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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th January, 2022
+ **W.P.(C) 1614/2022 & CM APPL. 4674/2022**
SHRI BIRI SINGH Petitioner
Through: Mr. Vinay Sabharwal, Advocate.
versus

DELHI TRANSPORT CORPORATION Respondent
Through: Ms. Aditi Gupta, Advocate
(M: 9811046710)

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 5th October, 2021 in *LID No. 559/2019* titled *Shri Biri Singh v. Delhi Transport Corporation* passed by the *PO, Labour Court-08, Rouse Avenue District Courts, New Delhi* (hereinafter "*Labour Court*"). Vide the impugned award the claim of the Workman/Petitioner (hereinafter "*Workman*") who was working as a Conductor with the Respondent-Delhi Transport Corporation (hereinafter as "*DTC*") was rejected by the Labour Court.
3. The background of the case is that the Petitioner was appointed as Conductor in the DTC in the year 1983. The case of DTC is that on the intervening night of 19th/20th April 1991 when the Workman was on duty on bus no.9065, a surprise checking team entered the bus at Safdarjung Airport. The checking staff found that 12 passengers who were travelling in the bus were not issued tickets by the Conductor despite collecting the cash from them. A chargesheet was served on the Workman on 6th May 1991. The charges that were alleged against him are as under:

“i) That the workman received the complete fare from the passengers who boarded the bus from Jama Masjid, but did not issue tickets to the passengers till Safdarjung Airport.

ii) Cash was found less with the workman of Rs.2.45 paise on checking the cash.

iii) The workman was found dishonest towards his duties.

iv) Causing intentionally financial loss to the Corporation.

v) Refused to get his cash checked.

vi) Refusing to sign and refusing to take the challan.

vii) Refusal. to give unpunched ticket to the checking staff”

4. The Workman was asked to submit a reply and an enquiry was conducted. After a detailed enquiry, the removal of the Workman was recommended. He was, accordingly, terminated on 6th May, 1992. A demand notice was thereafter served by the Workman in 1995 seeking reinstatement. Since, there was no response from DTC, he filed a claim before the Labour Court. The enquiry proceedings were set aside by the Labour Court on vide order 1st February, 2005 holding that the enquiry was held in violation of principles of natural justice and finding of the enquiry officer were perverse. Thus, fresh evidence was adduced by the DTC for proving the misconduct of the Conductor. The ATI, Sh. Ishwar Singh was examined as MW-2 on 03rd April 2006 by DTC. Finally, vide order dated 5th October, 2021 the claim of the Workman was dismissed by the Labour Court. The findings of the labour Court are as under:

“27. Facts and circumstances of the case lead to the only inference that workman having collected lesser amount as per prevalent malpractice had neither made any entry in the way-bill nor issued any ticket to the group of 12 passengers having boarded at Jama Masjid till the bus was stopped by the checking staff near Safdarjung Airport and tried to hand over punched tickets to the passengers after necessary entry in the way-bill when he was stopped by the checking team and punched tickets were collected from the workman.

28. Non-examination of Sh. Shakeel Ahmed by management cannot be considered fatal in view of testimony of MW-2 Shri Ishwar Singh who has deposed that statement Ex.MW-2/3 on the reverse side of challan slip was written by the passenger.

29. Management has therefore succeeded in establishing the mis-conduct committed by workman in view of absence of valid explanation justifying shortage of Rs.2.45. Removal of workman from service is therefore held to be legal and justified in view of five adverse entries in his past record.

30. Reference under Section 10(1)(c) read with Section 12(5) of the I.D. Act is accordingly answered by holding removal of workman Shri Biri Singh from service as legal and justified.”

5. Mr. Vinay Sabharwal, Id. Counsel appearing for the Workman submits that there were various discrepancies in the evidence adduced by DTC. In fact, the Workman was not found carrying any surplus cash when the checking team entered the bus. He submits that in fact the way bill would show that the tickets were in fact given by the Workman and the allegations against the Workman was completely wrong and baseless. He,

further, submits that none of the twelve passengers were examined by the DTC before the Labour Court in the case. He states that the allegation in the chargesheet were not proved by the DTC and hence the dismissal of the claim was not justified.

6. Ms. Gupta, Id. Counsel for DTC submits that the Workman had previous record which had five adverse entries, which was clear from his own testimony in the cross-examination. She, further, submits that the Workman has not been working with the DTC for more than 30 years now and he is having his own house, as is also clear from the testimony. In these circumstances, she submits that there is no error in the impugned award and does not warrant any interference any interference by this Court.

7. The Court has perused the testimony of the Workman/Conductor. In his testimony, the Workman admits that he was working as a Conductor with the DTC and he denied the suggestion put to him that he had not issued tickets to the 12 passengers. The Workman admits that there were five adverse entries against him in his past record. The said admission is set out below:

“It is incorrect to suggest that I refused, to handover unpunched tickets to the checking staff & later on handed over tickets after punching them. It is incorrect to suggest that I refused to saw my cash to checking staff. It is also incorrect to suggest that my cash could be checked by the checking staff only after the bus was taken to police station where it was found less by Rs. 2.45 Vol. I handed over my cash for checking at the Safdarjang Airport itself. It is correct that I did not mention this fact either in my claim or my affidavit. It is incorrect to suggest that my cash was checked in the presence of a Police Head Constable. It is

correct that challan does not bear my sign. Vol. I wanted to sign challan but checking staff did not let me affix my sign on it. It is incorrect that I misbehaved with the checking staff. It is incorrect that checking staff took statements of passengers in my presence. It is correct that in respect of every employee corporation maintains a past record. It is correct that there are five adverse entries in my past record. It is incorrect that by my conduct I caused financial loss to the Corporation or I was not taking interest in work. It is incorrect that I misbehaved with checking staff & refused to comply with their orders. It is correct that I was aware of the fact that I had been challaned by the checking staff. It is incorrect to suggest that bus was got stopped at police post (I.N.A.) /check post.”

8. On the other hand, the ATI-Mr. Ishwar Singh himself was examined by the DTC. The exact details of the manner in which the inspection was conducted is set out in the affidavit. As per the said testimony the Workman had received full fare of Rs. 24 from a group of 12 persons for travelling in the bus from Jama Masjid to Khan Pur during night service in bus No.9065 on route no.052 till Safdarjung Airport. The checking team entered the bus at about 2:40 a.m. on the intervening night of 19th/20th April 1991. As per his testimony, the Workman did not issue tickets to the entire group of passengers and upon seeing the checking staff, he tried to give them the tickets bearing No.749/39132 to 39143. He also refused to give the unpunched tickets to the checking team. The Witness also states that statement of one of the passengers, who was the leader of the group of 12 passengers who were travelling in the bus was also taken and the same was also annexed and marked as Ex.MW-2/3.

9. In his cross-examination, the Management's witness also denies specifically the fact that the Conductor had issued tickets to all the passengers. He, further, denies the suggestion that the checking report is false. The witness also testified that the Conductor had misbehaved during the time when the checking staff had entered the bus. The impugned award also clearly records that the Management was successful in proving the misconduct committed by the Workman and that the Workman had failed to issue tickets after having accepted money from the passengers.

10. The present case is a case of misconduct by the Workman. The dismissal has taken place more than 30 years ago. The testimonies of the witnesses are summarised below:

Evidence of the Workman-

“The charges mentioned in the chargesheet dated 6th May 1991 are false and wrong. All the passenger travelling on Bus No. 9065 on route no. 052 on 19/20th April 1991 were issued ticket of right denomination when the bus was checked by the checking officials. The checking staff had closed the number of way bill and the last number was 39144 which showed that the tickets sold till no. 39144 were sold, checked and punched. The checking officials took valid tickets from the passenger and made a false challan against the deponent. The charge that punched tickets were not given to the checking staff is false and was added to give false colour to the challan. The alleged statement of the passenger is forged and false. No person has given any statement in front of the deponent nor was the deponent confronted by any such passenger. The cash was found short with the Deponent at the time of checking, but the Deponent had deposited the same in the depot and

as such there was no misconduct on part of the Deponent. The deponent is unemployed since termination and is facing acute financial hardship. Deponent is surviving due to some agriculture work by him and some stitching work done by the wife of the deponent.”

Evidence of the Mr. Ishwar Singh for DTC-

“I was the ATI at the time of the issuance of a challan dated 19/20th April 1991 to Sh. Biri Singh which is Ex. MW2/1. I gave checking report of the said challan to the Workman. The Workman was chargesheeted. That I checked the bus on 19/20th April 1991 at 2.40 am. I found the that the Workman Sh. Biri Singh received from a group of 12 persons, full fare from Jama Masjid to Khan Pur Rs.24/- in the night service in the bus No. 9065 route No. 052 and till Safdarjung Airport. The Workman did not issue tickets to the group of passengers. The workman tried to the give tickets to the passengers on seeing the checking staff, No. 749/391132 to 391143. That when I asked for the ticket, the Workman refused to give me unpunched tickets. The Workman refused to ger his cash checked in the bus. That I took the bus to INA Police Post where the cash was checked and it was found less of Rs. 2.45 paisa. The Workman behaved improperly with the checking staff. That the checking staff recorded the statement of the group leader of 12 passengers on the back of the challan which is annexed marked as Ex. MW2/4. That the copy of the waybill is Ex. MW2/4”

11. After perusing the above testimonies, the Court finds that the ATI who gave evidence has mentioned all the facts relating to the surprise inspection. He has given details of the conduct of the workman and the manner in which Workman behaved when he realised that the inspection

team was about to board the bus. The ATI's evidence that the bus had to be taken to the INA check post is affirmed by the driver of the bus who gave evidence before the Labour Court. The observation of the Labour Court where the driver's evidence is captured reads as under:

“24. WW-1 Shri Biri Singh during his cross-examination recorded on 27.07.2006 has denied the suggestion that he refused to show the cash to the checking staff and that cash could be checked by the officials only after the bus was taken to police station where a sum of Rs.2.45 was found short. He, in addition, has also denied the suggestion that the bus was stopped at INA check post. It is, however, relevant to note that Shri Chand Ram, Driver, Badge No. 17315 in his testimony recorded during-enquiry as defence witness has deposed that the bus was stopped at INA check post and a sum of Rs.2.45 was found short. The fact that workman has tried to mislead the Court by denying the suggestion that bus was taken to INA check post coupled with the fact that a sum of Rs.2.45 was found short which could not be explained by the workman dissuades the Court from relying upon his testimony.”

12. There are also some glaring inconsistencies in the case put forth by the Workman. The relevant portion from the impugned order showing the aforesaid inconsistency is:

“22. WW-1 Shri Biri Singh in his cross-examination recorded on 09.04.1999 has initially deposed to have given punched tickets to the checking staff before resiling from his earlier statement in his cross-examination recorded on 27.07.2006. Relevant portion of his cross-examination recorded on aforesaid dates is

extracted below:

Cross examination recorded on 09.04.1999.

"..... It is correct that I gave punched tickets to the checking staff. "

Cross examination recorded on 27. 06.2006.

" It is incorrect to suggest that I refused to handover unpunched tickets to the checking staff and later on handed over tickets after punching them "

13. From the above extracts it is clear that the labour court notices the clear contradiction in the workman's testimony. In the cross examination, the workman has merely denied all the suggestions put to him. There is no dispute to the fact that the statement of one of the passengers was recorded, placed on record and exhibited. The testimony of the Workman is clearly unreliable and untrustworthy. On the other hand, the testimony of the Management witness has been unimpeached leading to the inescapable conclusion that misconduct was indeed committed by the Workman.

14. It is also the settled position that customers need not be produced in such proceedings. Recently, in *Asst. General Manager, Stat Bank of India v. Ashok Kumar Bhatiya, WP(C) 7584/2017* vide order dated 17th December 2021, this Court has reiterated that customers need not be produced for proving misconduct or irregularities, as it leads to the greater inconvenience for the customer which the Management sees to avoid under all circumstances. Moreover, this Court in the case of *Delhi Transport Corporation v. Shree Kumar & Anr. 113 (2004) DLT 505* has squarely dealt with the issue of non-production of passenger as a witness in the domestic enquiry or before the Labour Court and held that production of a passenger is not required to prove the misconduct of the Workman. The

relevant observations of the Court are as follows:

“10. In Shyam Sunder v. Delhi Transport Corporation (supra) this Court held that since the enquiry officer based his findings on the examination of the checking staff, there was independence evidence to link the petitioner with the charges levelled 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 many other decisions were noticed by this Court in the decision in Delhi Transport Corporation v. N.L. Kakkar and another (supra). After noticing all the judgments, this Court held that it is quite clear that consistent view of the court over the last few decades has been that non-production of the 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. It was further held that the value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal. In the said judgment this court also noted the law laid down by some other High Courts and thereafter it was held that the 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. I am of the considered opinion that all the aforesaid decisions are fully

applicable to the facts and circumstances of the present case.”

15. The said proposition of law has been reiterated in judgment passed by this Court in ***Dayal Singh v. Delhi Transport Corporation 2013 LLR 525*** to hold that it is not mandatory that passenger witness should depose to establish guilt.

16. Therefore, the misconduct having been established on facts in a detailed award passed by the Labour Court, in the opinion of this Court, the said order does not warrant any interference in writ jurisdiction under Article 226 of the Constitution of India, 1950. Accordingly, the present writ petition, along with all pending applications, is dismissed with no orders as to costs.

PRATHIBA M. SINGH
JUDGE

JANUARY 27, 2022
dj/sk

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