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In the Karnataka High Court

Case No : Writ Petition No. 2507 of 2013 (L-KSRTC).

Karnataka State Road Transport Corporation, Bangalore Central Division, Bangalore - Petitioner @HASH T. Sambashivaiah

Date of Decision : 12-02-2016

Acts Referred:

Citation : (2016) 3 KantLJ 431

Hon'ble Judges : G. Narendar, J.

Bench : Single Bench

Advocate : Smt. H.R. Renuka, Advocate, for the Petitioner; Sri L. Shekar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. G. Narendar, J. - Heard the learned Counsel for the petitioner and the respondent.

2. The petitioner before the Court is the employer-Corporation. The respondent is its employee discharging his duties as conductor and assigned badge No. 3613 and working in depot No. 2 of the KSRTC.

3. It is submitted by the petitioner that the respondent was on duty on the bus bearing Registration No. KA 01 F8049 while plying on Bangalore-Kodaikanal route and that at about 11.45 p.m., the checking officials of the petitioner-Corporation are said to have intercepted the bus when it had stopped at a hotel and on checking the cash in possession of the respondent-workman, it was found that he was in possession of an amount of Rs. 489/- in excess of the amount declared by him i.e. by way of personal cash and amounts collected by way of sale of tickets. Checking officials thereafter issued offence memo which is marked as Ex. M. 5 and the same has been received by the delinquent workman on 12-8-2005 (though in the offence memo it is stated as 11-8-2005). Thereafter they submitted a report dated 20-8-2005 to the Security Department, the same is also marked as Ex. M. 5. The way bill, in which the workman is required to declare the cash possessed by him, is marked as Ex. M. 6. The said

exhibit also bears the endorsement of the checking staff, delinquent workman and the depot staff, who have received the amount. The said way bill is said to have beer submitted in the depot on 14-8-2005.

4. It is the case of the workman that when he was checked at about 11.45 p.m. he had in his possession an excess sum of Rs. 513/- which belonged to one passenger who had bought two separate tickets, one up to Salem and the other in respect of his friend who was travelling up to Vattalagund and that the said passenger had given him a one thousand rupee note and as he did not possess the requisite change, he intimated the passenger that he would get exchanged the rupees One Thousand in the hotel when they stop for meals and return the remaining amount to him. It is also asserted by the delinquent workman that he had in fact endorsed the balance amount to be given on the reverse of the ticket issued to the said passenger but the Checking Officials refused to accept the explanation when they checked the vehicle as the vehicle had been stopped near the hotel and the passengers had alighted and gone to the hotel. Based on the offence memo the Disciplinary Authority without accepting the explanation given by the workman, initiated a domestic enquiry by appointing the Assistant Accounts Officer of the Bangalore Central Division as Enquiry Officer by order dated 30-9-2005. On conclusion of the enquiry, a report was submitted to the Disciplinary Authority and the Disciplinary Authority by its proceedings dated 26-3-2007 imposed the punishment of reduction of basic pay of the workman by two annual incremental stages and further directed that the period of suspension be treated as ''not on duty''.

5. Aggrieved by the same the workman who till then had maintained a blemish-less track record preferred an appeal but the Appellate Authority did not consider and dispose off the appeal expeditiously. In view of the delay in disposal of the appeal, the workman got raised a dispute before the Tribunal through the Union and as the conciliation effort failed to fructify on account of the non-participation of the management, a report came to be submitted and a reference was made to the Industrial Tribunal, Bengaluru and it came to be numbered as I.D. No. 190 of 2010.

6. It was contended by the learned Counsel for the petitioner that the order of the Tribunal is perverse and is liable to be set aside as it has relied upon the material which came into existence subsequently to the offence memo and that the offence memo is the evidence which comes into existence at the earliest point of time. It is further pointed out by the learned Counsel for the petitioner that the checking officials have categorically recorded in the offence memo that no amount is due to any of the passengers and that a sum of Rs. 489/- is excess cash and hence they have directed the conductor to remit the excess cash to the depot.

7. On a query from this Court the learned Counsel for the petitioner would submit that the checking officials have not obtained any statement, either of the conductor, the driver or the passengers. In fact, a reading of the offence memo-

Ex. M. 5 would show that the workman who is charged for a misconduct to the offence memo is required to submit his explanation to the Divisional Controller within three days from the date of receipt through their respective Depot Managers in respect of the irregularities noted in the offence memo. Further the note to the offence memo states that the memo is prepared in quadruplicate and under no circumstance, the employee shall refuse to accept the same. Hence, the assertion of the petitioner Counsel that the workman has admitted the findings in the offence memo by affixing his signature to the same cannot be countenanced.

8. The report submitted to the Security Department by the checking officials is a reiteration of the contents of the offence memo. The said report is marked as Ex. M. 7. The same is submitted on 20-8-2005. Ex. M. 6 is the way bill marked on behalf of the Corporation and the said document has come into existence on 14-8-2005. On the said exhibit the checking officials have made an endorsement stating that a sum of Rs. 489/- has to be collected from the conductor as the same is excess cash and the depot authorities have been directed to pass on necessary receipt. Accordingly, the delinquent workman has also deposited the said cash with the Depot Manager. It is also relevant to note that there is one more endorsement which reads as follows:

"Checked c/c and found Rs. 489/- excess cash. Issued OM No. 10858, which is nothing but the offence memo."

It is also relevant to note that in the said way bill the workman has set out his explanation which is also his case before the Enquiry Officer.

9. The learned Counsel for the petitioner would also rely on the decision rendered by the Hon''ble Supreme Court in Divisional Controller, N.W.K.R.T.C., Hubli v. A.I. Mane, (2005)3 SCC 254 and a another decision of the Hon''ble Supreme Court in State of Haryana and Another v. Rattan Singh, (1977) 2 SCC 491.

10. Per contra, learned Counsel for the respondent-workman would submit that though it was explained by the workman to the checking officials that the excess amount was in fact Rs. 513/- and belonged to a passenger, the checking officials did not wait till the return of the passenger from the hotel and simply issued the offence memo and left the place without verifying the explanation tendered by the delinquent workman. He would further draw attention of this Court to the evidence tendered by one Raghavan, who is said to have issued 1,000/- rupee note and not obtained change because by the time they returned from the hotel, the checking officials had left and the conductor i.e. the respondent-workman refused to part with the change as he had been directed to deposit the said amount with the depot authorities. The said passenger has not been cross-examined by the department officials and that the evidence of the passenger stands unrebutted and that the contention of the petitioner-Corporation must fly in the face of the deposition by the passenger.

11. A perusal of the records would show that the witness on behalf of the employer has been cross-examined in detail. In fact, it has been suggested that they have not checked the passengers and hence they have not noted the endorsement of the delinquent conductor on the reverse of the ticket endorsing the fact that a sum of Rs. 513/- is due to the passenger. The same is substantiated by the ticket which is produced by the witness by name Raghavan.

12. Learned Counsel for the respondent would further submit that the Tribunal, after assessing the material on record, arrived at the unacceptable conclusion that the decision of the Disciplinary Authority imposing punishment is perverse and unsustainable in law and hence he would state that no ground is made out by the petitioner which warrants interference with the findings of the Tribunal and hence he would pray for dismissal of the writ petition.

13. Though it is contended by the petitioner''s Counsel that the first document of material value which came into existence at the earliest point of time is the offence memo, written down by the checking officials, a perusal of Ex. M. 6 would demonstrate that it is in fact the first document which came into existence at the earliest point of time i.e. on 14-8-2005 whereas, the report, in lieu of the offence memo, has been submitted by the officials only on 20-8-2005 i.e. even before the report was submitted and at the first opportunity, the workman has submitted his explanation detailing the fact that the amounts found in his possession is due to the passenger who is travelling to Salem and the inspection carried before reaching Salem when it was stopped to provide refreshments to the passengers at Krishnagiri. The said explanation is not without basis. It has been subsequently backed by examining the said passenger who has produced the ticket which he had purchased and it is also an admitted fact that the ticket produced by the said witness relates to the said route and is issued by the workman only and on the said date. There is no material on record to demonstrate that the passengers were checked. In fact, the statement is an improvement on the contents of the offence memo.

14. Smt. H.R. Renuka, learned Counsel for the petitioner, would strenuously argue that there is no mandate of law that a statement must be obtained from the passenger nor that a mahazar shall be drawn up. She states that the offence memo by itself is an undisputable piece of evidence and in this regard she would place reliance on the judgment of the Supreme Court i.e. Divisional Controller, N.W.K.R.T.C.''s case. There the Apex Court has held that it is not mandatory on the part of the checking officials to examine the passenger in the light of the fact that the learned Single Judge of this Court has upheld the order of the Tribunal on the premise that the Corporation had failed to examine the passengers from whom the excess amount was collected. It was a case of non-issuance of tickets and in fact the delinquent workman therein had not submitted his explanation which is not so in the instant case on hand. Here in this case the workman has submitted his explanation at the earliest point of time i.e. on 14-8-2005, while submitting his way bill which is marked as an exhibit on behalf of the

Corporation-petitioner herein. Learned Counsel for the petitioner would also rely on another decision of the Hon''ble Apex Court in Rattan Singh''s case, wherein it has been held that in a domestic enquiry all the strict and sophisticated rules of the Indian Evidence Act, 1872 may not apply. There is no quarrel with the principle evolved in the said judgment and hence it is of not much avail to the petitioner. The Apex Court has held that the evidence of the inspector is only "some evidence" which has relevance to the charge and it was a case where the inspector attempted to record the statement of the passengers who were travelling without the valid ticket but the passengers declined. In the case on hand there is no averment that the checking officials made any attempt to obtain statement of the passenger to whom the excess amount was due. In fact, the case of the petitioner is that they are not bound to obtain statements of the passengers. As stated by the Hon''ble Apex Court the evidence of the checking officials is not of prohibitive value and it is an evidence which can be rebutted and in the instant case the workman has got the evidence to depose on his behalf and the department has not even thought it fit to cross-examine the said witness. When this being the case the petitioner cannot be heard to complain about the correctness of the conclusions arrived at by the Tribunal. The petitioner having failed to cross-examine the witness and the deposition of the said witness concurring with the explanation tendered by the respondent-workman, this Court does not find any good ground which would warrant interference with the impugned order.

15. Accordingly, the writ petition is dismissed and the findings of the Tribunal are sustained.

