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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on 13th September, 2022**Date of decision: 3rd November, 2022*

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W.P.(C) 1006/2011

DTC

..... Petitioner

Through: Mr. U.N. Tiwary, Advocate.
(M:9811771020)

versus

SHYAM SUNDER

..... Respondent

Through: Mr. Ashwani Tyagi, Advocate.
(M:8744855859)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.**Brief Facts**

1. The present writ petition under Articles 226 and 227 filed by Petitioner challenges the impugned award passed by the *ld. Presiding Officer, Labour Court, Karkardooma Courts* (hereinafter “Labour Court”) dated 2nd January, 2010 in *ID No. 285/08/98* titled *Delhi Transport Corporation v. Shri Shyam Sunder*. Vide the said award, the Labour Court reinstated the Respondent/ Workman (hereinafter ‘Workman’) and awarded him continuity of service along with Rs. 80,000/- with 12% interest from the date of the award till realization. The operative portion of the award reads as under:

“The removal of the workman Sh. Shyam Sunder from service is held as unjustified. Consequently the management is directed to reinstate the workman, with continuity of service. Workman is also entitled for a sum of Rs.80,000/- (Rs. Eighty Thousand only) which the management shall pay

within 30 days after publication of this award. In default the workman is also entitled 12% interest per annum from the date of award till realization.”

2. A brief background of this case is that the Workman joined the Petitioner/Delhi Transport Corporation (*hereinafter “Corporation”*) as a Conductor on 10th May, 1984. There were various complaints against the Workman which is reflected in the past conduct statement which has been placed on record. However, in so far as the present case is concerned, the case set up by the Corporation against the Workman is that on 2nd November, 1989, the Workman issued an old ticket bearing no. 199-27017 to a passenger– Mr. Balwant Singh, in lieu of the prescribed fare of Rs. 0.50, which was not matching with the series of unpunched tickets that were in his custody. He was also found to be in possession of excess cash amounting to Rs.5.70/-. When the Ticket Inspector raided the bus and realised that a false ticket had been issued to the Passenger, the statement of the Passenger and the Workman was recorded by a member of the checking staff, namely, ATI - Mr. Tej Bhan and their signatures were appended on the statement. According to the Corporation’s case, upon being confronted in the Passenger’s presence, the Workman admitted to have committed the mistake of having issued an old ticket to the passenger after picking up the same from the floor of the bus.

3. A copy of the checking report bearing No. 039246 dated 2nd November, 1989 was filed by the ATI Mr. Tej Bhan. The ATI filed a challan along with statements. A charge sheet was issued to the Workman on 17th November, 1989 under the Road Transport Corporation Act 1950 read with the Delhi Transport Amendment Act 1971. The Workman in his reply dated

24th November, 1989 to the chargesheet denied all the allegations levelled against him. The charge sheet having been issued, enquiry proceedings commenced against the Workman on 19th December, 1989. A copy of the ticket was also annexed with the charge sheet. In the enquiry proceedings, the concerned ATI, Mr. Tej Bhan appeared and his statement was recorded. He was also cross-examined by the Workman. The Workman chose not to present himself for any statement or for cross-examination in the enquiry proceedings. He also made a statement that he does not wish to record the statement of any other members of the checking staff. During the enquiry proceedings, the Workman did not produce any witness in his defence. He however claimed that the concerned Passenger ought to be called. The said Passenger, however, did not appear before the enquiry officer. The enquiry report held that the charges against the workman were proved. The enquiry on 30th January 1990 concluded that the statement, the old ticket bearing no. 199-27017, and the unpunched ticket no. 899-32302 bears the signature of the Workman and accordingly he was terminated on 3rd May, 1990.

4. After terminating the Workman, the Corporation filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (*hereinafter, the Act*) in which, an initial order was passed on 15th January, 1999 holding that the enquiry proceedings were fair and just and that the termination was valid. In view of this finding of the Id. Industrial Tribunal, the Workman submitted that he had no other points to raise and that the case could be finally disposed of. Thereafter, the Id. Industrial Tribunal approved the Corporation's decision of removal of the Workman from service dated 3rd May, 1990.

5. The Workman also raised an industrial dispute and challenged his termination before the Labour Court No. VII, Tis Hazari Courts, Delhi

bearing *ID No. 214/1998* titled *Sh. Shyam Sunder v. The Management, Delhi Transport Corporation*. In this case, the enquiry was held to be invalid vide order dated 27th July, 2009. The Corporation thereafter led the evidence of three witnesses MW-1 –Vikas Batra, MW-2 - Ishwar Das and MW-3 - Jawahar Singh before the Labour Court. The Labour Court held that the Corporation had failed to establish its case and that the evidence adduced by the Corporation is not sufficient to prove the misconduct and had accordingly directed the reinstatement of the Workman vide award dated 2nd January 2010. It is this award which is under challenge in the present petition.

Proceedings in this petition

6. Initially, notice was issued in the writ petition vide order dated 17th February, 2011. It was clarified vide order dated 14th March, 2011 that the impugned award would remain stayed. In the application filed by the Workman under Section 17B of the Act, since no reply was filed by the Corporation, the Court vide order dated 25th July, 2012 directed the payment of minimum wage or the wages last drawn, whichever was higher, from the date of the award till the pendency of the present writ petition or till the date of superannuation. Thereafter, the Petition was dismissed in default for non-prosecution on 21st August, 2014 however, the same was later restored vide order dated 13th October, 2014. It is the admitted position that the Workman was paid wages under Section 17B during the pendency of the present writ petition.

Submissions

7. Mr. U.N. Tiwary, Id. Counsel appearing on behalf of the Corporation has submitted that the inspection team that had raided the bus had clearly found that the Workman was in possession of excess cash. The statement of

the Passenger who had clearly informed the staff that the Ticket No.199-27017 was given by the Workman to him in lieu of Rs.0.50 was recorded. The said Passenger was properly identified along with his address in the said statement. Below the statement of the Passenger, the Workman had also admitted that it was his mistake and signed the said statement. The charge sheet was accordingly filed along with the copies of the challan, the statement as also the original ticket and the unpunched ticket which was taken for the purpose of evidence. The enquiry was properly conducted before the enquiry officer. The Workman conducted the case on his own without seeking any legal assistance. The statement of the ATI, Mr. Tej Bhan was also recorded who confirmed that the Workman admitted his mistake that he had given the ticket and he also confirmed that the statement was duly signed by the Workman.

8. The Id. Counsel further submits that no suggestion was put by the Workman to the ATI that the statement was obtained fraudulently. The recommendations of the enquiry officer were that the misconduct was proved. This enquiry proceedings were also upheld in the proceedings under Section 33(2)(b) Industrial Disputes Act, 1947 vide order dated 15th January, 1999. He submits that the impugned award which holds that the enquiry to be bad and that sufficient evidence has not been led, is completely contrary to the settled legal position inasmuch as the strict rules of evidence do not apply to enquiry proceedings conducted internally. He further drew the attention of the Court to admissions of the Workman at various places during the proceedings. Even the statement of the ATI given to the enquiry officer clearly states that he had admitted it and accordingly the enquiry proceeding was upheld in the proceeding under Section 33(2)(b). The order dated 27th July, 2009 passed by

the Labour Court holding the enquiry to be bad is contrary to law. The impugned award dated 2nd January, 2010 reinstating the Workman is also contrary to law as misconduct was clearly established.

9. The Id. Counsel for the Corporation relies upon the judgement of the Supreme Court in *State of Haryana vs. Ratan Singh* AIR 1977 SC 1512 to argue that the customer or passenger need not be produced in such a proceeding. He finally relies upon the past record of the Workman to show that this very Workman has been suspended on previous instances as well and has been repeatedly found to be in possession of excess cash. He was suspended earlier and he was also censured in the past. A list of the past transgressions of the Workman has been filed along with the present petition which is as under:

*“DELHI TRANSPORT CORPORATION
An organization of Government of India
Details of past record
Okhla Depot II*

*As per Service book
Shyam Sunder Verma Ex-Cond.BN.21226 T
No.46971
S/o Ram Kishan Verma Date of appointment 11-5-84
RC/*

11-2-85 MR

<i>S.No.</i>	<i>Order of authority</i>	<i>Reason</i>	<i>Nature of Penalty</i>
<i>1.</i>	<i>DM SMD/R-288/114 of 20-01-86</i>	<i>Wrong illegible -4-12-85</i>	<i>Censured.</i>
<i>2.</i>	<i>DM SMD/R-301/80/189 dt 28-1-86</i>	<i>Not displayed side board on 21-1-86</i>	<i>Censured.</i>

3.	DM SMD/CR-116/82/643 Dt.2-6-87	Was not the during duty and <u>issued</u> <u>tickets of less</u> <u>denomination</u> <u>28-5-87.</u>	Placed under suspension w.e.f.3-6-87
4.	DM SMD/CR-116/87 992 of 10-7-87	-----DO-----	Released from suspension
5.	DM SMD/CR-116/87/ 1061 of 3-8-87	Conductor sitting idle while on duty 28/5/87	
6.	DM SMD/50/84/861 dt 9-8- 84	<u>Issued Bogus</u> <u>tickets and</u> <u>found cash</u> <u>excess Rs 5-</u> <u>45 p</u>	Censured
7	DM SMD/A/17/SUSP/74/89/868 6-11-89	<u>Issued used</u> <u>tickets and</u> <u>found cash</u> <u>excess 2-11-89</u>	Placed under suspension w.e.f. 7-11-89
8	DMSMD/A/17/er- 121/90/106 Of 9-2-90	-----Do-----	Released from suspension on 10-2-90

10. The Workman has worked in the Corporation for 5 years and he has been receiving payments under Section 17B for approximately 10 years by virtue of the order passed by this Court on 25th July, 2012. The conduct of the Workman does not deserve the relief of reinstatement in his favour.

11. On the other hand, Mr. Ashwani Tyagi, Id. Counsel appearing on behalf of the Workman submits that the impugned award has clearly and categorically held in favour of the Workman stating that the case was merely based on the Passenger's statement, who was not produced. It is his submission that the Passenger's statement was not confirmed by the

Workman. He relies upon the judgment of the Supreme Court in *Andhra Pradesh State Road Transport Corporation v. G. Murali (2018) 12 SCC 41* to argue that once a Passenger exists whose statement has been recorded to take action against the Workman, an opportunity should be given to the Workman to cross examine the said Passenger. On a specific query from the Court, he states that the signatures on the statement dated 02nd November 1989 are of the Workman. However, he challenges the statement of the ATI Mr. Tej Bhan on the ground that he does not state that the statement dated 02nd November 1989 was written by the Workman himself. He further submits that the Workman has already superannuated and accordingly the relief of reinstatement may not be relevant but he deserves to be given continuity of service and other benefits as per the impugned award.

Analysis and Findings

12. On a perusal of the record and the arguments put forth by Id. Counsel for the parties, the following two aspects arise for determination in the present case:

- (1) Whether the enquiry proceedings which were held by the Corporation are fair, just and valid?
- (2) Whether the order of termination of the Workman is valid?

First Issue:

13. On the first aspect, as to the validity and legality of the enquiry held by the Corporation, it deserves to be noted that the Corporation had, on the termination of the Workman, filed an application bearing *O.P. No. 22/90* titled *Delhi Transport Corporation v. Sh. Shyam Sunder* before the Industrial Tribunal- II, Tis Hazari Courts, Delhi (*hereinafter 'Industrial Tribunal'*) under Section 33(2)(b) of the Act seeking approval from the

Industrial Tribunal for its decision taken regarding the removal of the Workman from service. In the said proceedings, the Industrial Tribunal vide its order dated 15th January 1999 held that the enquiry against the Workman was in accordance with the principles of natural justice and that it was just and valid. Subsequently, vide order dated 19th February, 1999 the Industrial Tribunal allowed the application of the Corporation under Section 33(2)(b) of the Act and accorded approval to the decision of removal of the Workman from service. The relevant portion of the order dated 19th February, 1999 is set out below:

“Delhi Transport Corporation, the appellant abovenamed, filed this application under section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter called the ‘Act’) seeking approval of this tribunal of its decision taken for the removal of the respondent from service. It was alleged that this action was taken by the management since the respondent, who was employed with it, had committed an act of misconduct of which he had been found guilty also in the enquiry that had been ordered by the management. The applicant also claimed to have remitted one month's wages to the respondent by money order as required under section 33(2)(b) of the Act, on the date of the passing of the removal order and this application was also filed in this tribunal on the same date as at that time an industrial dispute concerning DTC worker's demand for implementation of 4th Pay Commission's Report was pending adjudication in this tribunal.

The respondent opposed the approval application inter-alia on the grounds that he had not committed any misconduct and that the enquiry against him was also not held in accordance with the principles of natural justice.

Since the validity of the enquiry was challenged by the respondent and the applicant had prayed for deciding that objection as a preliminary issue the following preliminary issue was framed:

“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?”

Vide my order dated 15/1/99 the preliminary issue was decided in favour of the applicant-management and the respondent's challenge to the validity of the enquiry was rejected.

On 12/2/99, when the case came up for further consideration after the decision of the preliminary issue, the Ld. counsel for the respondent stated that the respondent's challenge to the validity of enquiry having been rejected he had nothing more to say in the matter on any other point and that the case could be finally disposed off.

The applicant-management having taken the decision for the removal of the respondent from its service for an act of misconduct after holding a departmental enquiry and the respondent's challenge to the validity of that enquiry having been rejected and it having been stated on behalf of the respondent by his counsel that he had

nothing more to say on any other point I am of the view that a case has been made out by the management for according approval to its decision taken on 3/5/90 for the removal of the respondent from its service.

I, therefore, allow this approval application of DTC and accord approval to the decision taken by it for the removal of the respondent from its service.”

14. The above order dated 19th February, 1999 is part of the LCR before the Labour Court. An attempt was made to trace the order dated 15th January 1999, but the same was futile owing to the weeding out of old records in the *Tis Hazari* Courts. It is however clear that the Corporation was successful in obtaining approval for the termination and a finding was rendered to the effect that the enquiry was legal and valid.

15. The terms of reference before the Labour Court were as under:

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

16. In order to adjudicate the above, the Labour Court first considered the legality and validity of the internal enquiry. The finding of the Labour Court in respect of the said enquiry in order dated 27th July, 2009 reads as under:

“While recording the evidence during the enquiry on 19.12.1989, the Enquiry Officer Pooran Chand, had examined one witness Tejbhan and no other checking staff. Tejbhan in his statement only stated that the conductor had signed the statement of the passenger. There is no mention that the conductor had admitted the

guilt by a separate endorsement. The separate endorsement is also seen consisting three lines.

In the peculiar circumstances where the workman is alleged to have made initial admission of his part, it was expected of the management to have examined the other checking staff apart from the Tejbhan. I find that the checking staff compromised of other members also.

After going through the enquiry proceedings, though one may not find violation of principles of natural justice as regards the procedure adopted. I find that the findings are based on this admission part of the conductor found on the statement of the passenger as stated in the findings, namely 'YATRI BAYAN PAR ABHIYUKT KE HASTAKSHAR HAI TATHHA USNE SWAYAM HI LIKHIT ROOP ME YEN MANA HAI KI WEH YATRI KE BAYAN SE SEHMAT HAI AUR USSE GALT HO GAYI HAI.' This part of the findings are not supported by the legally admissible evidence since Tejbhan, in his statement has not stated that the conductor had also made initial admission of guilt. It is not simple case where the conductor had signed the statement of the passengers but also a case where there is a writing which ought to have been proved. Hence, I am constrained to hold that the findings are perverse. Consequently, I pass following order:

ORDER

Enquiry issue is held in favour of the workman and against the management. Put up this matter for evidence on merits by 09.10.2009."

17. The above would show that in the order dated 27th July, 2009 passed by the Labour Court bearing **ID No. 285/08** titled, ***Shyam Sunder v. DTC***, there is no reference to the orders passed in the approval application under Section 33(2)(b) of the Act at all, which had attained finality. Though, an order passed under section 33(2)(b) of the Act cannot operate as *res judicata* in a proceeding under section 10 of the Act in view of the settled legal position,¹ it would nevertheless be relevant while assessing the legality and validity of the enquiry proceedings and the Labour Court ought to have taken note of the said order while considering the reference. The Labour Court acknowledges that, “*one may not find violation of principles of natural justice as regards the procedure adopted*”. However, it has proceeded on the basis that though the Workman may have made an admission to having issued a bogus ticket to the Passenger on 2nd November, 1989, since the enquiry officer examined Mr. Tej Bhan, the ATI and no other checking staff was examined, the enquiry is bad in law. The Labour Court further goes on to observe that the writing in the statement ought to have been proved by the Corporation.

18. The Labour Court seems to have completely ignored the fact that the Workman had clearly stated in Hindi on the statement of the Passenger that he agrees with the statement of the Passenger and affixed his signature on the said statement which was confirmed by Mr. Tej Bhan in his statement before the enquiry officer. There was no reason to seek double corroboration, i.e., the statement of the Passenger or of other members of the checking staff that the Workman had made admission of guilt as the Workman did not challenge his signature appended on the statement recorded on 2nd November, 1989.

¹ ***Balraj Dev v. The Management of DTC 244(2017) DLT 142; The Management of TNSTC (Coimbatore) Ltd. v M. Chandrasekaran (2016) 16 SCC 16.***

This seeking of corroboration by the passenger and other checking staff was clearly looking for a higher standard, which is not a requirement of the law. However, on this sole ground the enquiry report has been set aside by the Labour Court, a finding which is not tenable in the opinion of this Court.

19. Ld. Counsel for the Corporation has relied upon the judgment of a 3-Judge Bench of the Supreme Court in *State of Haryana v. Rattan Singh*, AIR 1977 SC 1512 wherein it was held by the Supreme Court that insisting on Passenger to be examined would be a wrong approach in such cases. Relevant portion of the said judgement is set out below:

*“4. 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, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgement 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 common sense 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. On the other hand, Id. Counsel for the Workman has placed reliance upon 2-Judges Bench decision of the Supreme Court in ***Andhra Pradesh State Road Transport Corporation v. G. Murali (2018) 12 SCC 41*** to argue that the statement of the passenger cannot be taken into consideration as no opportunity for cross examination of the Passenger was given to the Workman. The relevant portion of the said judgment reads as under:

“The matter was taken by way of industrial dispute being ID No.189/95 and the Industrial Tribunal-cum-Labour Court, Warangal vide order dated 30th December, 1999 had held that the charges 2 to 5

stand not proved for the simple reason that the statements of the passengers which were relied upon by the appellant-Corporation was specifically denied by the respondent and he had stated that he had issued all the tickets for which the fare was charged and the allegation that no ticket was issued is false. **The Industrial Court had held that as the passengers were not produced in the enquiry, the statement recorded by the TTI from the passengers cannot be taken in evidence, as no opportunity was given to the respondent to cross-examine.** Consequently, the Industrial Court had held that charges 2 to 5 have not been proved. So far as the remaining charges 1 and 6 are concerned, it was held to be proved and therefore the Industrial Court reduced the penalty from removal of service to stoppage of three increments. The appellant challenged the order by filing a Writ Petition before the learned Single Judge who dismissed the same. We have heard the learned counsel for the appellant and perused the impugned judgment. **We find that the order of the Industrial Court exonerating the respondent from charges 2 to 5 are on good grounds and do not call for any interference, as the passengers were not produced for cross-examination specifically when the respondent had denied the charges of collecting fare and non-issuing of tickets.**

21. In the opinion of this Court, the earlier decision of the larger Bench of the Supreme Court in *Rattan Singh (supra)* is clear to the effect that the statement of Passenger need not be recorded. The subsequent decision of 2-Judge Bench in *G. Murali (supra)* does not consider *Ratan Singh (supra)*. In any case, the facts in *G. Murali (supra)* are clearly distinguishable from the facts of the present case, as the statement of the Passenger has clearly been endorsed and accepted by the Workman in the case at hand. The said

statement of the Workman agreeing to the statement of the Passenger and his signature on it, cannot be resiled from by the Workman before this Court. This legal proposition also finds support in the judgement of the Id. single judge of this Court in *Shyam Sunder v. Delhi Transport Corporation [WP(C) No. 9165/2007, date of decision 13th December, 2007]* wherein the Court has observed as under:

“6. It is well-settled that the ignorance of law is no excuse. The petitioner signed the statement with open eyes. By no stretch of imagination it can be said that he was made to sign his statement fraudulently. The admission of facts comes from the horse's mouth itself. It is clear that he affixed signatures thereon of his own volition. The admission is free from ambiguity or obscurity.

7. 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.

8. Again, there was no bar for the checking staff to check the petitioner time and again.

9. The trial court noted that there were seven adverse entries already existed in the record of the petitioner. He had committed the misconduct of similar nature due to which his next due increment was stopped with cumulative effect.”

22. Thus, in the overall facts of the case, this Court is of the opinion that since the enquiry was held in a fair and just manner, and there being no other infirmity found by the Labour Court, except for the fact that the Passenger did not confirm that the Workman had admitted his guilt, when on the contrary the Workman himself had admitted to having appended his signatures on the Passenger's statement, the enquiry proceedings are held to be valid and legal. The order dated 27th July, 2009 is, accordingly, set aside.

Second Issue – On Merits.

23. Now coming to the second aspect, i.e., merits of the impugned award. The claim petition bearing ***I.D. No. 214/98*** filed by the Workman before the Labour Court No. VII, Tis Hazari Courts, Delhi challenging his removal raised the following grounds, *inter alia*, –

- That the charge sheet was false and baseless.
- That the checking report and the challan were false and baseless.
- That the Passenger ought to have been checked properly as to whether he had any other ticket on him apart from the ticket produced by him.
- That the independent co-passengers, who were given proper tickets and had paid the fare, had not been examined.
- That the excess amount of cash does not automatically lead to finding of misconduct.
- That the enquiry was not conducted in accordance with law.

- That the Passenger was himself not examined.
- That the punishment awarded was disproportionate.

24. On these grounds, the Workman prayed for setting aside of the removal order and passing of an award in favour of the workman with full backwages, continuity of service and other consequential benefits with costs.

25. The Corporation in its written statement, relied upon the following-

- That the enquiry, which it had conducted, was just, fair and proper.
- That the Workman was awarded several punishments in the past due to various irregularities in services during his service with the Corporation.
- That the Workman was rightly removed on 3rd May, 1990 vide memo no. OD-II/AI(T)/CS-121/90/1915. He confessed to his irregularity and signed on the statement of the Passenger and confirmed that he had indeed issued the fake ticket.
- That the report of the checking officials was true and correct as the Workman had himself admitted to his fault and signed the statement of the passenger without any pressure.
- The chargesheet was issued to the Workman on the basis of the challan and the statement of the Workman himself.
- That the enquiry has fully complied with the principles of natural justice, giving the Workman full opportunity to defend himself. All charges levelled in the chargesheet were proved beyond doubt.

- That the punishment awarded is proportionate considering the Workman's misconduct as also his past irregularities.

26. After holding against the Corporation that the enquiry conducted was not valid, the Labour Court proceeded to record evidence in the matter.

SUMMARY OF THE EVIDENCE OF THE WORKMAN

Evidence of the Workman – Mr. Shyam Sunder

27. The Workman in his evidence by way of affidavit dated 11th August, 2000 re-iterated the contents of his claim. He deposed that the Passenger in question showed a different ticket from the one that was issued to him and the checking staff did not ask him to check his pocket for the correct ticket despite the Workman's repeated requests. The main objection of the Workman was that the Passenger was not examined. He relied upon the Corporation's circular dated 6th December, 1972 as per which if the passengers are not examined/cross-examined, their statement cannot be used against the Workman.

28. The Workman in his cross examination admits to have signed the enquiry proceedings. He denied having any knowledge of the contents of the circulars dated 6th December, 1972 and 28th May, 1980. He also admits not to have protested against any of the procedures followed in the enquiry proceedings. He merely denied that he had issued an old ticket of Rs. 0.50 bearing no. 199-27017 to the passenger. Surprisingly, the Workman avers that he was not on duty on 2nd November, 1989 at Route No. 404 as the Conductor.

SUMMARY OF THE CORPORATION'S EVIDENCE

Evidence of MW1 – Mr. Vikas Batra

29. MW1 was the Depot Manager of D.K. Depot at the relevant point in time. He had issued the charge sheet to the Workman. MW1 confirmed that the enquiry was conducted by Mr. Mohd. Irfan. However, Mr. Mohd. Irfan had left the service of the Corporation at the time of filing of this affidavit. He identified the signatures of Mr. Mohd. Irfan on the enquiry proceedings and confirmed that the enquiry was conducted in accordance with the principles of natural justice.

30. During cross examination, MW1 deposed that he was not present during the enquiry proceedings because he is the disciplinary authority. He denied issuing the show cause notice without considering the enquiry report. MW1 also denied the suggestion that the Workman was not given a sufficient opportunity to bring his witnesses or defend himself in the enquiry.

Evidence of MW2 - Ishwar Das

31. MW2 was one of the ATIs working in the South Checking Team at the relevant time. He was one of the checking staff stationed at the Taikhand Railway Crossing between 10:05 am to 10:35 am when bus no. 2949 on Route No. 404 was checked. MW2 had personal knowledge of the checking which took place. He along with Mr. Tej Bhan, Mr. Jawahar Singh, Mr. Amrik Singh and Mr. Prem Singh found that the Workman had issued one already used/sold ticket worth Rs. 0.50 bearing no. 199-27107 to one Passenger namely, Mr. Balwant Singh. The said Passenger gave his statement in writing and signed it as well in MW2's presence. MW2 identified the signatures of the Passenger.

He also confirmed that the Workman had admitted his fault and had signed in his presence on Exhibit MW-2/1. MW2 asserted that he can identify the signature of the Workman. The checking staff also checked the cash that was on the Workman on 2nd November, 1989 and found that to be in excess of Rs. 5.70/-. The challan was issued by the checking staff that included the five witnesses and the same was signed by all the members of the checking staff and the Workman. He submitted that the report of the checking staff dated 2nd November, 1989 contained brief facts and that it was bearing the signatures of all checking staff. MW2 identified the signatures of the checking staff. The ticket which was sold to the Passenger was also exhibited as Ex. MW-2/5.

32. MW2 exhibited the statement of the Passenger as Ex.MW-2/1, which bore the Passenger's signature as also that of the Workman. The Challan at Ex MW2/2 also contained the signatures of Mr. Tej Bhan and the Workman. He exhibited the Checking Report and a photocopy of the ticket as Exhibit MW2/3. He denied the suggestion that the Workman was threatened to sign the statement of the Passenger. He confirmed that the statement was in the handwriting of the Passenger and that the resold ticket was recovered from the passenger bearing no signature of the Passenger or of the Workman. He denied the suggestion that the Ticket No.32302 was forcibly taken by the checking staff from the Workman.

Evidence of MW 3 - Mr. Jawahar Singh

33. MW3 was also one of the ATIs working with the Corporation, at the South Checking team at the relevant time and was part of the Checking Staff. His evidence was on similar lines as that of MW2 - Mr. Ishwar Das. He too

confirmed the incident, the inspection, the Passenger's statement, his signatures and the Workman's statement and signature.

34. MW3 denied the suggestion that the passenger was not issued a resold ticket. He also confirmed that the statement of the Passenger was written by Mr. Tej Bhan, ATI.

35. On the basis of the above pleadings and evidence, the Labour Court passed the impugned order holding that the charge of issuance of stale ticket of Rs. 0.50 is not proved with the following observations:

"11. With the above evidence, I am to find out whether the charge of issue of stale ticket of Rs. 0-50p is proved or not. The entire case is based on Ex-MW2/1 the statement of passenger Balwant Singh. This passenger had stated before the checking staff the conductor had given him ticket bearing No.199-27017. The same is produced as Ex MW2/5 in photocopy. I am not able to convince myself that the issuance of stale ticket is proved with available evidence for the following reasons:

(a) That MW-2 Ishwar Dass in the cross examination admitted that passenger himself had written his statement as Ex MW2/1.

(b) the above statement of MW-2 is belied by the testimony of MW-3 who deposed in the cross examination that the statement was written by one of the checking staff, namely, Tejbhan.

(c) MW-2 admitted that no signatures of passenger was obtained overleaf of the stale ticket bearing No. 27017.

(d) In the above contradiction, it was expected of the Management to have examined Tejbhan to remove the doubts arising regarding to statement of the passenger much relied in this case. The said Tejbhan is not examined.

(e) The MW-2 in the cross examination admits that all the other five passengers were issued proper tickets.

(f) *I have gone through the reply given by the workman to the initial charge sheet. it is his contention that passenger with a stale ticket defected was also issued with a proper ticket which he has not produced before the checking due to the sudden invasion by the checking staff. He requested the checking staff to properly check person so that appropriate ticket could be found with him. The checking staff had not cared to verify with the passenger properly.*

(g) *suffice it to say that the evidence adduced by management is not sufficient to prove the misconduct against the workman for the aforesaid reasons and the probabilities in the case would show that there was possibility of the passenger having been issued with the proper ticket and not a stale one but the passenger could have produced the proper ticket before the checking staff. This-inferences drawn from the evidence available on record as MW-2 Ishwar Dass had stated that all the other five passengers were issued with proper tickets.* Hence, I find that the rulings relied by the Ld. AR for the management are not applicable to the present case since the factual situation is different and that I am holding that the misconduct is not proved against the workman.”

36. A perusal of the impugned award dated 2nd January, 2010 shows that the Labour Court merely proceeds on the basis that the sale of the stale ticket is not proved. The Labour Court observed that the entire case is based on the statement of Passenger - Mr. Balwant Singh and that the issuance of the stale ticket is not proved as MW2, Mr. Ishwar Das had stated that the Passenger had written the statement whereas MW3, Mr. Jawahar Singh stated that the same was written by Mr. Tej Bhan. However, Mr. Tej Bhan had not been examined and the evidence adduced was not sufficient to prove the misconduct. This contradiction is relied upon by the labour court to hold in

favour of the Workman. It is pertinent to note that the impugned order is conspicuously silent on the statement given by the Passenger and the Workman's signatures appended in support of the same statement. All the witnesses have affirmed that the Workman confirmed the statement given by the Passenger. The statement of the Passenger duly endorsed and signed by the Workman reads as under:

“मै आज दिनांक 02.11.89 को मंदपुर से 2049 रूट नंबर 404 चढ़ा और कंडक्टर को 50 पैसे दिए। कंडक्टर ने मुझे एक टिकट 50 पैसे का दिया जिस का नंबर 199/27017 है जब गाड़ी तेखंड पर पहुंची तो चेकिंग स्टाफ गाड़ी में आया और मेरा टिकट चेक किया तो यह इस कंडक्टर का टिकट नहीं था। इस में मेरा कोई दोष नहीं। यह मेरी कोई गलती नहीं। यह कंडक्टर की गलती है। मेरी आप से प्रार्थना है कि इसके खिलाफ उचित कारवाई की जाए।

बलवंत सिंह
288A सरिता
बिहार
2.11.89

मै यात्रियों के बयान से सहमत हूँ क्योंकि मेरी गलती है यह टिकट गाड़ी में पड़ा था और मैंने उठाकर मैंने यह टिकट नंबर 199/27017 था बेच दिया।

Shyam Sunder
B.N. 21226
2/11/89²

37. The fact, that both of them gave their statements, is also confirmed by the checking report, which is duly signed by the various witnesses, who had

² The original statements are in Hindi and are handwritten. The same have been transcribed by the Court translator for use in this judgement.

appeared. The checking report was duly exhibited in the record. However, by merely holding that Mr. Tej Bhan was not examined, the Labour Court could not have ignored an array of documents consisting of the checking report, the challan and the statement of the passenger duly affirmed by the Workman. Two of the Management Witnesses were part of the checking staff team. There is no reason to disbelieve their evidence. The statement of the Passenger duly identifies the number of the ticket given to him by the conductor being 199-27017. Since there is no iota of doubt that the ticket bearing number 199-27017 is an old ticket, it could not have been held that the Corporation had not proved its case. Even during the course of submissions, Id. Counsel for the Workman clearly admits that the signatures on the statement of the passenger are of the Workman.

38. In addition, a perusal of the service record of the Workman would show that he has been repeatedly censured and suspended due to similar allegations in the past as well. His past record displays complete disregard towards his duty since the time that he was appointed with the Corporation. Repeated action has been taken against him for reasons similar to that of his removal, like issuing bogus/used tickets, being found with extra cash, sitting idle while on duty, not displaying the accurate destination board, issuing tickets of less denomination after collecting a higher fare, *etc.* The incidents are more than five in number.

39. In the above background, the non-examination of Mr. Tej Bhan before the Labour Court could not have been held to be detrimental to the case of the Corporation. Firstly, the enquiry was valid, legal and fair. Secondly, two witnesses forming part of the checking staff team deposed before the Labour Court. Finally, the Workman did not deny having appended his signature to

the Passenger's statement. The misconduct in the present case was evidently proved and established. The relief of reinstatement, which has been granted, is therefore, not tenable in the opinion of the Court and the same is accordingly, set aside.

40. The workman has superannuated. In view of the fact that the reinstatement has been set aside by this Court, the workman is not entitled to any further retirement benefits, continuity of service, *etc.* However, if there is any provident fund or gratuity amount, which is liable to be paid to the Workman in terms of the impugned order, the same shall be paid within 8 weeks from today.

41. It is noted that during the pendency of this writ petition, the Workman has received payments under Section 17B of the Act, which however need not be refunded.

42. The writ petition, along with all pending applications, if any, is allowed and disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 3, 2022/dk/SR/SK