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

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Decision delivered on: 17.12.2021

+ **LPA 401/2020 & CM APPL. 34541/2020, 34543/2020**

DELHI TRANSPORT CORPORATION (DTC) THROUGH ITS
CHAIRMANAppellant

Through: Mr Sarfraz Khan, Advocate.

versus

S.P. SAGARRespondent

Through: Ms Rashmi Bhushan Singh,
Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The present appeal has been preferred against the judgment dated 19.02.2020, passed by the learned single judge in W.P.(C) No.374/2010.

1.1. Via the impugned judgment, the learned single judge has modified the award dated 05.09.2008, passed by the Labour Court in ID No. 564/2006 (Old No. 249/1995), to the extent that the rate at which back wages were directed to be paid, *via* the said award, has been enhanced i.e., from 40 per cent to 50 per cent.

1.2. Being aggrieved by the judgment of the learned single judge dated 19.02.2020, the appellant i.e., Delhi Transport Corporation [in short "DTC"] has preferred the instant appeal.

2. The instant appeal has been filed in the background of the following broad facts:-



- 2.1. The respondent was appointed as a Conductor with DTC, with effect from 18.01.1983. He was served with a charge-sheet on 03.05.1993. Thereafter, an inquiry was initiated against the respondent.
- 2.2. The Enquiry Officer, *via* report dated 14.10.1993, concluded that charges framed against the respondent stood partly proved.
- 2.4. Based on the report of the Enquiry Officer, the disciplinary authority on 18.10.1993 issued a show cause notice to the respondent, calling upon him to state reasons for the irregularities committed by him, while discharging his duties, and as to why he ought not to be removed from service.
- 2.5. The respondent, at that stage, approached this Court by way of a writ petition under Article 226 of the Constitution of India i.e., W.P(C) 3396/1993. The writ petition, however, did not bear fruit and was dismissed on 19.04.1994. Resultantly, the respondent had to file a reply to the show cause notice dated 18.10.1993.
- 2.6. It is not in dispute that the respondent filed a reply to the aforesaid show cause notice. The reply by the respondent, however, did not find favour with the appellant, and, ultimately, the respondent was removed from service w.e.f. 13.10.1994, *via* communication dated 12.10.1994.
- 2.7. This resulted in the respondent approaching the Conciliation Officer. Since conciliation failed, the appropriate Government referred the dispute concerning the removal of the respondent to the Labour court, *vide* order dated 05.09.1995.
- 2.8. The reference made to the Labour Court was, broadly, as to whether the removal of the respondent from service was illegal and/or unjustified and, if that was so, what relief would he be entitled to.



3. The Labour Court, as noticed above, *via* award dated 05.09.2008, ruled in favour of the respondent. The Labour Court held that, the removal of respondent from service was both illegal and unjustified.

3.1. Consequently, the Labour Court directed respondent's re-instatement with continuity in service along with a direction that, the appellant would have to pay 40 percent of the back wages. It is this decision, as indicated at the very outset, which the appellant has assailed by way of the writ petition.

3.2. The writ petition was dismissed, via the impugned judgment. The learned single judge, in effect, enhanced the percentage rate at which back wages were to be paid to the respondent i.e., from 40 per cent to 50 per cent. The rationale provided by the learned single judge is: that the respondent was only negligent in discharging his duties.

4. Mr Sarfraz Khan, who appears on behalf of the appellant, says that, the learned single judge's direction to enhance the percentage at which back wages are to be paid to the respondent is completely untenable. According to him, there was no occasion for the learned single judge to enhance the quantum of the back wages, as the Labour Court after appreciating the evidence placed on record had pegged the rate at which back wages were to be paid i.e., at 40%.

4.1. According to Mr Khan, since in any event, the Labour Court had found that the respondent was negligent, the learned single judge ought not to have interfered with the punishment accorded by the appellant.

5. Ms Rashmi Bhushan Singh, who appears for the respondent contends to the contrary.

5.1. Ms Singh says that the Labour Court, having appreciated the material on record, and concluded, thereafter, that the removal of the respondent



from service was illegal and unjustified, the respondent's reinstatement, with consequential relief of continuity of service and back wages was in order.

5.2. Ms Singh further submits that the learned single judge in his wisdom has enhanced the rate at which back wages are to be given i.e., from 40 per cent to 50 per cent. Therefore, given the financial position of the respondent, the said direction ought not to be interfered with.

6. We have heard the learned counsel for the parties.

6.1. According to us, Mr Khan is right to the extent that the rate of back wages could not have been enhanced from 40 to 50 per cent by the learned single judge.

6.2. The reason we have reached this conclusion is that, the respondent had not preferred a writ petition against the award, and, therefore, while dealing with the appellants' writ petition, surely the learned single judge could not have enhanced the rate of back wages from 40 to 50 per cent. Thus, to that extent, we are *ad idem* with Mr Khan.

6.3. Insofar as other submissions of Mr Khan are concerned, according to us, the writ court rightly did not countenance them as it would have amounted to reappreciating the evidence, something which was beyond its jurisdiction. It is well-established that a writ court does not have the jurisdiction to reappreciate evidence, both with regard to quantum and/or quality.

6.4. The Labour Court, after taking into account the material placed before it, has ruled in favour of the respondent that the termination was both illegal and unjustified. We are of the view that, no interference is called for, insofar as that finding is concerned.

6.5. For the sake of convenience and to lend perspective as to what was



the charge that was framed against the respondent and how the same was dealt with, the following extract from the award would suffice :

“.....Arguments considered, file perused. I have gone through the case law cited by the AR of the management and I agree to this contention of the AR of the management that in determining the quantum of punishment, the role of administrative authority is primary and that of the Court is secondary and confined to see if the discretion exercised by the administrative authority has caused extensive infringement of rights. 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 can not sell the said tickets again, as the same had already been entered in the voucher. No cutting was found in the voucher. So far the 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 the 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 charges of issuing 12 unpunched tickets, the Enquiry officer has found the workman guilty of negligence and so far 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 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 can not 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 SP Sagar is shockingly disproportionate more particularly, when the Enquiry officer found the workman guilty of negligence and not misconduct and has also observed that the workman has not done the aforesaid act with ill will....."

7. Having regard to the aforesaid, the appeal is partially allowed.
- 7.1. The learned single judge's judgement dated 19.02.2020, to the extent it had enhanced the rate of back wages from 40 per cent to 50 per cent, is set aside.
- 7.2. The award of the labour court dated 05.09.2008, is restored in its entirety.
8. The appeal is, accordingly, disposed of.
9. At this stage, we are told by Mr Khan that, Rs.1,62,048/- was



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deposited by the appellant with the Registry of this Court. Even according to Mr Khan, this amount is far short of the back wages to be paid to the respondent.

9.1. Therefore, the Registry will release the aforesaid amount in favour of the respondent, along with accrued interest, upon the respondent approaching the Registry.

9.2. The appellant, while making payment towards back wages, will take into account, the amount released in favour of the respondent, exclusive of accrued interest.

10. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 17, 2021/nk

Click here to check corrigendum, if any