

(2006) 11 DEL CK 0100
In the Delhi High Court
Case No : WP (C) No. 9857 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Suresh Kumar and Another

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Citation : (2006) 11 DEL CK 0100

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

Bench : Single Bench

Advocate : Alok Shankar and Ranjit Sharma, for the Appellant; Rasmeet K. Charya and Deepali Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 3.7.2003 whereby the reference made by the Appropriate Government to the Industrial Tribunal was answered against the petitioner. The petitioner was directed to pay full back wages for the period 1.6.2000 to 10.10.2000 to the respondent.

2. Briefly the facts are that the respondent No. 1 Suresh Kumar was working as conductor with the petitioner. On 7.7.1989, following charge sheet was issued to him:

On 25.6.1999 when you were on duty on Bus No. 3405 plying on Gwalior-Delhi route, the following irregularities were found to have been committed by you.

The checking staff checked your bus at Sevalajat at about 9.30 hours and upon checking found that you collected fare from the seven passengers who were traveling from Dhaulpur to Agra in different Groups(3+2+2) but did not issue tickets to them. When you were asked to explain this in the presence of the passengers, you admitted your fault and agreed to issue seven unpunched tickets bearing No. 022-/05590-96 upon the instructions of the Checking staff. As such, you caused financial loss to the DTC by this act of yours and tarnished the

image of the Corporation.

3. An inquiry was conducted into the charges. The defense of the petitioner was that all the passengers who were allegedly found without DTC tickets, were actually the passengers of broken down bus of Haryana Roadways who had purchased the tickets from the bus conductor of Haryana State bus. He had not charged any money from the passengers and way bill numbers of Haryana Roadways were mentioned on his way bill. They were allowed to board the bus at the request of conductor of Haryana Roadways, whose bus had broken down. Haryana Roadways had also written letters to the petitioner about breakdown of bus and some of its passengers boarding the DTC bus. During inquiry, the bus driver deposed that when they started from Dhaulpur, conductor distributed tickets to all passengers. En route, he came across a bus of Haryana Roadways(Delhi Depot) whose tyre had punctured and whose conductor requested the conductor of his bus to allow 6/7 passengers to board the bus, to which the conductor of his bus refused. When the conductor of Haryana Roadways insisted, the conductor of his bus agreed to let them board the bus and recorded the number of tickets and route of his bus on the Way Bill of that conductor. Before Agra they were stopped by the Checking Flying Squad and they checked the bus. They did not accept the tickets of the Haryana Roadways and the Conductor was challenged. The checking staff refused to listen to the conductor. The conductor had not taken any money from the passengers of Haryana Roadways bus nor issued any tickets. The inquiry officer, relying upon the statement of inspector and disbelieving the statement of the driver, held that the respondent was guilty of misconduct and observed that ticket numbers and number of bus conductor recorded on the back of the way bill, was done with the intention to mislead. He further observed that in order to lessen the gravity of situation, the conductor seems to have conspired with the Haryana Roadways and letter of the Works Inspector, Haryana Roadways written to the petitioner, could not be accepted. The inquiry officer observed that the letter appeared to have been obtained by challaned employee at his personal level in order to lessen the gravity of matter. Inquiry officer further concluded that in cross examination, the respondent asked questions to the witnesses if he had charged Rs. 20 as fare from the passengers and not returned Rs..050 to the passengers, why he was not charged for another charge of not returning the balance and from this question, it was apparent that the respondent admitted his guilt.

4. The Tribunal, after going through the inquiry report and evidence of both sides, came to conclusion that the findings of inquiry officer were perverse. There was no admission on behalf of the respondent and question in the cross examination does not amount to admission. The Tribunal further observed that the management had failed to place on record copy of challan or statements of passengers or copy of the report on which reliance was placed by the inquiry officer. The inquiry officer, in her testimony, stated that the passengers had signed the statements "under protest" and it was written on the statement as "U.P.". The inquiry officer, instead of reading the "UP" as "under protest" read

the same as "U.P. State". All the statements were made by the passengers under protest and such statement could not have been relied upon by the inquiry officer.

5. It is to be noted that the respondent was re-employed by the petitioner from 11.10.2000. He was terminated from service on 1.6.2000. The re-employment of the respondent by the petitioner despite termination on the basis of charges of non issuance of tickets to the passengers after taking money from them, itself shows that the petitioner was not convinced about the correctness of the charges. The petitioner also did not produce any evidence before the Tribunal to prove the charges. The Tribunal allowed full back wages to the workman for the period 1.6.2000 to 10.10.2000, since the workman had already been given re-employment by the petitioner.

6. It is argued by the petitioner that the Tribunal had held primary issue of inquiry being contrary to the principles of natural justice on the ground that copy of challan, statements of passengers, were not filed before the Tribunal. The Tribunal should have given an opportunity to the petitioner to examine the witnesses, but no such opportunity was given. It is not the plea of the petitioner that any such opportunity was requested by the petitioner in writing. An additional affidavit has been filed before this Court that an oral request was made to the Tribunal. I consider that no cognizance of such oral request can be taken by the Court when the entire proceedings of the Tribunal are in writing and there is no mention of the oral request.

7. It is settled law that this Court cannot sit in appeal over the judgment of the Tribunal and cannot re-appreciate the evidence. This Court can only set aside the award if the award is perverse, i.e., contrary to the evidence on record or based on no evidence. No perversity has been shown by the petitioner in the award.

8. I find no merits in the writ petition. The writ petition is hereby dismissed. No orders as to costs.