

(2009) 03 DEL CK 0264

In the Delhi High Court

Case No : Writ Petition (C) No. 3754 of 2003

Delhi Transport Corporation

APPELLANT

Vs

Nem Singh and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 03 DEL CK 0264

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; Rashmi B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks to challenge the impugned award dated 12.7.2002 passed by the Labour Court No. VII, Delhi.

2. Brief facts relevant for deciding the present petition are as under:

3. The respondent workman was appointed as Conductor by the petitioner Management on 15.12.1988. On 16.8.1993 while performing his duty as a conductor with bus No. DBP-6538 on inter- state route from Delhi to Farukhabad he was caught by the checking staff for non-issuing ticket to a passenger after collecting less fare. As per the petitioner management this act of the workman tantamounts to mis-conduct of dis-obeying the rules of the Corporation showing negligence to his duty and put the corporation to loss and lack of interest in the Corporation work. Due to the aforesaid misconduct of the respondent the petitioner management decided to hold the domestic enquiry. On 10.9.1993 chargesheet was issued to him with the allegations that he did not issue the ticket to the passenger after collecting the lesser fare. The enquiry officer conducted the enquiry and the workman defended his case. The enquiry officer

found the respondent guilty and submitted the report to the Depot Manager for further action who in turn issued show cause notice vide memo dated 3.1.1994 to the respondent workman. The workman did not submit any explanation to the show cause notice and the Disciplinary Authority after fully considering the case found him guilty and passed an order of removal from services. After removal from the service, the workman filed statement of claim before the Conciliation Officer who referred the dispute for adjudication to the Labour Court where the following issue was framed:

Whether the domestic enquiry was not conducted according to the principles of natural justice and therefore not valid or proper?

4. The Labour Court vide order dated 22.7.2000 held that a fair and proper enquiry was not conducted against the workman in accordance with the principles of natural justice and the issue was decided in favour of the workman which resulted in the passing of an award dated 12.7.2002 wherein the workman has been reinstated with continuity of service and full back wages. Aggrieved with the said order and award the management has preferred the present petition.

5. Ms. Saroj Bidawat counsel for the petitioner submits that the respondent/workman had misconducted himself by not issuing the ticket to the passenger and he was caught red handed by the checking staff. Counsel for the petitioner submits that the Labour Court has not believed the petitioner management on the ground that the passenger from whom fare was collected but ticket was not given was not examined by the petitioner before the Inquiry Officer as well as before the Labour Court. The contention of the counsel for the petitioner is that as per the settled law there is no necessity of examining the passenger to prove misconduct on the part of the conductor as the passenger cannot be forced to give evidence and suffer the harassment of coming before the Enquiry Officer or before the Court. Counsel thus contends that the previous conduct of the respondent workman was sufficient enough to show that earlier also he had misconducted himself and taking in to view the totality of the circumstances the Labour Court ought to have upheld the findings of the Enquiry Officer.

6. Refuting the submissions of the counsel for the petitioner, counsel for the respondent submits that vide detailed order dated 22.7.2000 passed by the Labour Court it was held that a fair and proper inquiry in strict observance of the principles of natural justice was not conducted against the respondent/workman. Counsel for the respondent further submits that after the said findings on the preliminary issue, the petitioner management was afforded fresh opportunity to establish the misconduct on the part of the respondent but yet the petitioner failed to avail the number of opportunities granted by the Court. Counsel thus urges that once the petitioner management itself had failed to prove the charges of mis-conduct against the respondent/workman therefore the labour court rightly gave the directions for his reinstatement with continuity of service and full back wages.

7. I have heard counsel for the parties and gone through the record. Perusal of order dated 22.7.2000 clearly shows that the Labour Court had taken into consideration the findings given by the Enquiry Officer wherein it has observed that the conduct of the respondent workman is apparent that he asked the passenger to pay a sum of Rs. 7.50 which was a due fare and at that point of time the raid was conducted. The stand of the respondent workman before the Enquiry Officer was that due fare amount of Rs. 7.50 was payable by the passenger and not Rs. 5/- and therefore the same was not accepted by him and when he was demanding the said amount of Rs. 7.50, the raid was conducted and it was assumed as if the respondent workman had refused to give the tickets to the passenger. Labour Court also observed that the passenger witness was not produced before the Enquiry Officer and even no record was produced before the Court to show that as to what steps were taken by the petitioner management to summon the said witness before the Enquiry Officer. Taking non- appearance of the said passenger before the Enquiry Officer as adverse, the Tribunal found that in the absence of the testimony of the passenger, the version given by the respondent workman has to be accepted as correct. Another important factor which was taken into consideration by the Labour Court was that the management had duly admitted in their reply to the statement of claim that due to shortage of time the cash with the respondent workman could not be checked. It was also admitted by the management during the cross- examination of WW1 that the workman was not given the list of witnesses and the documents along with the charge sheet. Taking into consideration the totality of these circumstances, the labour court found that domestic enquiry was not conducted by the petitioner management in accordance with the principles of natural justice. It is well settled that the procedure at the enquiry must be consistent with the principles of natural justice and the principles of natural justice demand that the deligent workman should be given full opportunity to defend himself and for that purpose the relevant documents and list of witness should have been supplied to him. In this regard, it is no more res integra that a copy of the document which has not been relied upon in the course of the departmental enquiry, is not required to be supplied to the delinquent workman, but those documents whereupon reliance has been placed by the department management is required to be supplied. In this regard the relevant para of judgment of the Apex Court reported in State of U.P. Vs. Shatrughan Lal and Another, is as under:

4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: Chandrama Tewari v. Union of India; Kashinath Dikshita v. Union of India; State of U.P. v. Mohd.

Sharif.)

8. No doubt that it is not essential to examine the passenger to prove misconduct of the conductor. But there has to be some evidence to hold the delinquent conductor guilty of misconduct. In the instant case, even after the said findings on the issue No. 1, the petitioner management failed to adduce any evidence to substantiate the charges of mis-conduct against the respondent workman. The labour court after taking into consideration the fact of the respondent being unemployed gave the direction for his reinstatement with full back wages. I do not find that there is any illegality or perversity in the impugned award. There is no merit in the present petition. The same is hereby dismissed.