

(2014) 12 DEL CK 0259
In the Delhi High Court
Case No : Writ Petition (Civil) 759/2011

Delhi Transport Corporation	Vs	APPELLANT
Om Kanwar		RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2015) 1 AD 269 : (2015) 144 FLR 773 : (2015) 2 LLJ 209 : (2014) 4 LLN 649

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Karunesh Tandan, Advocate for the Appellant; R.R. Ahlawat, Advocate for the Respondent

Judgement

Suresh Kait, J.

W.P.(C) 759/2011

1. Vide the present petition, the petitioner has assailed the award dated 29.08.2009 passed by the learned Tribunal in O.P. No. 219/1994, whereby the application filed by the petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1948 (for short "ID Act") , has been dismissed.

2. On the basis of the pleadings, the Tribunal framed the following issues:

"(i) Whether the workman has committed the misconduct as alleged in the charge sheet dated 18.01.1993 (Ex.AW1/6) ?

(ii) Whether the Management had remitted/paid one month's wages to the workman in terms of provisions of section 33(2)(b) of the Industrial Disputes Act ?

3. Mr. Karunesh Tandon, learned counsel for the petitioner submitted that the petitioner Management/Delhi Transport Corporation (for short "DTC") had filed an application under Section 33(2)(b) ID Act, whereby sought approval of its action

in removing the workman from service. Therefore, the learned Tribunal ought to have seen the enquiry conducted by the Enquiry Officer and whether the enquiry was legally conducted; however, the Tribunal has gone beyond its jurisdiction by examining the witnesses. The case of the workman/respondent was that while conducting the enquiry, Principles of Natural Justice have been violated. Copies of documents were allegedly not supplied to the workman; he was afforded no opportunity to cross-examine and to produce his defence witnesses; he also alleged that neither list of witnesses nor copies of documents were supplied to the workman during the course of the enquiry. The workman was not afforded any opportunity of being heard nor was the counsel allowed to cross-examine the Management witnesses. The Enquiry Officer had allegedly recorded the enquiry proceedings incorrectly. Further alleged that the passenger examined in the enquiry, supported the workman, however, the same was not considered by the Tribunal. It is claimed by the workman that he had not committed any misconduct within the meaning of Para 19(b) & (h) of the Standing Orders.

4. Learned counsel for the petitioner submitted that the learned Tribunal ought to have seen the enquiry report and should have given its opinion. However, without relying upon the Enquiry report and witnesses of the Management, the learned Tribunal itself become the Enquiry Officer by examining the issues. Thus, the Tribunal has gone beyond jurisdiction and power conferred under the ID Act.

5. The allegations against the respondent/workman, as narrated in the charge-sheet dated 18.01.1993, were that on 06.01.1993 he was on duty in Bus No. 9900 plying from Chandigarh to Delhi route, at about 9:55 AM, when the Bus was on Karnal bypass, on checking, five passengers were caught without tickets, who had paid their full fare at Rs.12/- per ticket. However, the respondent/workman had taken Rs.60/- from them and had not issued tickets to the said passengers. The enquiry was conducted, the Enquiry Officer recorded in the enquiry that group of five passengers was getting down from the Bus and upon asking their leader stated that they had boarded the Bus from Shahbad to Karnal and had paid Rs.60/- as a fare @ Rs.12/- per ticket to the Conductor, however, Conductor had not issued any ticket to them. Shri Jagdish Chander, ATI, also confirmed during the course of enquiry that on 06.01.1993 they checked the aforementioned Bus at 09:55 AM at Karnal bypass and five passengers were found getting down from the Bus without tickets. Upon asking stated that they had given Rs.60/-, however, no ticket was issued. It is further recorded, when the Conductor and passengers were confronted with each other, the Conductor admitted his mistake and upon asking issued five unpunched tickets for Rs.12/- each. Moreover, during the enquiry one of the passengers, namely, Phafu Ram had appeared and stated that they were asked by checking staff about the tickets. They stated that they got down from the roadways Bus not from DTC Bus, however, the Enquiry Officer has not relied upon the statement of afore named passenger. Since the above named passenger had not supported the case of the department, therefore, there was no question to give opportunity to the respondent to cross-examine the said witness.

6. On the other hand, Mr. R.R. Ahlawat, learned counsel appearing on behalf of the respondent/workman submitted that issue before the learned Tribunal was that "Whether the Management held a legal and valid enquiry against the respondent/workman according to the Principle of Natural Justice? OPA".

7. Ex.AW-1/8 is the enquiry proceedings conducted by the Enquiry Officer, Mr.S.K.Jacob. As per the proceedings dated 12.05.1993, on request one passenger, namely, Phafu Ram was called by Enquiry Officer to make statement. After recording his examination-in-chief, the Enquiry Officer himself cross-examined this witness. Neither the said witness was cross-examined by the representative of the Management nor opportunity was given to the workman to cross-examine the said witness. On that very day, the workman was also cross-examined by the Enquiry Officer himself. Moreover, the representative of the petitioner/Management was not present before the Enquiry Officer nor on any date of the enquiry, thus, the Enquiry Officer, Mr.S.K.Jacob, acted as a Prosecutor and not as an Enquiry Officer. In view of the above, the learned Tribunal observed that the enquiry report which was under challenge before it was vitiated.

8. Mr.Ahlawat further submitted that the allegations upon the respondent/workman were that there were five passengers caught on getting down, who had paid Rs.60/- to the respondent/conductor and were travelling by the DTC Bus.

9. However, learned counsel for the respondent has drawn the attention of this Court to the evidence of AW-1, Sh. S.K.Jacob, the Enquiry Officer, who has been examined by the Management as witness before the Tribunal. In cross-examination, he stated that a passenger, namely, Phafu Ram had appeared in the enquiry proceedings as a summoned witness. The said passenger had stated that they were six passengers and not five and were travelling in a roadways Bus and not the DTC Bus.

10. The learned Tribunal had put question to the witness AW-1 that is it correct that you had put the questions to the said witness Phafu Ram? In reply, he stated that he had put certain questions to seek clarifications.

11. The said witness further admitted that as per the enquiry proceedings, the workman was not given an opportunity to cross-examine the management witness.

12. Learned counsel for the respondent/workman has also drawn the attention of this Court to the evidence of management, namely, Phafu Ram, who stated that they got down from Haryana roadways Bus and there were two Buses standing nearby. DTC officials were standing on the road, they told that they got down from DTC Bus and asked them to show the tickets but the witness told them that they had alighted from Haryana Roadways Bus, not from DTC Bus. The officials took his thumb impression as he was an illiterate person and do not know what was written on the papers.

13. The Enquiry Officer asked the following formal questions to the passengers:-

Q. How many passengers were?

Ans. We were five passengers and one female.

Q. Which Bus, you travelled from Karnal to Shahbad?

Ans. White Bus.

Q. How many rupees, you bought the tickets in Haryana Roadways?

Ans. 60 Rupees.

Q. When you were travelling in Haryana Bus, why then you give in writing to DTC officials?

Ans. They told us, you are getting down from DTC Bus we told them we have got down from Roadways Bus.

14. Learned counsel submitted that the aforementioned witness did not supported the case of the petitioner. Moreover, MW-3 Jagdish Chander, ATI, in his cross-examination deposed that he was a team leader and admitted that cash of the workman was not checked. He had not seen any passenger getting down from the Bus of the workman. He has not stated in Ex.AW-/1 that workman had refused to give the complaint book. He had no personal knowledge if passengers had paid due fare to workman or not, since, at that time he was not present in the Bus. He admitted that workman had made endorsement on Ex.AW-1/1 i.e. challan that he did not agree with the position mentioned in the challan.

15. I have heard the learned counsel for the parties.

16. The petitioner DTC terminated the services of the respondent/workman on the allegations, as narrated in the chargesheet dated 18.01.1993, that on 06.01.1993, when the workman was on the Bus No.9900 plying from Chandigarh to Delhi route, he had taken Rs.60/- from five passengers, however, did not issue the tickets. MW- 3, Shri Jagdish Chander, ATI, stated in the enquiry proceedings that when they checked the aforementioned Bus at about 9.55 AM at Karnal bypass, they found five passengers getting down from the Bus without tickets. Upon asking, stated that they had given Rs.60/-, however, the Conductor did not issue the tickets. When the Conductor and the passengers were confronted with each other, the respondent/Conductor admitted his mistake and upon asking issued five unpunched tickets for Rs.12/- each.

17. The passenger, namely, Phafu Ram, stated before the Enquiry Officer that they got down from the Haryana Roadways Bus not from DTC Bus. It is an admitted fact that neither the aforesaid witness was cross-examined by the petitioner DTC nor any opportunity was given to the respondent/workman.

18. It is also an admitted fact that the said witness was cross- examined by the Enquiry Officer, thus, he acted as a Prosecutor and not as an Enquiry Officer.

Moreover, the said witness specifically stated that they were six passengers not five and were travelling in the Haryana Roadways Bus.

19. AW-1, Shri S.K. Jacob, the Enquiry Officer, has been examined by the learned Tribunal. In the cross-examination, he deposed that the aforesaid passenger had appeared in the enquiry proceedings as a summoned witness. The representative of the petitioner Management was not present; therefore, there was no occasion for giving an opportunity to cross-examine the said witness. However, opportunity to the respondent/workman was also not given for the reason; the said witness did not support the case of the Management.

20. It has come in evidence that two Buses, i.e., Haryana Roadways Bus and DTC Bus were standing nearby the place where the checking staff had checked the tickets of the passengers while they were getting down from the Bus. Thus, the petitioner Management has failed to establish that the passengers in question got down from the DTC Bus and were not having tickets in their possession.

21. In the cross-examination, passenger Phafu Ram specifically stated that they got down from White Bus, which belongs to Haryana Roadways. In addition, MW-3, Shri Jagdish Chander, ATI, in his cross-examination admitted that cash of the respondent/workman was not checked and he had not seen any passenger getting down from the Bus of the workman.

22. In view of the facts recorded above, I find no merit in the present petition.

23. Accordingly, the same is dismissed with no order as to costs.

CM. No. 5164/2011

With the dismissal of the present petition, instant application has become infructuous and dismissed as such.