
(2004) 09 DEL CK 0186

In the Delhi High Court

Case No : Writ Petition (C) No. 2705 of 2003

Om Parkash

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2004) 113 DLT 759 : (2004) 76 DRJ 444 : (2005) 104 FLR 253 :
(2005) 3 SLJ 14

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : K.K. Koul, for the Appellant; General Manager and Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Petitioner was working as a conductor with the Respondent. He has challenged an order dated 13th January, 2003 passed by the Industrial Tribunal-III in O.P No. 17/96 filed u/s 33(2)(b) of the Industrial Disputes Act, 1947 (for short the Act).

2. On 4th June, 1992, the Respondent's staff consisting of Roshan Lal, Traffic Inspector, Hari Singh, Traffic Superintendent, Raj Kumar and Satyarth Prakash, Assistant Traffic Inspectors boarded the bus in which the Petitioner was working as a conductor. On checking the passengers and tickets, it is found that the Petitioner had collected fare for 14 1/2 tickets, but had not issued them. When the cash was counted it was found that it was in excess by one rupee. On this basis, a report was furnished by the Inspectors and a charge sheet was issued to the Petitioner on 15th June, 1992 alleging contravention of the provisions of clauses 6 and 7 of the Executive Instructions / Duties of Conductors read with para 19(b), (h) and (m) of the Standing Orders governing the conduct of employees of the Respondent. Paragraphs 19 (b), (h) and (m) of the Standing Orders read as follows:-

"19. GENERAL PROVISIONS : Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as misconduct:

(a) xxx xxx xxx (b) Theft, fraud or dishonesty in connection with the Authority business or property;

(c) to (g) xxx xxx xxx (h) Habitual negligence of duties and lack of interest in the Authority's work.

(i) to (l) xxx xxx xxx (m) Any other activity not specifically covered above, but which is prima facie detrimental to the interests of the organisation."

3. Since the Petitioner denied the charges leveled against him, a domestic enquiry was held in which the charges were proved. Considering the report of the Enquiry Officer and his past record, the Petitioner was issued a show cause notice dated 16th September, 1992 by the concerned Depot Manager whereby the Petitioner was asked to show cause why he should not be removed from service. The Petitioner submitted his reply and after consideration of the same, the disciplinary authority passed an order dated 16th October, 1992 removing the Petitioner from service. Simultaneously the Petitioner was also given one months wages.

4. Thereafter, in accordance with the provisions of Section 33(2)(b) of the Act, the Respondent filed an approval application before the learned Tribunal.

5. On 31st October, 1994, an issue was framed regarding the legality and validity of the domestic enquiry held against the Petitioner. The learned Tribunal decided this issue against the Respondent. Thereafter, two additional issues were framed and the Respondent was given an opportunity to prove the misconduct against the Petitioner. The two additional issues framed were:-

1. Whether the management is entitled to the approval of the action, as claimed?

2. Whether the workman is guilty of misconduct , as alleged?

6. In support of its case the Respondent produced Roshan Lal, Traffic Inspector as MW2 and Sanjay Saxena, Manager (Traffic) as MW3. The Petitioner examined himself as his own witness.

7. The learned Tribunal, on an examination of the evidence, including the statement and cross-examination of the witnesses of the Respondent concluded that the Petitioner had in fact collected money for 14 1/2 tickets but did not issue them to the passengers. In fact, unpunched tickets were given to the inspecting staff. Quite clearly, Therefore, the Petitioner had committed misconduct by collecting the due fare from the passengers and not issuing them tickets for the fare collected.

8. The defense set up by the Petitioner was that soon after having boarded the bus, he developed acute stomach pain. He also stated that he was suffering from

fever and he had requested the driver of the bus to give the tickets. The Petitioner, however, did not produce the bus driver in support of the case put up by him. As regards the sudden ailment of the conductor it was found that he produced a medical certificate from GTB hospital that he was suffering from fever for two days. There was no mention about any stomach pain, which he claims he had got all of a sudden when he was required to issue tickets to the passengers. The Petitioner also produced a medical certificate from a private doctor to show that he had both fever and pain. In his reply to the charge sheet, the Petitioner did not state that he was suffering from fever for two days, but he mentioned only about the stomach pain. In view of these serious contradictions in the oral and documentary evidence produced by the Petitioner, the learned Tribunal did not believe his version that he suddenly felt unwell and was not in a position to issue tickets to the passengers. This, coupled with the fact the driver of the bus was not produced, led the learned Tribunal to conclude that the Petitioner did not make out any case for believing his statement. The charge of misconduct, Therefore, was held to have been proved against the Petitioner.

9. Learned counsel for the Petitioner contended that the learned Tribunal has not properly appreciated the evidence. I am unable to accept this contention. There was sufficient evidence available, particularly from the Traffic Inspector who had himself checked the bus that the Petitioner had collected the due fare for 14 1/2 tickets but did not issue them. There is nothing in his cross-examination to suggest that the events narrated by him did not transpire. Moreover, unpunched tickets were also recovered. On the other hand, the excuse of ill health given by the Petitioner cannot stand any scrutiny because of the material contradiction between his statement and the medical certificates. The best evidence that was available to the Petitioner under the circumstances would have been of the bus driver who, according to the Petitioner, had issued the tickets on his request. However, for reasons best known to him, the Petitioner did not produce the bus driver.

10. Learned counsel for the Respondent rightly pointed out that even if it is assumed that the Petitioner suddenly developed stomach pain and fever on the fateful day, merely punching the tickets could not have been such an impossible task for him especially after he had collected the due fare from the passengers. If he was well enough to collect the fare, surely he was well enough to issue duly punched tickets. Similarly, if it is assumed that the Petitioner was having fever for two days that is not an excuse for his misconduct. The Petitioner was entitled to take leave if his condition was such that he could not perform his duties properly. At best, this could only be a mitigating factor for awarding a punishment, but then, as noted earlier, the testimony of the Petitioner with regard to his ill health was not trustworthy.

11. On the question whether one month's wages had been duly remitted to the Petitioner, the learned Tribunal found that he had been remitted the wages and this was adequately proved by production of the money order receipts. In any

case no argument was made in this regard by learned counsel for the Petitioner.

12. It was finally contended by learned counsel for the Petitioner that the punishment imposed upon the Petitioner is extremely harsh. I am not in agreement with learned counsel. The fact of the matter is that the Petitioner had taken money from innocent passengers and had not issued them tickets. There is no room for any misplaced sympathy in favor of the Petitioner.

13. In a large number of cases, the Supreme Court, this Court and various other High Courts have upheld orders of dismissal from service in cases of this nature. Several such decisions have been adverted to in DTC vs. N.L. Kakkar & Anr. (110) 2004 DLT 493. Since the quantum of punishment imposed on the Petitioner is not unduly heavy and no particular reason has been made out for any sympathetic consideration being shown to the Petitioner, it must be held that the punishment imposed upon him is commensurate with the gravity of the misconduct. (See also Municipal Corporation of Delhi vs. Daulat Ram, WP (C) No.2149 of 1990 decided on 27th August, 2004.)

14. Since there is no merit in this writ petition, it is dismissed. However, there will be no order as to costs.