



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

Judgment reserved on: 20.09.2022.

% **Judgment delivered on: 26.09.2022**

+ LPA 275/2022 and CM APPLs. 19347/2022 & 19348/2022
BIRI SINGH Appellant
Through: Mr. Anjum Kumar, Advocate.

versus

DELHI TRANSPORT CORPORATION Respondent
Through: Ms. Aditi Gupta, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal has been filed under Clause X of the Letters Patent Appeal which is arising out of order dated 27.01.2022 passed by Learned Single Judge in Writ Petition (Civil) 1614/2022 dismissing the Writ Petition.

2. The facts of the case reveal that the Appellant/ Workman before this Court was appointed as a Conductor in the Services of Delhi Transport Corporation, an Instrumentality of State in the year 1983. He was allotted the Batch No. 20082. He was served with a Charge-sheet on 06.05.1991 in respect of an incident which took place on 19/20.04.1991.



3. As per the imputation of misconduct it was alleged that while he was on duty on Bus No. 9065 on Rout No. 052 as Conductor, the bus was subjected to surprise check by Sh. Ishwar Singh, Assistant Transport Inspector at Safdarjung Airport at about 02.40 Hours.

4. At the time of inspection, it was noticed that the Appellant has recovered full fair from a group of 12 passengers who boarded the Bus from Jama Masjid, however, he did not issued tickets to them and when the Checking Team demanded the unpunched ticket, he refused to give unpunched ticket and later gave punched tickets.

5. It was further alleged that when the Bus was later on stopped at INA Police Station, and on checking the cash by the Head Constable posted there was shortfall of Rs. 2.50 was noticed in his bag and the respondent refused to put a signature on the Challan, and also misbehaved with the Checking Officers.

6. The Appellant submitted a reply to the Charge-sheet, and, thereafter, an Enquiry Officer was appointed in the matter. The Enquiry Officer submitted a detailed enquiry report, and thereafter based upon the enquiry report, the disciplinary Authority passed an order terminating the Appellant/Workman by an order dated 06.05.1992.

7. The Appellant preferred a claim before the Learned Labour Court and the enquiry proceedings were set-aside by the Labour Court by an order dated 01.02.2005 holding that the enquiry was held in violation of principles of natural justice and fairplay, and, thereafter, the employer was given a chance to prove the misconduct.



8. The employer produced certain witnesses and the Assistant Transport Inspector Sh. Ishwar Singh was examined as MW-2 on 03.04.2006, and finally by an order dated 05.10.2021, the claim of the workman was dismissed by the Labour Court.

9. The Award passed by the Labour Court dated 14.09.2006 was subjected to judicial scrutiny by filing a Writ Petition and the same was registered as W.P.(C.) No. 559/2007 titled as ***Biri Singh Vs. DTC*** and the Learned Single Judge after hearing the parties at length had remanded the matter back to the Labour Court for deciding it as afresh. Paragraph Nos. 11 to 15 of the order passed by the Learned Single Judge read as follows:

“11. The basic plea raised by the learned counsel for the petitioner is that the Labour Court has, while arriving at the conclusion that the petitioner was guilty of misconduct, has failed to consider the petitioner’s defence by simply accepting the version of the respondent and that too by ignoring the findings in its earlier order dated 01.09.2005. Having carefully perused the impugned award, I find merit in the petitioner’s contention that the learned Labour Court has failed to deal with the petitioner’s evidence or defence entirely and has merely discussed the respondent’s evidence, based on which it has concluded that the petitioner was guilty of misconduct. It needs no reiteration that the Labour Court while performing adjudicatory functions, is expected to arrive at any conclusion after dealing with the stand of both sides, and not merely the evidence led by the management.

12. In the present case, once the issue of the legality of the domestic inquiry was held against the management, any findings of misconduct against the petitioner could be based only on the evidence led before the Court. In these circumstances, it was incumbent upon the Court to refer to the evidence of both sides and give its reasons for holding the



petitioner guilty of misconduct. The findings in the impugned award are conspicuously silent regarding the version of the petitioner and on the other hand, it appears that the learned Labour Court was unduly swayed by the fact that the petitioner was unable to establish any enmity with the checking officials. While doing so, the learned Labour Court failed to appreciate the effect of the representation made by the petitioner soon after the incident as also the admitted position that the petitioner was not found to be in possession of any excess cash, he may have collected by way of fare from 12 passengers, as alleged by the respondent/management.

13. For the aforesaid reasons, the impugned award is wholly unsustainable and is set aside. However, keeping in view the nature of the allegations against the petitioner, the matter is remanded back to the learned Labour Court for deciding the matter afresh after considering not only the respondent's version and evidence but also the specific pleas raised by the petitioner.

14. Keeping in view the fact that the matter pertains to an incident of the year 1991, the learned Labour Court is requested to decide the matter as expeditiously as possible and, in any case, not later than three months.

15. The writ petition is allowed in the aforesaid terms."

10. After the remand, the Labour Court, Sh. Ishwar Singh was examined and again an Award was passed on 05.10.2021 by the Labour Court. Paragraph Nos. 22 to 31 of the Award passed by the Labour Court reads as under:

"22. WW-1 Shri Biri Singh in his cross-examination recorded on 09.04.1999 has initially deposed to have given punched tickets to the checking staff before resiling from his earlier statement in his cross-examination recorded on 27.07.2006. Relevant portion of his cross-examination. recorded on aforesaid dates is extracted below:



Cross examination recorded on 09.04.1999.

“.... It is correct that I gave punched tickets to the checking staff. ...”

Cross examination recorded on 27.06.2006.

“.... It is incorrect to suggest that I refused to handover unpunched tickets to the checking staff and later on handed over tickets after punching them.....”

23. Much emphasis has been laid upon entries in the way-bill Ex.MW-2/4 and MW-2 Shri Ishwar Singh, ATI during his cross- examination has admitted that number of way-bill was closed by the checking staff upon boarding the bus, however, he has also alluded to statement of Shri Shakeel Ahmed referred as Ex.MW-2/3 and deposed that fact of conductor having refused to sign the challan slip was mentioned in the checking report Ex.MW-2/2. Since way-bill was lying with the conductor who is required to make the entries as soon as the tickets are sold and there is no dispute over way-bill being closed at ticket No. 39144 so crux of the case lies over the disputed fact of handing over punched tickets by the conductor vis-a-vis allegation of punched tickets being collected from the passengers for making false challan against the workman.

24. WW-1 Shri Biri Singh during his cross-examination recorded on 27.07.2006 has denied the suggestion that he refused to show the cash to the checking staff and that cash could be checked by the officials only after the bus was taken to police station where a sum of Rs.2.45 was found short. He, in addition, has also denied the suggestion that the bus was stopped at INA check post. It is, however, relevant to note that Shri Chand Ram, Driver, Badge No. 17315 in his testimony recorded during enquiry as defence witness has deposed that the bus was stopped at INA check post and a sum of Rs.2.45 was found short. The fact that workman has tried to mislead the Court by denying the suggestion that bus



was taken to INA check post coupled with the fact that a sum of Rs.2.45 was found short which could not be explained by the workman dissuades the Court from relying upon his testimony.

25. Absence of valid explanation justifying shortage of Rs.2.45 either in the claim or in the affidavit tendered in evidence becomes significant considering the fact that driver Shri Chand Ram in his testimony recorded during enquiry proceedings has deposed that the amount was spent upon tea and mathhi.

26. MW-2 Shri Ishwar Singh in his cross-examination has denied the suggestion that punched tickets were taken from passengers for making false challan against the workman whereas tickets collected during inspection were not put to the witness for proving any 'cut' mark upon those tickets for impeaching his testimony.

27. Facts and circumstances of the case lead to the only inference that workman having collected lesser amount as per prevalent malpractice had neither made any entry in the way-bill nor issued any ticket to the group of 12 passengers having boarded at Jama Masjid till the bus was stopped by the checking staff near Safdarjung Airport and tried to hand over punched tickets to the passengers after necessary entry in the way-bill when he was stopped by the checking team and punched tickets were collected from the workman.

28. Non-examination of Sh. Shakeel Ahmed by management cannot be considered fatal in view of testimony of MW-2 Shri Ishwar Singh who has deposed that statement Ex.MW-2/3 on the reverse side of challan slip was written by the passenger.

29. Management has therefore succeeded in establishing the mis-conduct committed by workman in view of absence of valid explanation justifying shortage of Rs.2.45. Removal of workman from service is therefore held to be legal and justified in view of five adverse entries in his past record.



30. Reference under Section 10(1)(c) read with Section 12(5) of the I.D. Act is accordingly answered by holding removal of workman Shri Biri Singh from service as legal and justified.

31. Attested copy of Award be sent to the office of Secretary (Labour), 15 Rajpur Road, Delhi for publication as per rules and judicial file be consigned to record room after all necessary legal formalities. ”

11. The Award dated 05.10.2021 was again subjected to judicial scrutiny before this Court by filing a writ petition i.e. W.P.(C.) No. 1614/2022, and the Learned Single Judge has dismissed the Writ Petition. The operative Paragraph Nos. 9 to 16 of the order passed by the Learned Single Judge read as under:

“9. In his cross-examination, the Management’s witness also denies specifically the fact that the Conductor had issued tickets to all the passengers. He, further, denies the suggestion that the checking report is false. The witness also testified that that the Conductor had misbehaved during the time when the checking staff had entered the bus. The impugned award also clearly records that the Management was successful in proving the misconduct committed by the Workman and that the Workman had failed to issue tickets after having accepted money from the passengers.

10. The present case is a case of misconduct by the Workman. The dismissal has taken place more than 30 years ago. The testimonies of the witnesses are summarised below:

Evidence of the Workman-

“The charges mentioned in the chargesheet dated 6th May 1991 are false and wrong. All the passenger travelling on Bus No. 9065 on route no. 052 on 19/20th April 1991 were issued ticket of right denomination when the bus was checked by the checking officials. The



checking staff had closed the number of way bill and the last number was 39144 which showed that the tickets sold till no. 39144 were sold, checked and punched. The checking officials took valid tickets from the passenger and made a false challan against the deponent. The charge that punched tickets were not given to the checking staff is false and was added to give false colour to the challan. The alleged statement of the passenger is forged and false. No person has given any statement in front of the deponent nor was the deponent confronted by any such passenger. The cash was found short with the Deponent at the time of checking, but the Deponent had deposited the same in the depot and as such there was no misconduct on part of the Deponent. The deponent is unemployed since termination and is facing acute financial hardship. Deponent is surviving due to some agriculture work by him and some stitching work done by the wife of the deponent.”

Evidence of the Mr. Ishwar Singh for DTC-

“I was the ATI at the time of the issuance of a challan dated 19/20th April 1991 to Sh. Biri Singh which is Ex. MW2/1. I gave checking report of the said challan to the Workman. The Workman was chargesheeted. That I checked the bus on 19/20th April 1991 at 2.40 am. I found the that the Workman Sh. Biri Singh received from a group of 12 persons, full fare from Jama Masjid to Khan Pur Rs.24/- in the night service in the bus No. 9065 route No. 052 and till Safdarjung Airport. The Workman did not issue tickets to the group of passengers. The workman tried to the give tickets to the passengers on seeing the checking staff, No. 749/391132 to 391143. That when I asked for the ticket, the Workman refused to give me unpunched tickets. The Workman refused to ger his cash checked in the bus. That I took the bus to INA Police Post where the cash was checked and it was found less of Rs. 2.45 paisa. The Workman behaved improperly with the checking staff. That the checking staff recorded



the statement of the group leader of 12 passengers on the back of the challan which is annexed marked as Ex. MW2/4. That the copy of the waybill is Ex. MW2/4”

11. After perusing the above testimonies, the Court finds that the ATI who gave evidence has mentioned all the facts relating to the surprise inspection. He has given details of the conduct of the workman and the manner in which Workman behaved when he realised that the inspection team was about to board the bus. The ATI’s evidence that the bus had to be taken to the INA check post is affirmed by the driver of the bus who gave evidence before the Labour Court. The observation of the Labour Court where the driver’s evidence is captured reads as under:

“24. WW-1 Shri Biri Singh during his cross-examination recorded on 27.07.2006 has denied the suggestion that he refused to show the cash to the checking staff and that cash could be checked by the officials only after the bus was taken to police station where a sum of Rs.2.45 was found short. He, in addition, has also denied the suggestion that the bus was stopped at INA check post. It is, however, relevant to note that Shri Chand Ram, Driver, Badge No. 17315 in his testimony recorded during-enquiry as defence witness has deposed that the bus was stopped at INA check post and a sum of Rs.2.45 was found short. The fact that workman has tried to mislead the Court by denying the suggestion that bus was taken to INA check post coupled with the fact that a sum of Rs.2.45 was found short which could not be explained by the workman dissuades the Court from relying upon his testimony.”

12. There are also some glaring inconsistencies in the case put forth by the Workman. The relevant portion from the impugned order showing the aforesaid inconsistency is:

“22. WW-1 Shri Biri Singh in his cross-examination recorded on 09.04.1999 has initially deposed to have



given punched tickets to the checking staff before resiling from his earlier statement in his cross-examination recorded on 27.07.2006. Relevant portion of his cross-examination recorded on aforesaid dates is extracted below:

Cross examination recorded on 09.04.1999.

"..... It is correct that I gave punched tickets to the checking staff. "

Cross examination recorded on 27. 06.2006.

" It is incorrect to suggest that I refused to handover unpunched tickets to the checking staff and later on handed over tickets after punching them "

13. From the above extracts it is clear that the labour court notices the clear contradiction in the workman's testimony. In the cross examination, the workman has merely denied all the suggestions put to him. There is no dispute to the fact that the statement of one of the passengers was recorded, placed on record and exhibited. The testimony of the Workman is clearly unreliable and untrustworthy. On the other hand, the testimony of the Management witness has been unimpeached leading to the inescapable conclusion that misconduct was indeed committed by the Workman.

*14. It is also the settled position that customers need not be produced in such proceedings. Recently, in **Asst. General Manager, Stat Bank of India v. Ashok Kumar Bhatiya, WP(C) 7584/2017** vide order dated 17th December 2021, this Court has reiterated that customers need not be produced for proving misconduct or irregularities, as it leads to the greater inconvenience for the customer which the Management sees to avoid under all circumstances. Moreover, this Court in the case of **Delhi Transport Corporation v. Shree Kumar & Anr. 113 (2004) DLT 505** has squarely dealt with the issue of non-production of passenger as a witness in the domestic enquiry or before the Labour Court and held that production of a*



passenger is not required to prove the misconduct of the Workman. The relevant observations of the Court are as follows:

“10. In Shyam Sunder v. Delhi Transport Corporation (supra) this Court held that since the enquiry officer based his findings on the examination of the checking staff, there was independence evidence to link the petitioner with the charges levelled against him, and consequently it was held that the statement of the passengers, not being the sole material against the petitioner, the domestic inquiry was not vitiated. The aforesaid decision of this Court as also the decision of the Supreme Court in Rattan Singh (supra) and many other decisions were noticed by this Court in the decision in Delhi Transport Corporation v. N.L. Kakkar and another (supra). After noticing all the judgments, this Court held that it is quite clear that consistent view of the court over the last few decades has been that non-production of the passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic inquiry should not be interfered with so long as they are based on some evidence. It was further held that the value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal. In the said judgment this court also noted the law laid down by some other High Courts and thereafter it was held that the production of passengers either in a domestic inquiry or before the Labour Court in an industrial dispute is not at all necessary. This Court was of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the inquiry officer or the Labour Court causing them unnecessary inconvenience. I am of the considered opinion that



all the aforesaid decisions are fully applicable to the facts and circumstances of the present case.”

*15. The said proposition of law has been reiterated in judgment passed by this Court in **Dayal Singh v. Delhi Transport Corporation 2013 LLR 525** to hold that it is not mandatory that passenger witness should depose to establish guilt.*

16. Therefore, the misconduct having been established on facts in a detailed award passed by the Labour Court, in the opinion of this Court, the said order does not warrant any interference in writ jurisdiction under Article 226 of the Constitution of India, 1950. Accordingly, the present writ petition, along with all pending applications, is dismissed with no orders as to costs.”

12. The Award passed by the Labour Court and the order passed by the Learned Single Judge makes it very clear that the charge of recovering full fair from a group of 12 passenger and not issuing ticket was proved before the Labour Court, and the finding of fact arrived at by the Labour Court has been affirmed by the Learned Single Judge. Thus, the Appellant has certainly committed misconduct and was proceeded rightly under Section 4(E) of Delhi Road Transport Rules (Amendment) Act, 1971 read with Clause 15(2) of the Delhi Act (Conditions of Appointment and Services) Regulation, 1952.

13. Learned Counsel for the Petitioner has vehemently argued before this Court that no amount was found in surplus in possession of the Appellant at the time of checking of the Bus, and, therefore, as surplus amount was not found at the time of checking of the Bus, it can never be said that the Appellant has committed any misconduct and the Labour Court as well as,



the Learned Single Judge has erred in law and facts in holding the misconduct as proved.

14. The Learned Counsel for the Appellant has also raised a ground and stated categorically that in case the Appellant had charged fair, and had not issued the tickets, the amount found in the custody of the Appellant would have been surplus and the fact reveals that, in fact, the amount recovered from the Appellant was short by Rs. 2.50/-.

15. Learned Counsel for the Appellant has also argued before this Court that the evidence on record reveals that all the 35 passengers travelling in the Bus were issued tickets, and no passenger in the Bus was found without ticket. No passenger protested in the matter, and the statement of the passenger was not recorded before the Labour Court, and, therefore, the misconduct could not have been proved in the manner in which it has been done.

16. It has also been argued that the quantum of punishment Awarded in the matter is on the higher side, and the present case is a case of perverse findings by the Labour Court, and, therefore, the Award as passed by the Labour Court deserves to be set-aside, and the order passed by the Learned Single Judge also deserves to be set-aside.

17. Learned Counsel for the Appellant has read out the statement of the witnesses before this Court while arguing the matter, and has made an attempt to establish that the Appellant did not commit any misconduct. It has also been argued by the Learned Counsel appearing for the Appellant that there were lots of discrepancies in the evidence adduced on behalf of the



employer and the Workman was not found carrying any surplus cash when the Checking Team entered the Bus.

18. It was submitted by the Learned Counsel for the Appellant that, in fact, the way bill would show that the tickets were in fact given by the Workman and the allegation against the Workman were baseless.

19. This Court has carefully gone through the evidence on record as well as the ground raised in the present Appeal by the Appellant. The evidence on record especially the testimony of Assistant Transport Inspector, establishes that a surprise check took place.

20. Details are also on record in respect of the conduct of the Workman in the manner and method in which Workman behaved when the inspection took place.

21. The Inspecting Team was forced to take the Bus to INA Police Check Post, and at INA Checkpost only a search was carried out.

22. There are lot of inconsistencies in the case put up by the Workman as held by the Learned Single Judge. The Workman has merely denied all the suggestions put to him.

23. The Learned Single Judge has placed reliance upon the Judgment delivered in Writ Petition No. 7584/2017 titled as *Asst. General Manger, State Bank of India Vs. Ashok Kumar Bhatiya*, where, in case of departmental enquiry where the customers were not examined, the misconduct was upheld and it was also held that the customers need not be produced in which departmental enquiry proceedings. In the present case



also non-examination of the passengers is certainly not at fatal as the statement of the other witnesses are good enough to prove the misconduct.

24. The Learned Single Judge has also taken shelter of the Judgment delivered in the case of *Delhi Transport Corporation Vs. Shree Kumar & Anr.*, 133 (2004) DLT 505, wherein, non-production of passenger was not held to be fatal for domestic enquiry or before the Labour Court.

25. It has also been vehemently argued by the Learned Counsel for the Appellant before this Court that the Workman should have dealt with leniency.

26. This Court has carefully gone through the documents on record, and this is not a case of a Workman who has committed some minor misconduct. The Workman in the present case had earlier in the past also committed similar misconduct. He was earlier in the past also placed under suspension in the year 1988 for not issuing the tickets to the two passengers, and, thereafter, he was punished by inflicting a punishment of stoppage of two increments with cumulative effect.

27. The Workman was also Awarded five adverse entries keeping in view his performance, and the present case is not a solitary case where the Workman has committed a similar misconduct, and, therefore, in the considered opinion of this Court, even if it is a solitary misconduct misconduct committed by the Appellant, misappropriation of Government money of is a heinous offence, even though it is of few Rupees only.



28. In the considered opinion of this Court, once the misconduct was proved by the Labour Court based upon the witnesses, and the finding arrived at by the Labour Court has been affirmed by the Learned Single Judge, the question of interference by this Court in the peculiar facts of the case does not arise.

29. Resultantly, in view of the above, the present LPA stands dismissed. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 26, 2022

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