



2024:DHC:3949



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

% **Date of order: 14th May, 2024**

+ **W.P.(C) 6785/2011**

DELHI TRANSPORT CORPORATION Petitioner

Through: **Mr.Uday N.Tiwary & Mr.Akshat
Tiwary, Advocates**

versus

RAM AVTAR SHARMA Respondent

Through: **Mr.Vikram Singh, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed by the petitioner under Article 226 of the Constitution of India seeking quashing of the award dated 2nd September, 2009 and 3rd May, 2010 passed by the learned Tribunal.
2. The respondent workman joined as conductor with the petitioner/ DTC on 30th January 1984.
3. On 24th April, 1992 the respondent workman was served with a chargesheet on the ground that the respondent workman did not issue ticket however, collected the fare from the passengers regarding the same. The respondent filed a reply to the aforesaid chargesheet.
4. The petitioner referred the matter to the Enquiry Officer, pursuant to

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which the enquiry report was prepared by the Enquiry Officer and the Disciplinary Authority issued a Show-Cause Notice on the basis of the aforesaid enquiry report.

5. Pursuant to abovesaid show cause notice, the Disciplinary Authority issued an office order dated 17th October, 1994 thereby terminating the services of the respondent workman.

6. The respondent workman approached the authorities against the aforesaid termination order and the Appropriate Government referred the industrial dispute to the learned Tribunal vide order dated 30th August, 1996 on the following terms of reference:

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

7. Pursuant to completion of the trial, the learned Tribunal vide order dated 2nd September, 2009 held that the inquiry conducted by the petitioner against the workman was not in accordance with the principles of natural justice. Furthermore, vide order dated 3rd May, 2010 it held that the respondent would be reinstated without back wages.

8. Aggrieved by the same, the petitioner has filed the instant petition.

9. Learned counsel for the petitioner submitted that the impugned awards are based on surmises and conjectures and therefore, suffer from illegality.

10. It is submitted that the learned Tribunal erred in holding that the enquiry proceedings were conducted in violation of the principles of natural



justice as the enquiry officer, after taking all the documents into consideration, had given the findings that the workman was guilty of misconduct.

11. It is submitted that the respondent has committed a grave misconduct that despite charging the passengers for the ticket he did not issue any ticket, thereby, he is liable to be dismissed from the services.

12. It is further submitted that the past record of the respondent not being attached along with the chargesheet is merely a technical glitch and the learned Tribunal has wrongly held that non- attaching the past record with the chargesheet as a ground for disputing the authenticity of the chargesheet.

13. It is contended that the petitioner is a habitual offender and had misconducted several times by taking fare from the passengers and not issuing tickets to them hence, the respondent workman was rightly dismissed from his services.

14. It is submitted that the learned Trial Court has absolved the workman of any punishment by giving him benefit of doubt, however the aforesaid principle is not applicable to the departmental proceedings.

15. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought may be granted.

16. *Per Contra*, the learned counsel for the respondent vehemently opposed the contentions of the petitioner submitting to the effect that the respondent was not supplied with the relevant documents which were taken into consideration by the enquiry authority in holding the respondent guilty



of misconduct.

17. It is submitted that the learned Trial Court rightly held that the inquiry proceedings were vitiated and conducted in violation of the principles of natural justice since the petitioner was not even given an opportunity to present his case properly by engaging a defence assistant.

18. It is submitted that the checking staff did not check the cash of the respondent to ascertain whether the respondent had collected more money than the actual fare.

19. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

20. Heard the learned counsel appearing on behalf of the parties and perused the record.

21. It is the case of the petitioner that the impugned awards passed by the learned Tribunal suffer from illegality and error apparent on the face of it as the learned Tribunal failed to appreciate that the respondent has committed the misconduct of not issuing tickets to the passengers despite taking money from them. Moreover, the petitioner has alleged that the respondent is a habitual offender and had misconducted several times in the past.

22. In rival submissions, it has been contended on behalf of the respondent that the impugned awards passed by the learned Tribunal is in accordance with the material placed on record and thus merits no interference as the enquiry conducted by the petitioner was vitiated as the respondent was not provided the relevant documents that were taken into consideration to hold that the respondent was guilty of misconduct as well as



there were various discrepancies in the statements of the various passengers.

23. The issue which falls for adjudication before this Court is whether the impugned awards merit interference of this Court under its writ jurisdiction.

24. The Tribunal vide order dated 2nd September 2009 adjudicated upon the issue whether the enquiry conducted by the petitioner were vitiated and in violation of principles of natural justice. Now this Court will advert to perusal of the award dated 2nd September, 2009 and the relevant extract of the award is reproduced as follows:

“6. After completion of the pleadings, my Ld. Predecessor had framed the following issues on 10.07.98 as under :

Whether the management has not conducted a fair and proper enquiry in accordance with the principles of natural justice ?

2) As per terms of reference?

7. To substantiate his claim on the enquiry issue, workman examined himself as WW-1 and closed the side; There is no evidence on behalf of the management. Heard the arguments. With the available material on record, I proceed to the answer the issue number 1 as under. in the evidence of the workman, I find that the workman contends that he was not supplied with the documents despite the demands and that the enquiry was not in accordance with the principles of natural justice. In the cross-examination, he admitted that he participated in the enquiry, cross-examined the witnesses and was allowed to summon the witnesses. He was being given the copy of the enquiry proceedings. In the second instalment of his examination in chief, he contended that he addressed a letter to the Depot Manager at Ex. WW 1/1 requesting for furnishing the documents dated 06.04.1993. The reply by the Depot Manager is at Ex. WW 1 /2 showing that the way bill is provided to him and that the passenger statement was inspected by the workman. Ex. WW 1 /3 to 1 /5 are also produced which are



copies of the letter addressed to the Depot Manager. The workman in his cross-examination submits that though he received the reply, he was not allowed to inspect the documents. Again, he wrote a letter but the management has not supplied him the documents. Ex. WW 1/M-1 the charge sheet, Ex. WW 1/M-2 the enquiry proceedings. Ex. WW 1/M-3 the show cause notice all confronted to the workman are admitted by him. He was very particular that the enquiry report was not supplied to him.

9. I have perused the documents admitted by the workman. The charges are that the bus was being plied on 24.04.1992, Ex-Shivaji Stadium - Sohna around 20: 20 hrs.. the bus was checked at Badshahpur, five passengers were not issued tickets despite collecting fare by the conductor for which the conductor gave unpunched ticket of Rs: 2 each. Likewise, further checking revealed that five passengers from Gugaon to Bhondsi have also paid the-fare but were not given tickets. Conductor gave unpunched ticket bearing number 82297. 98, 99 and 83312 and 13. From the proceedings at Ex. WW 1/M-2, I find that workman was read over with the charges and he opted for contesting. It is noted that the workman had not brought any co-worker. I find that the enquiry Officer has not explained him that he is entitled for a co-worker as a defence Assistant. Such an opportunity is not given to him on 29.03.1993. On that day, three management: witnesses were examined, who were all cross-examined by the workman. The matter was further taken up by the enquiry Officer on 30.04.1993 and one witness was examined.

10. On 30.08.1993, the enquiry Officer had noted that the way bill copy is supplied to the workman. As regards the statement of the passengers, the workman had inspected the same. Workman demanded the log book, the same was denied as not relevant for the enquiry.



11. The workman had signed having inspected the passengers statement as could be seen from the proceedings dated 30.08.1993.

12. From the documents exhibited by the workman in his additional evidence, he contends that by Ex. WW 1 /4 and 1/5, he wanted the passengers to be summoned or be intimated as regards the outcome of the service of notices to the passengers. The non-examination of the passengers will not vitiate the enquiry as per the settled position of law.

13. From the evidence, it is clear that though the management has followed all the principles of natural justice, it has not supplied the documents of the driver memo, statement of passengers and the log book. The copy of the log book was denied on the ground that it is irrelevant. Workman contends that it was relevant. The non-supply of the statement of passengers and allowing him only to inspect, in my opinion is not in accordance with the principles of natural justice.

14. In the charge sheet at Ex. WW 1/M-1, it is mentioned that the past record will be taken into consideration at the time of passing the final orders or giving the recommendation. Management has not enclosed the past record along with the charge sheet which again is a lapse affronting the principles of natural justice. Whether the inspection was allowed, is not spoken to by the enquiry officer who ought to have stated before this court that he allowed the inspection which according to the workman was not allowed. In the result, in the absence of proper evidence on the aspect of the workman having been Allowed to inspect the documents and non- supply of the log book which the log book which the workman insisted to be relevant and having not enclosed the past record in the chargesheet and that the defence assistance was not having been properly allowed. I find that the enquiry stands vitiated. Accordingly, I passed the following order :-



Issue no. 1 held in favour of the workman and against the management. Hence, put the matter for ME on merits by 6.11.2009”

25. The learned Tribunal perused the documents admitted by the respondent pertaining to the charge of not issuing ticket to the passengers despite collecting fare from them. It was further noted by the learned Tribunal that the respondent could not bring a defence assistant, as the respondent was not informed by the Enquiry Officer that he was entitled to a co- worker who could act as a defence assistant for him. Hence, the respondent was denied the opportunity to be assisted by a defence assistant.

26. On 30th August, 1993, during the enquiry proceedings though the respondent had demanded the log book, however, the same was not supplied to him on the pretext “not relevant for the enquiry” and after inspection signed passengers’ statement.

27. The observations of the learned Tribunal on the additional evidence led by the respondent are to the effect that the non-examination of the passenger witnesses would not vitiate the enquiry.

28. Upon perusal of the evidence on record, the learned Tribunal observed that the enquiry proceedings were conducted in violation of principles of natural justice as the respondent was not supplied with the copy the documents, such as the driver memo, the log book and was only allowed to inspect the statement of passengers.

29. Moreover, as per the chargesheet, it was stated that the past record of the respondent was to be taken into account at the time of passing of the



final orders, however, the petitioner did not enclose the past record along with the chargesheet. The Enquiry Officer has further erred in not recording the factum whether the inspection was allowed or not, hence there is a violation of the principles of natural justice

30. This Court is of the view that non-supply of the log book and absence of proper documents to prove the fact that the petitioner was allowed to inspect the documents considered during the inquiry proceedings, vitiated the enquiry proceedings. Moreover, the factum that the respondent was not allowed to be represented by the defence assistant as well as the past record was not enclosed with the chargesheet, establishes that the enquiry proceedings were conducted in violation of the principles of natural justice.

31. In view of the aforesaid discussion, it is held that the learned Tribunal, has correctly held the enquiry proceedings to be vitiated and perverse.

32. Thus, the Court is of the view that the impugned award dated 2nd September, 2009 does not suffer from any illegality or any error apparent on the face of it which merits interference of this Court.

33. Now advertent to impugned award dated 3rd May, 2010 wherein the learned Tribunal adjudicated upon the issue whether the respondent's service is illegal and/or unjustified and if so, what relief is the respondent entitled to. The relevant extract of the aforesaid award is reproduced as follows:

“ **ISSUE NO. 1.**

9. By an order dated 02.09.09, I have held the issue no. 1 in favour of the workman and against the management.



ISSUE NO. 2

10. Before taking up issue no. 2, the relevant charges against the workman as per the charges sheet at Ex. WW 1/M-1, the following allegations are found. When the bus was checked on 24.04.92 by the vigilance at Badshapur, five passengers alighting informed that they have paid the due fare and the conductor did not issue the tickets. Acknowledging this irregularity, the conductor had surrendered five unpunched tickets of Rs. 2/-bearings no. 66667 to 66671.

The second irregularity is that five passengers were found in the bus ticketless from Gurgaon to Bhondsi, though the passengers paid the fare to the conductor. The conductor while conceding the same, handed over unpunched ticket numbers 82297 to 82295 and 83312 to 83313.

11. To substantiate these charges Sh. Rajbir Singh MW-1 who was the reporter in the case is examined. He testified that he along with Satish Kumar Tyagi ATI, R.K. Sharma ATI, Kanhiya Lal TI under the supervision of Jai Chand Verma OS (V) checked the bus which was on the route of SST -Sohna. At Badshapur, five passengers were found ticketless who paid the fare to the conductor. On further checking another group of five passengers were found ticketless. MW-1 testified that the conductor surrendered the unpunched tickets. The statement of passengers were recorded. He has produced the copies of the challan, unpunched tickets, report, passengers statements at Ex. MW 1/1 to MW 1/4 respectively. According to this witness the workman has committed the misconduct. In the cross examination it is elicited that the bus was checked at Badshapur and the alighting group of passengers were traveling from Gurgaon to Badshapur. It is also elicited that in his report MW-1 has not mentioned the details of the passengers and their journey for want of space. He is also aware of the circular to write the statements of the passengers



over leaf of the challan. He further denies the suggestion that the conductor signed the papers not admitting the guilt. Further it is admitted that the cash was not checked as the bus was on interstate route. He further admits that hand block was not collected. He denies a suggestion that the passengers statement at Ex. MW 1/4 was not written by the passengers.

12. MW-2 B. P. Nigam in this case is the disciplinary authority who deposed that ore G.K. Sharma issued the show cause notice. MW-2 considered the reply to the show cause notice and he passed the removal order at Ex. MW 2/1. He relied on the past record of the workman which is at Ex. MW 2/2. In the cross examination he admits that he does not have the personal knowledge but only had confirmed the punishment. According to him he had not passed the order mechanically. He admits that he has not given any opportunity to explain the past record.

13. With the available evidence, I am to answer whether the two counts of charges against the workman are proved or not. According to the report at Ex. MW 1/3, vigilance found that alighting passengers without tickets have boarded the bus from Gurgaon to Badshapur and they paid Rs. 2/- each. The report is also signed by the workman. I have perused the passengers statement. The passengers statement Ex. MW 1/4 shows that some passengers by name Zile Singh, Subhash have paid the fare but the conductor did not issue the tickets. The statement is "Gurgaon se baithe, paise de diye, ticket nahi diya Badhahapur ke liye".

14. The above statement is first part as regards the first count of the charges. In this statement the starting point and destination is not mentioned. The amount of fare paid by the above two persons is also not forthcoming. Only two names are forthcoming. There is not statement of the group for five who traveled from Gurgaon to Badshapur.



15. The other part of the passengers statement also contains the following "panch yatri gurgaon se bhondsi ke liye baithe, conductor ko paise de diye, conductor ne ticket nahi diya". This is signed by the Abhey Singh S/o Dharampal, Jai Singh. The Succeeding part read "Sonha adde se baithe do sawari, chaar rupai diye". This is signed by Saroj Jain, Phool Mata Jain of Badshapur. The above statements and the signatures found gives room to doubt for two reasons that the sufficient number of ticketless passengers do not tally with the names of the passengers found on Ex. MW 1/4. The second reason is that the passenger statement is silent with regard to the starting point of travel and the amount each passenger paid to the conductor.

16. Ex. MW 1/2 which is the photocopy of the unpunched tickets do not bear the signatures of the conductor to establish he had surrendered it voluntarily. However the checking of the bus and challaning is not disputed by the workman. With the above evidence, I am to look into the rebuttal evidence of the workman. He admits the checking but contends that he issued tickets to all those passengers who paid him the fare. According to him he has not surrendered the unpunched tickets and the passengers were never confronted to him. The signatures found on the passengers statement is fabricated. The cash of the conductor was not checked. Workman deposed that the chocking staff tore off the unpunched tickets from the hand block and he had written a protest letter also. In the cross examination the suggestions made were denied to the effect that he signed the challan, passengers statement admitting the guilt. Further suggestion that he had not written any complaint to the Depot Manager is denied. Since the statement of the passengers are not compatible with the oral testimony of MW-2 Rajbir Singh, it was expected of the checking to have tallied the cash as held in **DTC vs. Anoop Singh, 133 (2006) DLT 148 DB**, by our Hon'ble High court which is as under:



PARA: 16- We may add here that we may not be understood as holding that in every such case the passengers will have to be examined as witnesses. We are aware that it may not always be possible to examine the passengers themselves. We are also conscious of the decision of the Hon'ble Supreme Court in this regard in State of Haryana v. Rattan Singh, (1977) 2 SCC 491. But, surely, there are other forms of evidence which can go to prove that fare charges were collected without tickets being issues. For instance, it should have been possible for the checking staff to tally the cash in the Conductor's hand with the tickets issued and record this contemporaneously in writing in any known and acceptable form which can be proved in the enquiry by the author of the document. This is only one possible method, there might be other too. We are, in the facts of this case, unable to accept the plea of the Ld. Counsel for the appellant that there is enough evidence on record to prove the guilt of respondent. Accordingly, we see no reason to interfere with the award of the Tribunal or the impugned order of the Ld. Single Judge.

17. In the instant case, the cash is not checked by the checking staff. The rebuttal evidence of the workman seems more probable than the probability of the case of the management. From the preponderance of the probabilities, the aspect of cheating by the workman becomes rather doubtful.

18. For the aforesaid reasons, I am of the considered opinion that the management having not established the misconduct through evidence to the hilt before this court, the workman is entitled for reinstatement.

19. Though the workman had pleaded and deposed in the affidavit that he remained unemployed from the date of removal, I find that the grant of back wages is matter of pure discussion which is to be exercised after considering several factors including the nature of employment, length of service,



*the antecedents during the service, conduct and character of the workman, the interest he has shown in the working of the employer as held in several rulings **2009 LLR page no. 1, UP State Electricity Board Vs. Lakmi Kant Gupta and Rajasthan Lalit Kala Academy Vs. Radhey Shyam, 2008-III, LLJ 562, Talwara Co-op. Credit & Service Society Ltd. vs. S. Kumar 2009-1-LLJ 328 SC.***

I have considered the past record of the workman which is at Ex. MW 3/2. The entries found in the past record are not disputed by the workman. The workman was once warned for performing the duties without uniform in the year 1986. In the subsequent year stoppage of next due increment was inflicted on him for non issuance of tickets after collecting the fare. In the year 1989 he was warned as he refused to give the unpunched tickets to the checking staff. With these flagrant service entries, I find that the workman is not entitled for any back wages. Thus, I pass the following award:

AWARD

The claim of the workman is allowed. The management is directed to reinstate the workman with continuity of services for the purposes of seniority and pension, gratuity and other benefits.....”

”

34. Upon perusal of the same, it is made out that the learned Tribunal observed that as per report at EX MW1/3, checking team of the petitioner found that alighting passengers without tickets had boarded the bus from Gurgaon to Badshapur and had paid Rs. 2/- each and the aforesaid report had been signed by the respondent workman too.

35. As per Ex. MW1/4, the passengers, *namely*, Zile Singh, Subhash testified to the effect that they had paid the fare, however, the conductor did



not issue the tickets. Upon perusing the statements of the passengers in the aforesaid exhibit, the learned Tribunal has observed to the effect that the statement of the passengers did not mention the exact starting point and the destination as well as the amount which had to be paid by the passengers. Moreover, it was held that the two names were forthcoming and there was no statement of the group of five people who travelled from Gurgaon to Badshapur.

36. Furthermore, there is another statement given by the passengers travelling from Gurgaon to Badshapur signed by one Mr. Abhey Singh stating that 5 passengers boarded to travel from Gurgaon to Bhondsi, the conductor did not issue ticket to them and upon perusal of the aforesaid statement, the learned Tribunal held that the statement was not authentic since the number of ticketless passengers did not tally with the names of the passengers on Ex. MW1/4 and the statement did not elucidate regarding the starting point of travel as well as the amount paid by each passenger to the conductor.

37. Ex. MW1/2 is the photocopy of the unpunched tickets and the same does (did) not bear the signature of the respondent to establish that the tickets were surrendered voluntarily.

38. The respondent had admitted checking the bus and issuing challans, however, he contended that he issued tickets to all those passengers who paid him the fare. He further contended that he did not surrendered the unpunched tickets and that the same were tore off from the hand book to which the respondent had written a protest letter too.



39. In light of the aforesaid contentions averred by the respondent workman, the learned Tribunal held that since the statement of the passengers were not compatible with the oral testimony of MW-2 Rajbir Singh, the checking team of the petitioner should have checked the cash.

40. In view of the aforesaid discussion, the learned Tribunal held that the petitioner failed to establish the alleged misconduct having been committed by the respondent.

41. It is further held by the learned Tribunal that the respondent is not entitled to back wages considering his past conduct wherein he performed duty without uniform, non- issuance of ticket after collecting the fare, warned for not giving unpunched ticket to the checking staff.

42. This Court is of the view that the learned Tribunal has correctly held that that the statement of the passengers were shrouded with discrepancies as the statements of Zile Singh and Subhash did not mention the exact starting point, the destination and the amount which was paid by the passengers and the two names were forthcoming and there was no statement of the group of five people who travelled from Gurgoan to Badhspur.

43. It is further held that there is another statement given by an another passenger, namely, Mr. Abhey Singh, travelling from Gurgaon to Badshapur, the aforesaid statement lacks authenticity since the number of ticketless passengers do not tally with the names of the passengers and it does not state regarding the starting point of travel and the amount paid by each passenger to the conductor.

44. This Court is of the opinion that the learned Tribunal has rightly



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observed that the statement of the passengers were not compatible with the oral testimony of MW-2 Rajbir Singh, in that case the checking team of the petitioner should have tallied the cash.

45. This Court is of the view that since the petitioner was not able to establish the fact that any misconduct was committed by the respondent hence, the respondent is entitled to be reinstated. Moreover with regard to the backwages, it is held that the respondent workman is not entitled to any backwages due to his past record. Thus, the impugned order dated 3rd May, 2010 does not suffer from any illegality or any error apparent on the face of it.

46. In light of the same, this Court is of the view that the impugned awards dated 2nd September, 2009 and 3rd May, 2010 passed in I.D 204/08/96 having unique case no. 02402c0002151996 by the learned Presiding Labour Court, Karkardooma Courts, Delhi do not suffer from any illegality and do not warrant any intervention of this Court by way of issuance of writ of certiorari as the petitioner has not been able to make out a case in his favour.

47. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 14, 2024

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