

(2011) 10 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) 3725 of 2000

Krishan Kumar Nagar

APPELLANT

Vs

The Manangement of Delhi Transport Corporation

RESPONDENT

Date of Decision : 05-10-2011

Acts Referred:

Citation : (2011) 9 AD 54 : (2011) 126 DRJ 639 : (2012) 132 FLR 140 : (2011) LLR 1191

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Narottam Vyas and Vikramjit Sikand, for the Appellant; Arati Mahajan Shedha and Nilesh kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner, who was working as a Conductor with the Respondent Delhi Transport Corporation ("DTC") challenges an Award dated 25th February 2000 passed by the Labour Court dismissing his claim in ID No. 52 of 1988.

2. The Petitioner joined the DTC as a Retainer Crew in 1982. On 21st December 1984 while he was performing his duties in Bus No. 4047 on Route No. 521 he was intercepted by the checking staff of the DTC at Lodhi Road. One group of five passengers and another group of three passengers who had boarded the bus from Plaza for Dakshin Puri and Madangir had not been issued tickets up to Lodhi Road. Consequent upon a domestic enquiry the Petitioner was removed from service. The resultant industrial dispute was registered as ID No. 52 of 1988.

3. On 2nd April 1994 the Labour Court passed an order holding that the Enquiry Officer ("EO") had failed to comply with the departmental instructions and did not give a fair opportunity to the workman to defend himself. Further, the checking staff failed to examine or produce the passengers and also failed to record the statement of the co-passengers. Accordingly, it was held that the

enquiry was not fair and proper and the EO violated the principles of natural justice. The above order of the Labour Court was not challenged by the DTC. It sought permission to lead evidence. The DTC examined Mr. Harbans Singh, who was working as Assistant Traffic Inspector ("ATI") as MW-1 and Mr. Pritam Singh, ATI as MW-2. The workman filed an affidavit by way of evidence on 9th December 1998 and was cross-examined.

4. By the impugned Award dated 25th February 2000, the Labour Court held that the misconduct of the Respondent was proved. One of the factors that weighed with the Labour Court was that in the examination-in-chief of the workman recorded on 8th April 1991 he did not give an explanation as to how the incident had taken place and had also not alleged any animosity by the checking staff. The Labour Court held that there was no reason to discard the testimony of MW-1 and MW-2 and the non-examination of the passengers did not vitiate the order of removal. The Labour Court concluded that punishment of removal from service was not disproportionate.

5. Mr. Narottam Vyas, Learned Counsel for the Petitioner, highlighted the fact that the checking staff had found the cash with the conductor to be short by Rs. 8.50. He submitted that this completely demolished the case of the DTC that the Petitioner had collected the fare but not issued tickets to eight passengers. Ms. Arati Mahajan Shedha, Learned Counsel for the DTC, in reply pointed out that this point was not urged by the workman at any time before the Labour Court.

6. The challan prepared by the checking staff states that "conductor cash and body was checked. Found Rs. 8.50 short." The charge sheet served on the Petitioner by the DTC too prominently mentions this. Against the report of the EO holding the charges to be proved, the Petitioner made two representations dated 3rd August 1987 and 1st September 1987 which were rejected with by the Disciplinary Authority ("DA"). In those representations the Petitioner had stated: "checking staff should have taken action against the passengers who had been found travelling without tickets. The passengers concerned in order to evade action had falsely stated that they had paid the due fare. Had conversation of the passengers been a fact, his cash should have been found in excess is Rs. 3.25 paise. In fact the passengers had intentionally given wrong address since they were telling lie...". The reasoning of the DA in rejecting the said contention was: "the plea advanced by the delinquent employee ("DE") that his cash should have been found in excess in these circumstances has no force since his cash was on the contrary found to be short by Rs. 3.25 paise leading to the conclusion that the cash account had no relevancy to the case as claimed by the DE." The DA missed noticing that the fact that the cash with the conductor was found short, was inconsistent with the charge that he had collected the fare and not issued tickets. In other words, the cash should have been found in excess. Interestingly, in his statement of claim and in his evidence filed before the Labour Court the workman maintained that "there was no case of misappropriation of any amount as a matter of fact the passengers had not rendered any fare and had also not

admitted any guilt in the bus." In his cross examination on 22nd April 1991 the Petitioner specifically stated that he was coerced into writing on the challan that he had committed a mistake and that he was asking to be excused.

7. In its order dated 2nd April 1994 whereby it held that the enquiry was violative of principles of natural justice the Labour Court observed in para 12 as under:

Now coming to the case on merits. The findings of the enquiry officer is perverse from the facts on the record. On the one hand, the allegation of management is that the delinquent workman/conductor accepted the money from these eight passengers who stated to have given him a note of Rs. 20/-. On the other hand, the charge sheet itself stated and also MW-2 in his statement before the Court as well as during the enquiry, stated that when the cash of the conductor was checked, it was found short to the tune of Rs. 8.50p. If it was so, how it can be said that he received the amount was not issued the tickets. The enquiry officer failed to deal this aspect in his final report. Therefore, his conclusion that the charge was fully proved, was perverse.

(emphasis supplied)

8. Then there is an affidavit dated 9th December 1998 of the Petitioner where he offered his version of the incident and explained how the cash with him was found short. This is what he stated:

The checking officials had taken in their possession the block of tickets and they had taken out the tickets themselves so as to implant false evidence. There is no rule or procedure that unpunched tickets shall be taken in evidence to show that the concerned conductor did not issue tickets after receiving fare. It is a fact that before starting the checking of the bus, the checking officials take in possession the block of tickets, way bill and other documents. Nothing remains with the conductor. Even on that occasion I had handed over all the documents including block or tickets and only kept cash bag. Out of shortage of Rs. 8.50, cash amounting to Rs. 3.20 was due to the fact that the checking officials had taken out tickets of the value of Rs. 0.40 paise each but did not pay the amount to me. They had taken out other tickets as well and issued to other passengers, but did not pay the money to me. This fact was stated in reply to the charge sheet dated 25th February 1985.

9. The above explanation is a plausible one. However, the Labour Court not only failed to notice it but proceeded on the erroneous premise that the Petitioner had not led any evidence. It is indeed strange that the cash with the conductor was found to be short by Rs. 8.50 whereas he was charged with having collected fare from eight passengers without issuing them tickets. The burden was on the checking staff to explain this anomaly. They failed to do so. This was one of the factors which weighed with the Labour Court when it had passed an order on 2nd April 1994 holding the enquiry to be violative of principles of natural justice. An explanation was sought to be offered by Ms. Shedha that the conductor may

have randomly thrown out some cash from the bag when he noticed the checking staff board the bus. No such plea was raised by the DTC at any stage of the case and cannot be permitted to be now raised for the first time particularly when there is no evidence whatsoever to support it.

10. This Court finds that the impugned Award dated 25th February 2000 of the Labour Court holding that the misconduct of the workman was proved, to be unsustainable in law. Even on the question of punishment, the order of removal of the workman was disproportionate going by the DTC's circulars in that behalf, copies of which have been exhibited by the Petitioner in the Labour Court. Significantly, the records produced by the DTC in the Labour Court contained a document (page 293 of the Labour Court record) which states that the workman's "past record is clear". There have been many similar cases against the conductors of the DTC, where the punishment of removal from service was awarded only after two or three instances of misconduct. In the present case, it is not in dispute that the Petitioner had no adverse past record whatsoever. In the circumstances, the punishment of removal from service was disproportionate. For all the aforesaid reasons, this Court sets aside the impugned Award dated 25th February 2000 of the Labour Court.

11. The workman's evidence shows that after his removal from service he did not find any gainful employment. In his evidence recorded on 28th October 1999 he states that "I am unemployed since the date of termination of my services. My wife is doing a domestic help and that is how we are pulling on. I did not try out alternative employment as I was told by somebody that if I would do some job I would not be reinstated into service." The Petitioner's family includes his wife and four children.

12. In the circumstances, this Court directs the reinstatement of workman in service with 50% back wages for the entire period from the date of termination of his services till the date of reinstatement which should not be any later than four weeks from today. The Petitioner will also be given all consequential benefits with continuity of service as well as costs of Rs. 5,000/- to be paid by the DTC within the same period. The writ petition is allowed in the above terms.