
(2013) 01 DEL CK 0097
In the Delhi High Court
Case No : Writ Petition (C) 12956 of 2005

D.T.C.

APPELLANT

Vs

Ram Karan

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Citation : (2013) LLR 608

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Arati Mahajan Shedha, for the Appellant; K.B. Hina, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By the present petition the Petitioner challenges the orders dated 18th March, 2004 whereby the enquiry conducted by the Petitioner was held to be not in accordance with the principles of natural justice and 13th April, 2005 whereby the application of the Petitioner u/s 33(2)(b) of the Industrial Disputes Act, 1947 (in short "the ID Act") was rejected and the Respondent was directed to be reinstated with all consequential benefits to the extent of 50% taking into consideration the time that has elapsed and there was no evidence led by the workman that he remained unemployed throughout the proceedings. Learned counsel for the Petitioner at the outset does not challenge the order dated 18th March, 2004 whereby the preliminary issue whether the inquiry was just and fair was held against it as no inquiry report was exhibited before the Court nor the Enquiry Officer was examined before the Tribunal. The contention of the learned counsel for the Petitioner is that in the evidence led before the Tribunal the Management was not required to produce the passenger witness and it had led sufficient evidence in the form of Shri Layak Ram AW2 and Rakha Ram AW3 the members of the raiding party. It is contended that the scope for interference by the Tribunal is limited and only if there is no evidence it can set aside the finding of the enquiry however, the Tribunal cannot go into the

sufficiency of the evidence. The learned Tribunal erred in coming to the conclusion that the passenger was not examined in view of the decisions in State of Haryana and Another Vs. Rattan Singh, and Delhi Transport Corporation Vs. N.L. Kakkar Presiding Officer, Industrial Tribunal No. 1 and Karan Singh, Conductor, . Reliance is also placed on Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, to contend that short charging of the fair is a serious misconduct. The evidence proved by the Petitioner was logically probative and thus the dismissal of the Respondent could not have been interfered with.

2. Learned counsel for the Respondent on the other hand relies upon the cross-examination of the witness. It is stated that it is a case of no evidence against the Respondent and thus the Tribunal committed no error in setting aside the dismissal and directing reinstatement with 50% back wages with consequential benefits to the Respondent.

3. I have heard learned counsel for the parties.

4. Briefly the facts of the case are that the Respondent was appointed as a Conductor on 15th January, 1992 with the Petitioner Corporation. On 20th January, 1992 the checking staff conducted checking on the bus No. 9496 of Route No. 523 wherein the Petitioner was the conductor. It was found that one passenger who was travelling from Andheria Mor to Mehrauli actually paid Rs. 1 but the Respondent issued him an already sold ticket of Rs. 2 of the same trip. The checking officials prepared the challan, the copy of the complaint, statement of passenger, tickets etc. and a charge sheet was issued to the Respondent. Not satisfied by the reply to the charge sheet an enquiry was conducted and the Inquiry Officer held that the charges against the Respondent were proved. Thus the Respondent was issued a show cause notice calling upon him to show cause as to why he be not removed from the service. After receiving the reply, the Respondent was removed from the service on 16th October, 1992. An application u/s 33(2)(b) of the ID Act was filed before the Tribunal for seeking approval of the order of dismissal. After pleadings of the parties, the preliminary issue regarding validity of the enquiry was decided against the Petitioner on 18th March, 2004 as neither the enquiry report was exhibited nor the Enquiry Officer was examined. Though there is a prayer to set aside this order however, during the arguments there is no challenge to this order.

5. After the preliminary issue of enquiry was decided against the Petitioner, it led evidence. Learned Tribunal relied on the cross-examination of AW2 Layak Ram, who admitted that the disputed ticket was issued in the process of the same trip. The cross-examination of Shri Layak Ram AW2 is reproduced as under:

It is correct that the disputed ticket was issued in the process of the same trip. I did not record the statement of the passenger. I can tell after seeing the statement as to who recorded it. I cannot identify as to in whose handwriting the statement of the passenger recorded is. It is incorrect that no such statement like Ex. AW-3/1 was made by Nisar Ahmed.

6. A perusal of the testimony of witnesses shows that this was first ticket sold by the Conductor after the bus had started from Bhati Mines to one Nisar Ahmad. The ticket was of Rs. 2 though the passenger gave currency note of Rs. 5/- out of which the Conductor returned him Rs. 4/-. A perusal of the examination-in-chief and cross-examination of Shri Rakha Ram AW3 the member of the raiding team itself shows that the Respondent did not over charge nor gave the old ticket but charged less amount. Faced with this situation, the contention of the learned counsel for the Petitioner is that even short charging is a misconduct. However, this was not the charge against the Respondent. The Petitioner cannot now built up a new case on which neither the charge sheet was issued nor proceedings carried out. Having gone through the testimony of the two witnesses Shri Layak Ram AW2 and Rakha Ram AW3 and the reasons assigned by the learned Tribunal, this Court cannot come to the conclusion that the inference drawn by the learned Tribunal was not a plausible inference. That being the position, no interference is called for by this Court. Petition is dismissed.