

(2009) 10 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C.) No. 3083 of 2007

Delhi Transport Corporation

APPELLANT

Vs

Shri Sem Pal, Conductor

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Citation : (2009) 10 DEL CK 0020

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Sumeet Pushkarna, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The respondent is ex-parte as per order dated 29.09.2008.

2. Ex-parte arguments in the petition heard.

3. The management of Delhi Transport Corporation, in this writ petition seeks to challenge an industrial award in I.D. No. 93/2003 substituting the punishment of stoppage of four increments with cumulative effect imposed upon the respondent workman with the punishment of stoppage of only one increment and that too, without cumulative effect and directions to the petitioner management to refund the amount of three increments to the respondent workman within a period of three months failing which to pay the said amount with interest at 12% per annum.

4. The respondent workman was employed as Conductor with the petitioner and he was charge-sheeted in the year 1994 for non-issuance of tickets to the passengers of one party while on duty on 06.08.1994. The charge was proved against the respondent workman in the domestic inquiry held against him and the management of the petitioner decided to impose punishment of stoppage of four increments with cumulative effect against him for this misconduct. The respondent aggrieved by the said punishment imposed on him, raised an

industrial dispute which was referred by the appropriate Government in the Government of NCT of Delhi for adjudication to the Industrial Tribunal. The Tribunal vide its award dated 17.08.2005 in I.D. No. 93/2003 has set aside the punishment of stoppage of four increments with cumulative effect imposed upon the respondent and substituted the same with the punishment of stoppage of only one increment. It was found by the Tribunal that the domestic inquiry was held against the respondent in conformity with the principles of natural justice and it was further held that the misconduct of non-issuance of tickets by the respondent to the passengers also stands proved against him. The relevant portion of the impugned award is extracted below:

It is an admitted fact that the workman was working as Conductor on 06.08.1994 and the allegation against him is of non-issuance of tickets to the passengers of one party. The facts and evidence on record indicate that the workman had not issued the tickets to the passengers which amounts to misconduct on the part of the workman. Looking into the facts & circumstances of the case, in my opinion, the workman who is working as Conductor and getting a meager salary, stoppage of four increments with cumulative effect could ruin his family life and future of his children, therefore, punishment of stoppage of one increment is enough to give him a lesson. Consequently, the management is directed to refund the amount of three increments within a period of three months failing which the workman is entitled to claim the same with interest @ 12% p.a. from the management. The reference is answered accordingly. Award is passed accordingly.

5. Mr. Sumeet Pushkarna, learned Counsel appearing on behalf of the petitioner, has referred to a judgment of Hon''ble Supreme Court in V. Ramana Vs. A.P.S.R.T.C. and Others, , and on the strength of this judgment he has contended that the impugned award substituting the penalty of stoppage of four increments with cumulative effect with a penalty of stoppage of one increment, suffers from grave perversity because according to him, it was not open for the Tribunal to interfere with the administrative discretion exercised by the petitioner in the matter of award of punishment on the basis of misconduct proved against the respondent workman. In V. Ramana's case (supra) relied upon by the petitioner's counsel, it was observed by the Hon''ble Supreme Court as under:

It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various Regulations contained in The Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short "Regulations"). In the Karnataka State Road Transport case (supra) it was held

that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three Judge Bench in *Regional Manager, RSRTC v. Ghanshyam v. Sharma*, (2002) 1 LLJ 234 SC, where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service.

6. Para 12 of the judgment of the Hon'ble Supreme Court in *V. Ramana's case* (supra) is also relevant and is extracted below:

The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's case* (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

7. The facts in *V. Ramana's case* (supra) are almost identical to the facts of the present case. In that case also a Conductor was charge-sheeted for non-issuance of tickets to the passengers and in that case after the charge of non-issuance was proved against him, he was removed from the service of the Andhra Pradesh State Road Transport Corporation. It was held by the Hon'ble Supreme Court in *V. Ramana's case* (supra) that the removal of the Conductor from service for non-issuance of tickets, was justified and the said punishment could not have been interfered by the Labour Court or by the High Court.

8. In the present case, the charge of non-issuance of tickets to the passengers has been proved against the respondent workman and there is a finding of fact in this regard contained in the impugned award which has not been assailed by the workman in any proceedings before a higher Court. Though, the charge of non-issuance of tickets against the respondent was proved but despite that the petitioner in its wisdom chose only to impose punishment of stoppage of four increments with cumulative effect in stead of passing an order for his removal from its service. The cases cannot be decided on the basis of misplaced sympathy. In view of the law laid down by the Hon'ble Supreme Court in *V. Ramana's case* referred above, the impugned award cannot stand the test of judicial scrutiny. I have no hesitation in saying that the said award suffers from perversity and is, therefore, liable to be set aside.

9. In view of the foregoing, the impugned award is hereby set aside. This writ

petition is allowed leaving the parties to bear their own costs.