Advocate.

versus

CHANDER RATTAN

..... Respondent

Through: Mr. Ankit Singh, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. These are two petitions challenging the impugned award dated 5th June, 2009 passed by the Presiding Officer, Labour Court, by which reinstatement without back-wages has been granted to the Workman. The petition filed by the Management being W.P.(C) 3139/2010, additionally challenges the order dated 18th August, 2007, passed by the Labour Court, by which enquiry conducted by the Management against the Workman was held to be unfair and improper.
3. The brief background of this petition is that Mr. Chander Rattan, the Workman was working as a conductor with Delhi Transport Corporation

(hereinafter, 'DTC/Management'). He had joined service on 22nd November, 1982 and was earning a salary of Rs.3154.29/- per month. A raid was conducted by the Management on 31st August, 1990 on one of the buses, where the raiding team alleged that the Workman was misconducting himself and there was over-selling of stale tickets to passengers. Various charges were raised against the Workman. The charges, which were raised as per the charge-sheet were:

- 1) That the workman had collected Rs.16/- from eight passengers and issued them stale tickets of rupees 2 each. On enquiry by checking staff, the Workman had admitted that he had resold the tickets and handed over unpunched tickets in lieu of the stale tickets issued to the passengers.
 - 2) The second charge is that the Workman had used unparliamentary language and misbehaved with the checking staff and further tried to snatch away the tickets from the checking staff and tear them.
 - 3) Third charge is that the Workman refused to receive copy of challan.
 - 4) Fourth challan is that he refused to have the cash checked.
 - 5) Fifth charge is that he intentionally caused loss to the corporation.
4. Thereafter, an enquiry was conducted and the Workman was terminated from services on 3rd August, 1995. Vide the impugned order dated 5th June, 2009, the Labour Court reinstated the Workman, and further directed Rs.20,000/- to be paid towards the litigation expenses. It was also directed that the intermittent period shall not affect the seniority, promotion, gratuity and pension benefits of the Workman. However back-wages were not granted. The operative portion of the impugned order reads as under:

“The order of removal of service of the

workman is held as unjustified. Consequently, the management is directed to reinstate the workman into service by paying sum of Rs. 20,000 (RUPEES TWENTY THOUSAND ONLY) to the workman towards the litigation expenses. Back wages are not granted.

The intermittent period shall not affect the seniority, promotion, gratuity and pension benefits of the workmen and the same be not treated as a break in service."

Submissions

5. Mr. Ankit Singh, Id. counsel for the Workman submits that the Workman was reinstated on 20th September, 2010, however, instead of the salary which was being paid to all the conductors then, which was Rs.13,140/-, this Workman was only paid a salary of Rs.8,550/-. He also challenges the non-grant of back wages to the Workman. He further submits that the Workman superannuated on 31st May, 2016, however, no retiral benefits have been given to the Workman, on the ground of pendency of the present writ petition.

6. On merits, it is submitted by Mr. Singh that the Labour Court has found that the first out of the five charges, i.e. in respect of the selling of stale (used) tickets was not made out. Consequently, the fifth charge of having caused wrongful loss to the corporation also failed. Insofar as the third charge was concerned i.e. non-receipt of challan, that was also found not tenable. Insofar as the second and fourth charges were concerned, the Labour Court found that the said two grounds were proved, however, the Labour Court also noted that the Workman and the Checking Staff must have played an equal role in the imbroglio and the so-called unparliamentary language used by the Workman. Insofar as the cash box was concerned, Id.

counsel submits that the same was never sought in the first place and hence there was no question of denying access to the cash box. He further submits that since there is no evidence in 4 out of the 5 charges, and 4 charges are not even made out against the Workman, the Workman is entitled to reinstatement with complete back wages. He further submits that non-payment of an equal salary, which is supposed to be payable to an equally placed conductor/ workman, is also untenable. The Workman is entitled to receive all the amounts due i.e. back wages, equivalent salary and retirement benefits.

7. Reliance is placed by the ld. counsel for the Workman on two judgments- *Mahavir Prasad v. Delhi Transport Corporation [WP(C) 2216 of 2014]* and *Deepali Gundu Surwase v. Kranti Junior Adhyapak and ors.[2013(10) SCC 324]*, to argue that non-grant of proper wages, retiral benefits and back wages upon reinstatement, severely affects the life of the Workman and his family. Thus, he submits that the Workman is entitled to all the above-mentioned amounts and to this effect, the impugned order deserves to be set aside. It is also Mr. Singh's submission that the enquiry conducted by the Management against the Workman was unfair and improper, and the order dated 18th August, 2007, passed by the Labour Court in this regard, is clear in its terms that attested and certified copies of the documents were not provided to him during the enquiry.

8. On the other hand, Ms. Bhakti Pasrija Sethi, ld. counsel for DTC has taken the Court through the charge sheet at page no.40 of DTC's petition, wherein the allegation which was raised against the Workman was that he was selling stale tickets. She submits that the Labour Court has incorrectly held that the first charge was not proved, as the unpunched tickets are placed

on record. She further submits that the second charge was also proved i.e., the Workman had used unparliamentary language. Insofar as the third charge is concerned, she submits that the refusal to accept the copy of the *Challan* was held to be not proved, merely on the ground that the police report was not filed. She submits that the police report was in fact filed on record. Insofar as the fourth charge is concerned i.e. that the cash was not permitted to be checked, this charge was also proved.

9. Under these circumstances, Ms. Sethi submits that the dismissal order was completely justified and the Labour Court should not have exercised discretion in favour of the Workman by granting reinstatement, with several benefits. She further submits, in response to the allegations of unfairness and impropriety in the enquiry proceedings, that photocopies of all the documents were supplied to the Workman during the enquiry, but he himself chose not to participate in the enquiry proceedings.

Analysis and Findings

10. This Court has heard ld. counsels for the parties. The two orders which are under challenge in the present petitions are orders dated 18th August, 2007 and 5th June, 2009. As per the impugned order dated 18th August, 2007, the Labour Court had come to the conclusion that the enquiry which was conducted against the Workman was not fair and proper. A perusal of the said order shows that the only reason why the enquiry was not held to be fair was because the documents were not supplied in attested and certified form.

11. It is the admitted position on record as contained in the claim petition and also the order dated 18th August, 2007 that photocopies of the documents were supplied. In paragraph 5 of the Statement of Claim, it is

categorically recorded that the Workman had received the copies of the documents which were photocopies. The relevant portion of the statement of claim reads:

“That in order to reply properly the chargesheet, the workman demanded certain letters from the management vide letters dated 24.12.1990, 21.2.1991 12.4.1991, 29.4.1991 etc. but the management did not accede the legitimate demands of the workman. In this respect, it is submitted that the management sent some documents (photo copies) which were not certified and therefore the workman sent those letters back to the management requesting the management to send the certified copies of the documents demanded by the workman. It is submitted that the management did not sent the certified copies of the documents”

Under these circumstances, the mere non-supply of attested or certified copies cannot by itself be held to be violative of natural justice. The Workman had a duty upon him to participate in the enquiry proceedings.

12. Further, a perusal of the enquiry report dated 20th February, 1992 conducted by the Enquiry Officer shows that the Workman failed to lead any evidence before the Enquiry Officer and in fact he did not cooperate in the Enquiry proceedings. The relevant portion of the enquiry report is set out below:

“The delinquent employee was asked to produce his defence witnesses but he refused to co-operate in the enquiry proceedings in any manner. He did not co-operate despite repeated efforts to make him agree for the same. His this type of attitude makes it clear that he does not want to produce any defence witness nor he wants to say anything in his final statement.”

13. The non-supply of attested/certified copies of documents forms the basis of the finding that the enquiry was not in terms of the principles of natural justice.

14. The reference which was decided in the impugned award was framed on 30th August 1996 to the following effect:

“Whether the removal of Sh. Chander Ratta from service is illegal and/or unjustified and if so to what relief is he entitled to and what directions are necessary in this respect?”

In view of the above reference, the first issue was whether a fair and proper enquiry was conducted by the management or not and if so, what is the effect? On this issue the Labour Court has proceeded on the ground that the documents demanded were not supplied in terms of the order dated 18th August, 2007. This issue has, according to this Court, been wrongly decided by the Labour Court in the impugned order. In the opinion of this Court, a perusal of the Enquiry report shows that the Workman repeatedly sought to delay the proceedings. He was given an opportunity to either conduct his case by himself or could appoint any co-worker for presenting his case. However, the Workman simply made a demand for certified documents and stated that despite repeated requests certified copies are not being supplied to him. The Depot Manager informed the Enquiry Officer that the same have been supplied vide letter dated 13th September 1991 and was then asked to cooperate in the proceedings. The Enquiry Officer in fact opines that the request for certified copies is nothing but a `false pretext`. Thereafter the Workman did not cooperate in the Enquiry proceedings.

15. The impugned order dated 18th August 2007 simply proceeds on the basis that attested and certified copies were not supplied. The said order

does not take note of the conduct of the Workman at all. After perusing the Enquiry report, this court is convinced that the enquiry was conducted in a fair and transparent manner. Mere allegation of non-supply of attested copies ought not to result in the enquiry being set at naught. The order dated 18th August 2007 is accordingly not tenable and is set aside.

16. Thereafter, in the impugned award dated 5th June, 2009, the four charges framed against the Workman are considered. In respect of Charge no.1 i.e., sale of stale tickets, the Labour Court has come to the conclusion that the same was not proved, as the statements of the passengers were not recorded.

17. Insofar as the second charge is concerned i.e. using of abusive or unparliamentary language, the Labour Court has held that the said charge was proved against the Workman.

18. The third charge is that the workman refused to receive the challan. In this regard, the Labour Court's finding that the police complaint is not filed on record, is not correct. The police report was available on record. However, a perusal of the police report shows that no allegation has been made in respect of the challan in the said report. Thus, the Labour Court's finding that this charge is not proved is upheld, though for a different reason.

19. The fourth charge is that the workman did not permit the cash to be checked. The Labour Court has held that the said charge was also proved against the Workman.

20. The final charge is that he caused loss to the Corporation.

21. The findings of the Labour Court in respect of charge no.1 and 5 have to be read together. The conclusions of the labour court on these two charges are detailed and reasoned. The Labour Court has exercised discretion and

reinstated the Workman. The Workman was in fact after passing of the impugned award reinstated in 2009 and remained in service until his superannuation in the year 2016. Thus, the impugned award of the Labour Court has worked itself out. The present two writs were filed in 2009 and 2010, after which the Workman has even retired from service.

22. Therefore, insofar as the impugned award is concerned, this Court is of the opinion that the Workman having been reinstated and having earned salary till 2016, the award of reinstatement does not require to be interfered with.

23. However, while discretion may have been exercised by the Labour Court in favour of the Workman, considering that the Workman did not participate in the enquiry despite having copies of the documents and also having regard to the use of abusive language by him as also the charge relating to cash not being allowed to be checked having been proved, this Court is of the opinion that the Workman would not be entitled to seniority and promotion. Gratuity and pension benefits shall, however, be given to the Workman, in accordance with the applicable Rules.

24. If there are any payments which are due to be made in terms of the order hereinabove, the same shall be made by the Corporation within six weeks. If the payment is not forthcoming, the Workman is permitted to avail of his remedies in accordance with law. The impugned order stands modified in the above terms and with these observations, both petitions stand disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 14, 2020/dj/A