

(2007) 03 DEL CK 0060
In the Delhi High Court
Case No : LPA No. 04 of 2007

Kapoor Singh

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2007) 03 DEL CK 0060

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Pradeep Kumar, for the Appellant; R.D. Makheeja, Deepak Agaraiya and Manoj Gera, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 15th September, 2006 passed by the learned Single Judge

dismissing the writ petition filed by the appellant herein challenging the orders of the Industrial Tribunal dated 10th April, 2002 and 1st May, 2003

granting approval under Sections 33(2)(b) of the Industrial Disputes Act, 1947 to the Delhi Transport Corporation to the action removing the

appellant from service.

2. The respondent Corporation issued a charge sheet to the appellant on 22nd January, 1993 on the ground of several misconducts as mentioned

in the charge sheet. One of such misconducts pertained to failure on the part of the appellant, who was a conductor, to issue tickets to the

passengers even after collecting due fares. On the basis of the aforesaid charge sheet, a regular inquiry was initiated in which the appellant was

found guilty and accordingly an order was passed removing him from service.

Based on the said action, the aforesaid application seeking approval was filed by the respondent Corporation in which order was passed in favor of the Corporation. The Industrial Tribunal framed a preliminary issue as to whether the respondent Corporation had held a valid inquiry against the appellant according to the principles of natural justice. The said issue was decided in favor of the Corporation under order dated 10th April, 2002. The Industrial Tribunal thereafter went into the next issue as to whether one month's wages had been remitted to the appellant as per the provisions of Section 33(2)(b) of the Act. The said issue was also decided in favor of the respondent Corporation and thereafter the approval was accorded.

3. In the writ petition it was alleged that the Inquiry Officer arrived at a finding without there being any evidence before him and, Therefore, report of the Inquiry Officer was perverse. It was also argued that the checking staff did not record statements of the passengers to whom tickets were allegedly not issued by the appellant though fares were collected. The aforesaid issues were considered by the learned Single Judge and by a detailed order dated 15th September, 2006, dismissed the writ petition holding that none of the aforesaid grounds was made out.

4. As regards the contention that the Inquiry was vitiated because of non-examination of the passengers, the same is no longer rest integra in view of the decisions of the Supreme Court in the case of Cholan Roadways Limited Vs. G. Thirugnanasambandam, and Delhi Transport Corporation Vs. Shyam Lal, . In both the aforesaid decisions it was held that it is not obligatory to record statements of the passenger witnesses and to produce and examine passenger witnesses and that the checking staff through their deposition could also prove the misconduct and misappropriation by the employee.

5. However, from the records placed before us, it is established that while the appellant was on duty on 7th January, 1993 he was intercepted by the checking staff who found four passengers traveling without tickets as the appellant did not issue tickets to the aforesaid four passengers even after taking due fares and despite their request for issuing tickets. It is also disclosed from the records that the appellant went to the extent of even instigating the passengers, who were illiterate, not to give their statements to

the checking staff. It is Therefore crystal clear that in view of the aforesaid conduct on the part of the appellant in instigating the passengers not to record their statements, none of the passengers came forward to give their evidence. But the guilt of the appellant was established in the inquiry proceedings. It was so held by the Industrial Tribunal and the learned Single Judge from the other material on record including the statements of the checking staff. The learned Industrial Tribunal and also the learned Single Judge have held that the inquiry Officer conducted a detailed inquiry and that there was no violation of the principles of natural justice in conducting the said inquiry.

6. It was submitted before us by the counsel appearing for the appellant that even the identity of the passengers could not be disclosed by the checking staff and their particulars were not recorded. The next submission made was that cash with the appellant was not checked by the checking staff and Therefore, the entire inquiry is vitiated. It was also contended was that the respondents did not comply with the instructions issued by the respondents themselves under their communication dated 8th March, 1994. In order to appreciate the aforesaid contention, we have perused the said communication. Said communication was issued requesting the Traffic Officers to stress upon the Traffic Supervisory Staff working under their administrative control to invariably obtain the statement of witnesses/related passengers on the back of the challan form under the signatures of the conductor as far as possible in future. The contention is that the aforesaid circular has been violated in the instant case. When the checking staff intercepted the appellant they found that four passengers were traveling without tickets. The said passengers also stated that they were not given tickets and the appellant instigated them, who are illiterate, not to give any statement to the checking staff. In view of the aforesaid circumstances it was not possible for the checking staff to record their statements on the back of the challan form.

7. In the facts and circumstances of the case it cannot be said that the guidelines given in the said communication were violated in any manner by the respondents. The checking staff were also examined and nothing has come on record to show that none of them had any animosity against the appellant and there is no reason as to why any of the said witnesses would

depose against the appellant. The evidence of the checking staff clearly establishes the guilt of the appellant. It is also established from the records that the appellant did not cross examine Mr. Ved Prakash Sharda, who had appeared before the Inquiry Officer on behalf of the management to prove the allegations in the charge sheet. Deposition of the aforesaid witness Therefore went unchallenged and uncontroverted . It is also established from the orders passed by the Industrial Tribunal that the appellant admitted before it that he had been given full opportunity to defend himself before the Inquiry Officer.

8. In State of Haryana and Another Vs. Rattan Singh, the Supreme Court had held that departmental inquiry does not become invalid merely because statements of passenger witnesses are not recorded and that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It was also held in the said decision that passengers are not required to be chased and brought before the domestic tribunal. On the scope of permissible interference with the conclusions in a domestic inquiry, the Supreme Court said that what has to be seen is whether there was some evidence or was it a case of no evidence. The Supreme Court further held that as long as there was some evidence, sufficiency thereof in proof of a finding by a domestic tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer and, Therefore, the order passed in the domestic inquiry was not invalid. The following passage from the decision of the Supreme Court is worth quoting which is as under:

It is well settled that in a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is

objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the Courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

9. In *Shyam Sunder v. Delhi Transport Corporation* (CWP No. 922/1976, decided on 5th February, 1996), this Court held that since the enquiry officer had based his findings on the examination of the checking staff, there was independence evidence to link the petitioner with the charges leveled against him, and consequently it was held that the statement of the passengers not being the sole material against the petitioner, the domestic inquiry was not vitiated. The aforesaid decision of this Court as also the decision of the Supreme Court in *Rattan Singh* (supra) and various other decisions were noticed by this Court in *Delhi Transport Corporation v. N.L. Kakkar and Anr.* reported as 110 (2004) DLT 493. After noticing all the judgments, this Court held that consistent view of the courts over the last few decades has been that non-production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic inquiry should not be interfered with so long as they are based on

some evidence. In the said judgment this Court also noted the law laid down by some other High Courts and thereafter it was held that production

of passengers either in a domestic inquiry or before the Labour Court in an industrial dispute is not at all necessary. This Court was of the view that

in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the

inquiry officer or the Labour Court causing them unnecessary inconvenience.

10. We are of the considered opinion that all the aforesaid decisions are fully applicable to the facts and circumstances of the present case.

Reference can also be made to the decision in Delhi Transport Corporation Vs. Shree Kumar and Another, , which was also decided almost on

similar lines.

11. In view of the above discussion and considering the facts and circumstances of the case, we find no reason to take a different view than what

was taken by the learned Single Judge and the Industrial Tribunal. The appeal has no merit and is dismissed.