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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 03.08.2022
Pronounced on: 17.08.2022

+ W.P.(C) 5183/2003

D.T.C.

..... Petitioner

Through: Mr. U.N. Tiwary, Advocate

versus

PHOOL SINGH & ANR.

..... Respondents

Through: Mr. Pradeep Kumar, Advocate

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The Petitioner/Management filed the present Writ Petition challenging the Award dated 17.07.2002 and 07.10.2002 passed in I.D. No. 89 of 1995 by the Learned Presiding Officer, Labour Court VII, Delhi (hereinafter referred to as "**Labour Court**"). Vide the impugned Award dated 17.07.2002, the Learned Labour Court was pleased to hold the domestic enquiry conducted by the Petitioner/Management as vitiated and vide the impugned Award dated 07.10.2002, the Learned Labour Court was pleased to hold the termination of the Respondent No.1 as illegal and hence directed for reinstatement of the Respondent No.1 with 75% back wages.



Facts relevant for the consideration of the present Writ Petition are as follows:

2. Respondent No.1 (hereinafter referred to as “**Respondent/Workman**”) was employed as a conductor with the Petitioner/Management (Batch no. 14243, P.T. no. 26943). When the Respondent/Workman was on duty on 23.01.1993 with bus no. 8688 operating on route no. 708, the checking team of the Petitioner/Management comprising of (i) Sh. Bhiku Ram; (ii) Sh. Satya Prakash; (iii) Sh. Om Prakash; and (iv) Sh. Raja Ram, checked this bus at Chandpur Crossing, Delhi. During the said checking, it was found that four passengers alighting from the front gate with two bags did not have tickets with them. On being questioned, the passengers informed the checking team that they had boarded the bus from Bawana and were going to Chandpur, and that they had given Rs. 6 to Respondent/Workman but he did not issue any tickets to them. The checking officials also checked the cash with Respondent and found cash in excess of Rs. 8/-.
3. Since the passengers were illiterate, they could not give a statement to the checking officials in writing. Hence, Shri Bhiku Ram, T.I., prepared a report based on the statement of the passengers, and submitted it to the Petitioner/Management.
4. The Depot Manager on 28.01.1993 placed the Respondent/Workman under suspension pending enquiry. Subsequently, the Petitioner/Management, through its Disciplinary Authority, the Depot Manager, issued a charge sheet (no. BD/AI (T)/CS-32/93/120) dated 01.02.1993 under Delhi Transport Law (Amendment) Regulation,



1971 read with Clause 15(2)(vi) of DTC (Conditions of Appointment and Service) Regulation, 1952 against the Respondent/Workman with the following charges:

“On 23/1/93 you were on duty on bus no. 8688 route no.708. Your bus was checked by the checking team at Chandpur Mor and it was found that you had taken the full fare from a group of four passengers but did not issue tickets to them. When the passengers were questioned in front of you they said that they had boarded the bus at Bawana for Chandpur Mor and they also had two large bags. We gave Rs. 6 to the conductor and despite our request the conductor did not give the tickets. You admitted your mistake in front of the passengers and gave six unpunched tickets to the checking team. When your cash was checked, a sum of rupees eight was found in excess. It is clear that you have violated the rules of the Corporation and caused monetary loss.”

5. The Enquiry Officer on 24.03.1993, after conducting the enquiry, found the Respondent/Workman guilty of the charges levelled against him. The Disciplinary Authority, after examining the enquiry report, issued show cause notice dated 13.04.1993 to the Respondent/Workman asking him to show cause as to why he should not be removed from the service.
6. The Respondent/Workman submitted the reply to the show cause notice dated 13.04.1993 and the same was found to be ‘not satisfactory’. Hence the Disciplinary Authority, vide order no. BD/AI (T)/ (Cond.14243)/93/1533 dated 24.05.1993, removed the Respondent/Workman from the services of the Petitioner/Management



under Clause 15(2) (VI) of DTC (Conditions of Appointment and Service) Regulation, 1952.

7. Since at the relevant time another Industrial Dispute was pending between the Petitioner/Management and its Workmen before the Industrial Tribunal, the Petitioner/Management sought approval of the Industrial Tribunal under Section 33(2) (b) of the Industrial Disputes Act, 1947 (“**I.D. Act**”). The said approval was granted to the Petitioner/Management.
8. The Secretary (Labour), Government of the N.C.T. of Delhi on 15.05.1995 made the following terms of reference under Section 10 of the I.D. Act.

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

9. The Respondent/Workman filed his Statement of Claim before the learned Labour Court alleging that his services were illegally terminated by the Petitioner/Management. The Respondent/Workman claimed that the domestic enquiry conducted by the Petitioner/Management against him was not in accordance with law and hence the same is vitiated. The Respondent/Workman prays for declaring his termination as illegal and also prays for his reinstatement in service with full backwages. The Petitioner/Management filed its Written Statement contending that the Respondent/Workman is guilty of misconduct and hence after conducting the proper domestic enquiry in accordance with the DTC (Conditions of Appointment and Service) Regulation, 1952, the services of the Respondent/Workman were



terminated. The Petitioner/Management further submitted that the domestic enquiry was conducted by the Petitioner/Management in accordance with the specific rules in this regard and in compliance with the principles of natural justice

10. Based on the pleadings of the parties, the learned Labour Court framed the following two issues for adjudication:

- i. Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?*
- ii. As per terms of reference.*

11. The parties led their evidence to substantiate their respective cases. The Respondent/Workman examined himself as WW-1. The Petitioner/Management examined Smt. Anu Kumar, Manager, IP Estate Depot, D.T.C as MW-1.

12. The Learned Labour Court vide impugned order dated 17.07.2002 decided the Issue no. 1 against the Petitioner/Management and held as under:

“It is now to be considered whether the conductor has been rightly challaned and a proper and fair enquiry has been held against him. Perusal of the enquiry proceedings reveals that passengers who had stated to the checking officials that they were not issued tickets despite payment of fare have not been examined by the enquiry officer. Even the checking officials had not recorded their statements for the reasons best known to them. The checking officials have submitted that the passengers were illiterate and, therefore, their statements were not recorded. In my opinion, even if the passengers were illiterate, the checking officials could have recorded the statement in their own hand and thereafter, have obtained the signatures/thump impression of the



concerned passengers. The checking officials have failed to do so and this throws a grave doubt on their version.

The statement of checking officials otherwise would have been believed if the passengers had deposed against the workman during the course of enquiry. Unfortunately, the passengers were also not examined in the enquiry by the management and there is no explanation for the same. The management has tried to explain their absence by stating that they were not available at their address despite the letters sent by registered post. However, no such letter or the regd. cover has been placed on record. This could have specifically asked the management whether the said record was available with it.

MW1 Smt. Ann Kumar had stated that the letters were sent to the passengers by UPC as well as regd. post and such record can be produced. The court had thereafter, issued directions for production of the record. However, on 13.2.2002, one of the officials of the DTC had given a statement that no such record was available with DTC. It is thus clear that passengers were never summoned by the management in the enquiry. It is further clear that enquiry proceedings dated 23.3.99 have been wrongly recorded as it is mentioned there that the passengers were called by regd. post but they have failed to appear. In such circumstances, it cannot be said that a fair and proper enquiry was conducted by the management. The vital witnesses were never examined by the management to prove the allegations against the workman.

In view of the above reasons, I am of the opinion that a fair and proper enquiry has not been conducted where full opportunity was given to the workman to prove his version and the enquiry proceedings and findings are based on facts which are not proved and, thus, cannot form the basis for taking action against the workman. The result of the above discussions is that enquiry conducted by the management



was in violation of the principles of natural justice and the same be therefore, set aside.”

13.The Petitioner/Management neither requested for framing of additional issues nor sought to prove the validity of the domestic enquiry before the learned Labour Court. Hence, the learned Labour Court vide the impugned Award dated 07.10.2002 directed reinstatement of the Respondent/Workman with 75% back wages. Being aggrieved by both the impugned orders, i.e., Award dated 17.07.2002 and 07.10.2002, the Petitioner/Management filed the present Writ Petition.

Submission on behalf of the Petitioner

14.Mr. U. N. Tiwary learned counsel for the Petitioner submitted that the learned Labour Court erred in interfering with the disciplinary proceedings conducted by the Petitioner/Management. The learned counsel for the petitioner further contended that the Petitioner/Management has conducted the enquiry in fair and proper manner in accordance with principles of natural justice and the learned Labour Court erred in rejecting the domestic enquiry conducted by the Petitioner/Management on the sole ground that the statement of the passengers were neither recorded by the checking team nor summoned during the enquiry proceedings. He further contended that learned Labour Court erred in ignoring the fact that during the checking excess amount of Rs. 8 has been found from the possession of the Respondent. Learned counsel for the petitioner referred to Inspection Report dated 23.01.1993 contending that the Respondent has admitted



his misconduct before the checking team and handed over 6 unpunched tickets of Rs. 1/- each bearing no. 325/59982 to 59987. Learned counsel for the petitioner further contended that vide letter dated 17.03.2009 issued by the Petitioner, the Respondent was allowed to join his services and was paid minimum wages under Section 17-B of the Industrial Disputes Act. He further contended that the learned Labour Court erroneously held that the domestic enquiry is liable to be set aside as the passengers who were travelling without tickets have not been produced before the learned Tribunal by the Management. In order to substantiate his arguments learned counsel relied on Judgment dated 03.09.2008 passed by Single Bench of this Court in *Delhi Transport Corporation Vs Gian Chand; M.L. Singla Vs Punjab National Bank and Anothers* reported as (2018) 18 SCC 21; *State of Haryana v. Rattan Singh* reported as (1977) 2 SCC 491, *U.P. State Road Transport Corporation v. Suresh Chand Sharma* reported as (2010) 6 SCC 555 and *North West Karnataka RTC v. H.H. Pujar*, reported as (2008) 12 SCC 698.

Submissions on behalf of the Respondent

15.Mr. Pradeep Kumar, learned counsel for the Respondent contended that Impugned Award passed by the learned Labour Court is correct and interference is called for by this Court. He further contended that that the officials of the Petitioner/Management misused their position by falsely accusing the Respondent/Workman. Learned counsel further contended that the Petitioner/Management failed to prove the charges leveled against the Respondent/Workman and accordingly order of reinstatement has been awarded by the learned Labour Court.



16. It is further submitted by the counsel for Respondent/Workman that the enquiry proceeding was held without observing the principles of natural justice. Neither the statements of the passengers were recorded nor summoned as a witness in the enquiry proceedings. Although there were 15 passengers in the bus, no independent passenger was examined. Learned counsel for the Respondent further contended that there exists an official bias during the Enquiry proceeding as the Enquiry Officer was an employee of the Petitioner/Management. Learned counsel for the petitioner contended that the checking officials failed to adhere with the requirements mentioned in DTC regulations whereby the checking officials were bound to record the statement of passengers/witness on the back portion of the challan on the spot and hence the finding of the Enquiry officer was vague and perverse. In order to substantiate his arguments learned counsel for the respondent relied on the Judgment dated 05.09.2011 passed in the case of *MGT of DTC Vs Surinder Kumar* by Single Bench of this Court in WP(C) 6967/2005.

Legal Analysis based on the facts of the present case

17. Heard the arguments advanced by learned counsels for the parties and perused the documents and judgments relied upon by them. Learned Labour Court vide impugned Award dated 17.07.2002, decided the preliminary term of reference, i.e., '*Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice?*' in favour of the Respondent/Workman and against the Petitioner/Management. It is the case of the Petitioner/Management that they have conducted the enquiry in



accordance with law. Hence, it is imperative for this Court to examine the validity of the departmental enquiry conducted by the Petitioner/Management.

18. The Respondent/Workman is an employee of the Petitioner/Management and governed by the Delhi Road Corporation Authority (Conditions of Appointment & Service) Regulations, 1952. Regulation 15(2)(C) of the said Regulations regulates the procedure to be followed while conducting the disciplinary proceedings. Regulation 15(2)(C), inter alia, reads as follows:

“ Without prejudice to the foregoing provisions, no order of dismissal, removal or any other punishment except censure shall be passed against an employee of the Authority other than an order based on facts before a Criminal Court unless he has been informed in writing of the grounds on which it is proposed to take action shall be reduced to form a separate charge or charges which shall be communicated to the person charged and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The employee shall be required to be within a specified time to submit a written reply to the charges and to state whether he desired to be heard in person also. If he so desires and the competent authority so directs an oral enquiry shall be held. The officer conducting the enquiry may record facts brought out in such enquiry and may utilize them for coming to a finding on the truth or otherwise or the charge or charges levelled against employees. The Welfare Officer if any employed with the Authority may attend such enquiry to watch the interest of the employees but shall not intervene or obtrude in proceedings at any stage. The proceedings shall contain a statement of the finding and grounds thereof”



19. This Court has examined the enquiry report in detail and notes the following facts:

- (i) The Petitioner Management issued the chargesheet dated 01.02.2003 against the Respondent Workman explaining the charges against him with clarity.
- (ii) The said charge sheet was duly served upon the Respondent Workman.
- (iii) The Respondent Workman submitted his detailed reply contesting the allegations as contained in the said chargesheet and requested for an oral enquiry.
- (iv) As per the request of the Respondent Workman, a detailed enquiry was conducted by the Petitioner Management in accordance with the statutory regulations.
- (v) The Respondent Workman was granted enough opportunity to cross examine the witness of the Management.
- (vi) After affording proper opportunity to the Respondent Workman, the enquiry officer submitted a detailed enquiry report to the disciplinary authority.
- (vii) The disciplinary Authority after affording proper opportunity to the Respondent Workman, imposed a penalty of 'removal from service' on the Respondent Workman.

20. A perusal of the enquiry proceedings therefore shows that the said enquiry was conducted in accordance with the statutory regulations after affording opportunity for the Respondent/Workman. It is also pertinent to note that there is no allegation of the



Respondent/Workman regarding non-compliance of statutory regulations by the Petitioner/Management.

21.A perusal of the impugned Award dated 17.07.2002 shows that the learned Industrial Tribunal has held that the departmental enquiry is vitiated on the following grounds:

- (i) The checking team failed to record statements of the passengers and failed to examine them during the enquiry proceedings.
- (ii) The Petitioner/Management failed to produce the registered cover by which they issued summons to the passengers before the Learned Tribunal.

22.The issue of non-examination of the passengers is no more *res integra* and has been settled by various case laws. Learned Single Judge of this Court, in an exhaustive Judgment in the case of ***DTC Vs N.L Kakkar & Ors.*** reported as ***110 (2004) DLT 93*** summarised the law by referring to various case laws in this field. The relevant portion of the said Judgment reads, inter alia, as follows:

“Passenger Witnesses

- 13. *In a similar fact situation, a Full Bench of the Punjab & Haryana High Court in State of Haryana vs. Ram Chander 1976 (2) SLR 690 laid the foundation for its discussion in paragraph 3 of the Report. It was held that a domestic tribunal is not bound by the strict rules of evidence and can evolve its own procedure as long as it is in accordance with the principles of natural justice. It was said:*



"The first question for consideration is, whether the evidence of the checkers as to what they were told by the passengers was not legal evidence in the domestic enquiry against the respondent. Time and again, it has been repeated by the Supreme Court that domestic tribunals in the absence of statutory guidance, have the right to regulate their own procedure and are also not bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in Courts are often misplaced in domestic enquiries. A Domestic tribunal whose procedure is not regulated by a statute is free to adopt a procedure of its own so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source if it is 'logically probative'."

14. *Thereafter, the Full Bench considered earlier decisions of the Supreme Court and also referred to cases from England to lay down the law in paragraph 4 of the Report with regard to the value to be attached to hearsay evidence. It was held :*

*"... .. where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the Checker that he found passengers traveling without tickets and (2) the statements made by the passengers to the checker at the time of checking. **The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstance that statements were made in the presence of the conductor and on the spot.** In such a case, it cannot be said that the*



enquiry officer's findings are based on pure hearsay or hearsay of unreliable nature."

15. *The most important judgment on the subject is State of Haryana vs. Rattan Singh . The facts of that case are similar to the facts of the present case. What must be mentioned, however, is that in Rattan Singh the Civil Court declared the domestic inquiry a nullity. The appellate Court affirmed this conclusion and the High Court dismissed a second appeal. Yet, the Supreme Court entertained a petition for special leave to appeal and upset the conclusions of three Courts.*
16. *The contentions urged before the Supreme Court are also of some importance. They are:*
 - (i) *None of the passengers traveling without tickets were examined in the domestic enquiry.*
 - (ii) *The checking inspectors had violated a departmental instruction by not recording the statements of the passengers.*
 - (iii) *The co-conductor in the bus had affirmed the innocence of the conductor.*
17. ***The Supreme Court held in paragraph 4 of the Report that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It was said that the passengers are not required to be chased and brought before the domestic tribunal.***
18. *On the scope of permissible interference with the conclusions of a domestic inquiry, the Supreme Court said in the same paragraph that what has to be seen is whether there was some evidence or was it a case of no evidence. As long as there is some evidence, sufficiency thereof in proof of a finding by a domestic tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer*



and, therefore, the order passed in the domestic inquiry could not be held invalid.

19. I think it is worth quoting the view of the Supreme Court as reflected in paragraph 4 of the Report. This passage really answers both the issues before me. This is what the Supreme Court says:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement.** The simple point is,



was there some evidence or was there no evidence -- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

20. *With regard to the second contention relating to non-compliance of departmental instructions, the Supreme Court found them to be rules of prudence and not rules that bind so that their violation will not vitiate the exercise. Absence of written statements of the passengers (the statements were orally made) was explained by Supreme Court as being understandable given the psychology of the passengers, though not worthy of approval. But, it was held that merely because their statements were not recorded, it would not invalidate the order in the domestic inquiry.*
21. *Finally, with regard to the third contention, the Supreme Court held that "re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal."*
22. *Two facts are noteworthy in the decision of the Supreme Court. Firstly, the only evidence against the conductor was what was told by the passengers to the checking staff. The passengers did not enter the witness box, nor did they give written statements to the*



checking staff. Secondly, the co-conductor supported the conductor and apparently entered the witness box. Yet the Supreme Court accepted the finding of the domestic inquiry and reversed the conclusion of three Courts.

23. Soon after the decision of the Supreme Court in *Rattan Singh*, a Division Bench of this Court had occasion to deal with a similar situation, wherein again, both the issues before me had also arisen. In *Delhi Transport Corporation vs. Presiding Officer, Additional Industrial Tribunal* (1979) XVI DLT 220, the Division Bench noted two competing principles, that is, non-reviewability of a finding of fact based on evidence and violation of the rules of natural justice. The Division Bench laid down the law on page 224 of the Report and then referred to and relied upon *Rattan Singh* in support of its conclusions. This is what the Division Bench said:

"The alleged violation of natural justice presupposes that it was necessary that the passenger witness should have been made available for cross examination. This assumption is baseless. Firstly, the notice by registered post sent to the witness was received back with the remark that the witness had left the address and the notice could not, therefore, be served on that address. This made it impossible for the Inquiry Officer to serve the passenger witness. Secondly, the question whether the hear-say evidence of the checking staff about the statement of the passenger should have been admitted in evidence by the Inquiry Officer because of the impossibility of enforcing his attendance which may arise in a suitable case did not arise in this case. Even when no such impossibility of enforcing the attendance of the passenger was proved the Supreme Court observed in *State of Haryana and another v. Rattan Singh*"



24. *On the question of interference with a finding of fact arrived at in a domestic inquiry, it was held :*

"Therefore, in the present case, the principle (sic) finding of fact of the Inquiry Officer which is based on some evidence independent of the written statement or oral evidence of the passenger witness is unassailable."

25. *On page 225 of the Report, the Division Bench made an important observation, which I think should be taken serious note of. It was said:*

"We may take judicial notice of the fact that the checking of the conductors of the buses of the appellant is a salutary practice. Its effectiveness cannot be defeated by technicalities. When the misconduct is proved by the common sense standards before the Inquiry Officer, legal ingenuity and technicalities should not be allowed to impugn the common sense findings and defeat the operation of the system of checking."

(emphasis supplied)

23. This Court is in respectful agreement with the law as summarized by the learned Single Judge of this Court in **N.L Kakkar** (Supra). The domestic enquiry conducted by the Petitioner/Management in accordance with the statutory regulations cannot be brushed aside by the simple reason that the passengers were not examined. In the present case, all the members of the checking team were examined and they were cross-examined by the Respondent/Workman. All of them supported the inspection conducted by the checking team. There is no allegation of any personal animosity between the Respondent/Workman and the members of the checking team. Hence



there is no motive for the members of the checking team to give evidence against the Respondent/Workman. Therefore, it is clear and evident that there were enough evidences before the Disciplinary Authority to proceed against the Respondent/Workman. In addition, this Court notes the past record of the Respondent/Workman. As per the said past record, there were 9 adverse entries out of which one entry was related to non-issuance of tickets to the passengers after accepting the due fare from them.

24. In view of the discussion herein above, this Court is of the considered opinion that the domestic enquiry conducted by the Petitioner/Management is in accordance with the statutory regulations and cannot be held to be vitiated merely because the passengers were not examined.

25. The second objection of the Learned Tribunal against the domestic enquiry was that the Petitioner/Management failed to produce the record vide which they issued summons to the passengers. It is the consistent case of the Petitioner/Management that the summons were issued to the passengers, however the said summons returned undelivered. This fact has been categorically mentioned in the enquiry report. However, the Petitioner/Management failed to produce the said records before the Learned Labour Court because the files were submitted to the old record room, Okhla and the said files could not be retrieved. There is no reason to disbelieve the enquiry report in this regard.



26. This Court further notes that the checking team recovered unaccounted excess cash from the Respondent/Workman based on statement of passengers recorded on the spot. The quantum of amount recovered holds no relevance here as such an act committed by Respondent/Workman is a gross misconduct amounting to violation of fiduciary duty. The petitioner rightly placed reliance on the case of ***Karnataka SRTC v. A.T. Mane*** reported as (2005) 3 SCC 254 in which following observation was made:

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

27. The defense adopted by the Respondent/Workman that possession of excess cash is not a misconduct under the D.R.T.A Regulation is not sustainable, as this Court refrains itself from taking such a narrow view. The regulation was put in place for disciplined and efficient working of the Authority and breach of fiduciary duty falls under the category of misconduct.

28. Learned counsel for Respondent No.1 contended that officials of the Petitioner/Management misused their powers and that there existed an official bias during enquiry proceeding. This Court is not persuaded enough to believe that there exists genuine ill motive on the part of



the petitioner's officials against Respondent/Workman. There is no allegation of personal animosity between the Respondent/Workman and the members of the checking team. A learned Single Judge of this Court has also held in the order dated 13.12.2007 passed in **W.P(C) No.9165/2007 titled Shyam Sunder Vs DTC**, that:-

“This is not a part of the duty of the checking officer to record the statement of 95 passengers. His own statement if proved to be recorded without ill will or malice is more than sufficient. Counsel for the petitioner himself admitted that the checking staff did not have any enmity or hostility with the petitioner. If somebody is to be entangled falsely there should be some motive. In the absence of such motive all the allegations levelled against the checking officer pale into insignificance. The Court is bound to take a down to earth view. No passenger likes to become a witness under such circumstances. Moreover, the absence of passengers does not go to whittle down the value of the disciplinary report.”

29. Mere accusation of official bias will not help the Respondent/Workman and there is no reason to doubt the evidence given by members of the checking team, therefore this court refuses to accept this contention.

30. In view of the discussion herein above, it is evident that the Petitioner/Management conducted the domestic enquiry in accordance with the statutory regulations. It is also clear that the Petitioner/Management granted enough opportunity to the Respondent/Workman to defend himself. It is not the case of the Respondent/Workman that members of the checking team had any



kind of malice or personal animosity with the Respondent/Workman. Hence, this Court has no hesitation to hold that the non-examination of passengers does not vitiate the entire disciplinary proceedings. There are other reliable evidences before the Disciplinary Authority to hold the Respondent/Workman guilty of the alleged misconduct and hence the enquiry officer rightly concluded that the charges are proved against the Respondent/Workman. The Disciplinary Authority accepted the enquiry report and after affording proper opportunity to the Respondent/Workman decided to remove him from service. This Court is of the considered opinion that the learned Labour Court ought not have interfered with the enquiry proceedings in view of this Court's judgment dated 24.10.2016 in **LPA 601/2010** titled as ***Lochan Singh v. Haryana Roadways*** which states as follows:

“23. Ghanshyam Sharma v Regional Manager, Rajasthan State Road Transport Corporation, [(2000) 33 LLJ 588 Raj.] was again a case where conductor was held guilty of misconduct of carrying passenger without ticket. On a reference being made, the Labour Court invoked its jurisdiction under Section 11(A) and while upholding the finding that the respondent was guilty of misconduct, it directed the respondent's reinstatement with continuity of service but without back wages. The learned Single Judge set aside the award which decision was reversed by the Division Bench of Rajasthan High Court. Reiterating the observations made in Hullikatti (supra), it was held:

“Furthermore, we agree with the observations of the single judge in the present case that the labour court was not justified in interfering with the punishment of dismissal. Though under section 11(A), the labour court has jurisdiction and



powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the road transport corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal.”

Hence the Award dated 17.07.2002 is set aside and it is held that the domestic enquiry conducted by the Petitioner/Management was proper and fair in accordance with the law.

31. That in view of the findings of this Court qua the validity of the domestic enquiry, the service of the Respondent/Workman was terminated validly in accordance with law. Hence, the subsequent Award dated 07.10.2002 is also hereby set aside.

32. In view of discussion herein above, the impugned Award dated 17.07.2002 and 07.10.2002 are hereby set aside. It is further clarified that the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent proceedings and not dependent upon the final order passed in the main proceedings. Hence, in view of the law laid down by the Hon'ble Supreme Court in ***Dilip Mani Dubey Vs M/s SIEL Limited & Anr. 2019(4) SCC 534***, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the Industrial Disputes Act, 1947 is not recoverable.



33. In view of the above clarifications, the present Writ Petition is hereby allowed and the impugned Awards dated 17.07.2002 and 07.10.2002 are hereby set aside. No order as to cost.

GAURANG KANTH, J.

AUGUST 17, 2022

