**(2010) 11 DEL CK 0188**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 4442 of 2010

Delhi Transport Corporation (DTC) APPELLANT

Vs

Shri Darshan Kumar RESPONDENT

**Date of Decision :** 18-11-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 467, 474

**Citation :** (2010) 11 DEL CK 0188

**Hon'ble Judges :** Siddharth Mridul, J;Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Avnish Ahlawat and Latika Chaudhary, for the Appellant; Anil Mittal, for the Respondent

**Final Decision :** Allowed

## Judgement

Pradeep Nandrajog, J.—Vide impugned judgment and order dated 04.02.2010, T.A. No. 1253/2009 filed by the Respondent has been allowed and the order dated 01.07.2008 passed by the Disciplinary Authority imposing penalty of removal from service and upheld by the appellate authority vide order dated 03.09.2008 has been set aside.

2. The only reason given by the Tribunal is that the Respondent was unjustifiably denied a fair opportunity to represent against the report of the inquiry officer by not extending time which he sought to file the reply, but even for the reason relevant documents sought by him to respond to the report of the inquiry officer were not supplied. A taint has been found in the appellate order which has been opined to be a non-speaking order.

3. Let us begin the journey with the events as they transpired.

4. The day was 10.10.2005. Respondent was on duty as a Conductor on Bus No. 5709 plying on route No. 871. A special checking staff boarded the bus and as claimed by ATI Shripal and his colleague ATI Dariya Singh a passenger named Mohan was found with a ticket bearing No. 947-60173 in denomination of Rs. 7/-

which was found to be a fake ticket. He said that the Respondent had issued the ticket to him. When confronted and asked to hand over the unsold tickets and on receiving the same from the Respondent, on checking with the Way Bill it was detected that the Respondent was carrying forged tickets printed somewhere and not the one''s issued by the department. Also a counterfeit of 71 tickets of Rs. 10/- denomination and another block of 16 counterfeit tickets of Rs. 7/- denomination were recovered from his possession. The two members of the Checking Staff also stated before the Inquiry Officer that upon checking his cash, it was found to be Rs. 298/- short.

5. The department claims that the next day i.e. 11.10.2005, when the locker of the Respondent was checked it was found to contain Rs. 500/- which could not be accounted for by the Respondent and that pertaining to 4 green code tickets in denomination of Rs. 25/- the sum of Rs. 100/- had not been deposited.

6. An FIR was registered against the Respondent in which no charge-sheet was filed till the disciplinary proceedings terminated.

7. On 19.09.2007, a charge-sheet was served upon the Respondent pertaining to the incident dated 10.10.2005. The Respondent was charged as under:

That on 10.10.2005 you were on duty on Bus No. DL-1PB-5709, Route No. 871. For checking your bus, the Checking employees boarded the bus at about 08:50 from District Centre Janakpuri and during the checking the following irregularities were found against you.

1. It was found on checking the above said bus that one passenger who had a ticket No. 947/60173 (Original in the police record) of Rs. 7/-, when did not tally with the Waybill. On inquiry from the passenger it was found that ticket had been sold by you, but you denied for this. Thereafter after checking your hand block, 16 tickets of Rs. 7/- each of the series of 947 bearing No. Bi, 947/06184 to 06199 were found. Those all did not tally with the print of the tickets of the Corporation and were unpuncted and were forged. And two tickets No. 947/60185 and 60199 were also found whereas Ticket No. 06185 and 06199 should have been with you. From which it proves that during your duty you have been playing found with the Corporation and were selling the forged tickets.

2. Similarly on checking the tickets of Rs. 10/- it was found that you in your hand block 71 tickets of Rs. 10/- were found unpuncted forged tickets which you had not entered in the Way bill (the complete details of the same has been given in the report No. 597412 dated 10.10.2005) and at that time complete details and reference of cash was given at you Way-Bill No. 6894 that on checking the cash Rs. 298/- was found at the spot. From this it is proved that from your this act, the Corporation has suffered loss.

3. Due to you above said act, case No. 442/05 has been registered against you at police station Vikaspuri u/s 467/474 of the Code of Criminal Procedure and you have been taken in police custody, later on you were released on bail.

 

4. Keeping in view the situation of selling forged tickets by you on the line, on 11.10.05 on checking of your allotted locker No. 122 by the Board it was found that a sum of Rs. 500/- (100x5) were found unauthorized in it and thereafter the above said amount has been deposited in the Cash Section Vide Receipt No. 592495 dated 11.10.05. Apart from this on checking the tickets of the locker it was found that, four tickets of green Code ( Rs. 25/- each) after selling them, its amount of Rs. 100/- was not deposited. Later on you have deposited Rs. 100/- in Cash section vide Receipt No. 631132 dated 14.11.2005. From this, it appears that you have tried to cause financial loss to the Corporation.

5. From the above irregularities committed by you, it is clarified that you are not devoted towards the Corporation and playing fraud with the Corporation, have caused financial loss and lowered down the reputation of the Corporation.

8. Respondent sought supply of eight documents stating that he needed the same before he could reply to the charge-sheet. The documents supply whereof was requested are as under:

1. Attested photo copy of the challan dated 10.10.05

2. Attested photo copy of his past record.

3. Attested photocopy of the statement of passenger.

4. A copy of report No. 597411 to 597413 dated 10.10.05 prepared by checking staff S/Sh Shripal ATI, Daryao Singh ATI, Virender Singh Conductor B NO 17008 and Rajender Singh Conductor B NO 24958 has already been supplied to you alongwith charge sheet.

5. Attested photo copy of FIR.

6. Attested photo copy of the standing order para 19(b), (f), (h) & (m).

7. Record of bogus tickets in original had been deposited by the police authority, Vikas Puri while FIR registered and this information is already exists in FIR, hence the documents cannot be supplied.

8. Attested copy of his way bill No 689416 dated 10.10.05.

9. The said documents were supplied to the Respondent under cover of letter dated 05.10.2007 and acknowledgment in receipt of the documents finds a mention in the handwriting of the Respondent on the office copy of the said letter.

10. Vide letter dated 08.10.2007 delivered in the office of the Depot Manager on 09.10.2007, Respondent desired to be supplied details of tickets issued to him on 10.10.2005. Necessary compliance was made by the department under covers of its letter dated 15.10.2007.

11. On 22.10.2007, the Respondent sent a reply to the charge-sheet in which he took the plea of false implication. He stated that since he did not agree to pay money demanded by the checking staff, bogus tickets were planted on him after

he had handed over the genuine tickets to the team. Pertaining to the charge of Rs. 500/- found in his locker he stated that a fellow conductor Sh. Ashok Kumar had returned Rs. 500/- to him which he had kept in the locker. Relevant would it be to note that the Respondent furnished no reason as to why he did not enter said sum as being in his possession, which he was required to enter for the reason as a conductor, the Respondent was dealing with government cash.

12. Relevant would it be to note that the Respondent predicated no justification as a defence with reference to the documents supply whereof he had demanded as relevant to his defence. The defence was of being falsely implicated and fake tickets being planted on him. It may be highlighted that it was not the case of the Respondent that the tickets which were deposited by the checking team were not fake tickets. It is apparent that the defence was that the checking team had procured fake tickets which were planted upon the Respondent since he did not agree to satisfy their illegal demand for money.

13. The enquiry proceeded as the defence was found unsatisfactory. An Inquiry Officer was appointed. Witnesses were examined and report submitted.

14. At the enquiry, ATI Shripal and ATI Dariya Singh (name typed as Darayo Singh by the Inquiry Officer), deposed facts to prove the indictment. In the words of ATI Shripal:

In the meanwhile the checking from the front caught one passenger who has a ticket of Rs. 7/- bearing No. 947/60173 which die not tally with the Way bill of the conductor. On asking the passenger he told that he has taken this ticket from the conductor. On facing the passenger with the conductor, he said that he has not issued this ticket to the passenger. In the meanwhile the stand of the passenger reached and he gave Rs. 100/- by deposing his statement in writing and he took the CFT and alighted at his stand. Later on the hand block of the conducted were taken and checked. The number of hand block of Rs. 7/- ticket was 947/06199, in its place it was 947/60199. As they had found ticket No. 947/60173 from the passenger and in the hand block of the conductor after one ticket it was 60185 number on which they became suspicious and when they tallied the number of the tickets of the said Block (Rs. 7/- block) with other tickets, they felt that these tickets of Rs. 7/- have not been issued by the Corporation. Besides that one block of Rs. 10/- which were having number 939/63927 to 63999 was also found in the hand block which was not entered in the Way Bill whereas the block of Rs. 7/- was entered in his waybill. We checked the cash of the conductor which was short by Rs. 28/-. And if the block of Rs. 10/- which was found, the cost of its 27 tickets is calculated, then it was short by Rs. 270 + 28 = 298/-. Conductor was asked about this, then he admitted his mistake and signed on the remarks of the Waybill and also received the challan and signed on it. The information regarding this they given to the Respected Depot Manager.

15. Ignoring the testimony of other prosecution witnesses as the same is not

 

relevant to deal with the contentions urged by the Respondent, it may be noted that the Respondent examined Shri Azad Singh, the driver of the bus who deposed:

that on 10.10.2005 he was doing his duty at 871/1 Bus No. 5709 with Shri Darshan Kumar, Conductor B. No. 17285. When his Bus reached at District Centre at 08300 hours, the checking staff boarded it. About after 10 minutes, there was noise in the bus in the rear. He asked the passengers and the passenger told that one passenger is without ticket. On asking the checking staff, the said without ticket passenger took the Parcha and alighted from the bus. Thereafter the bus reached at the last point H-3 Vikaspuri. Some altercation was going on with the checking staff and his conductor. On my asking the checking staff told that this conductor has bogus tickets. In between the Time Keeper also came there. On asking by the time keeper, Shri Shripal ATI told that nothing. You make the Bus N/R and ordered him to drive the bus. On reach at a little distance from H-3 Vikaspuri, the same checking staff got the but stopped. On asking by him the checking staff told him to drive the bus and said that the Conductor has bogus tickets. After some time the checking staff, the checking staff challaned the Conductor. Before this he asked the checking staff to provide another conductor and whatever they have to do, do it do not make him late. On this the checking staff gave the time on his Memo and asked him to go on the ground (Chakkar). Shri Darshan Kumar Conductor was also with him. On coming back to H-3 Vikaspuri, from Shivaji Stadium from Route No. 871 again, the same checking staff came in the bus and took the Way bill, tickets and cash from Shri Darshan Kumar Conductor. They started quarreling between them and a big crowd gathered there. After some time PCR came.

16. The Inquiry Officer has accepted the version propounded by the prosecution and has found the indictment being fully established.

17. The report was furnished to the Respondent for his reply vide memo dated 06.06.2008. Ten days time was given to the Respondent to furnish his reply. Vide letter dated 16.06.2008, delivered in the office of the Depot Manager on 17.06.2008, stating that due to ill health and mental tension he could not furnish a reply within the time prescribed, he required that two weeks'' time be granted to file a reply. Vide letter 20.06.2008 it was intimated to the Respondent that ten days'' further time was granted to him within which he must furnish his reply.

18. Ten days'' extended time expiring on 30.06.2008 and receiving no reply, the Disciplinary Authority accorded concurrence to the report of the Inquiry Officer and imposed the penalty of removal from service. Order dated 1.7.2008 was passed.

19. On 1.7.2008 the Respondent submitted a letter bearing date 27.6.2008 requesting that 4 documents be supplied to him. The 4 documents supply whereof was demanded are as under:

I need the following documents:

 

1. Shripal, ATI who is reporter in this case had issued CFT of Rs. 100/- to Shri Mohan who was caught travelling ticket-less. I may kindly be explained in Hindi as to what is the meaning of the word CFT.

2. As disclosed by Shripal during the Inquiry that the passenger Shri Mohan gave hundred rupees against the CFT receipt and also gave a written statement, I may kindly be given copy of that written statement.

3. Whether the inquiry officer made any effort to summon the concerned passenger in inquiry through post and if yes then copy of AD receipt may kindly be supplied to me.

4. Photocopy of closure of my complaint book on 10.10.2005, be supplied to me.

20. It may be noted that the relevance of the documents and reason why they were required for purposes of replying to the report of the Inquiry Officer was not highlighted. It may also be noted that by the time the letter was received, it was too late.

21. Appeal filed by the Respondent being rejected on 3.9.2008, he filed a writ petition challenging the order passed by the Disciplinary Authority as also the order rejecting the appeal filed by him which was transferred to the Tribunal and registered as TA No. 1253/2009.

22. Vide impugned order dated 4.2.2010 TA No. 1253/2009 has been allowed on twin reasoning: (i) Respondent was prejudiced on account of documents sought from the Disciplinary Authority to submit a response to the report of the Inquiry Officer were not furnished and (ii) adequate time to submit a response was not given.

23. It is unfortunate that the Tribunal has acted mechanically and without applying its mind. The Tribunal ignored the fundamental jurisprudence that the right of a charged officer to claim production of documents relevant to his defence is at the stage when the charge sheet is served and the relevance of the documents has to be justified before the Inquiry Officer. As is to be noted from the facts noted hereinabove the Respondent had exercised the said right vide two letters and all documents production whereof was desired by him were duly supplied to him. It was thus too late in the day for the Respondent to seek supply of further documents after the inquiry was over and the report submitted. That apart, assuming that the Respondent could seek production of documents even after the inquiry report being submitted, he had to establish the relevance of the said documents with reference to the report of the Inquiry Officer. The Tribunal has just not bothered to note the contents of the letter submitted by the Respondent to the Disciplinary Authority seeking supply of 4 documents. Had the Tribunal read the same, it would have dawned upon the Tribunal that the demand was an ipse dixit demand without any justification shown. Further, we find that even before the Tribunal the Respondent has not pleaded any justification for supply of further documents after the inquiry was over. Thus, the first reason

given by the Tribunal is palpably wrong.

24. As regards the second, from the facts noted hereinabove it is apparent that the Respondent got 20 days time to file a reply to the report of the Inquiry Officer and we find the period of 20 days as a reasonable period to respond to the report of the Inquiry Officer. From the facts noted by us it is apparent that the Respondent had not predicated any defence with reference to the documents which were relied upon by the department and even the documents which were supplied to him and brought on record by the Inquiry Officer on the ostensible ground that they were relevant for the defence. The defence was of planting of fake tickets and this shows that the Respondent was simply fishing in a dry river bed hoping to catch a dead fish, for what purpose we do not note.

25. Since learned Counsel for the Respondent had submitted before us that pleas on merits with respect to the report of the Inquiry Officer have not been considered by the Tribunal, we dispose of the writ petition setting aside the impugned order dated 4.2.2010 and we restore TA No. 1253/2009 for adjudication on merits, but limited to the challenge on merits to the report of the Inquiry Officer and not on any technical plea as was sought for by learned Counsel for the Respondent.

26. No costs.