



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 8th May, 2024**
+ W.P.(C) 384/2011
DTC Petitioner
Through: Mr.Uday N. Tiwary and Mr.Akshat
Tiwary, Advocates
versus
AZAD SINGH Respondent
Through: Ms.Rashmi B. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner under Articles 226 read with 227 of the Constitution of India seeking quashing of the impugned order dated 27th February, 2009 and impugned award dated 26th April, 2010 passed by the learned Presiding Officer, Labour Court, Karkardooma Court, Delhi in ID No. 318/08/96.

2. The relevant facts leading to the filing of the instant petition are as under:

- a. It has been stated that the respondent workman was appointed as a 'conductor' with the petitioner entity on 27th July, 1978. On 19th July, 1994, the respondent workman was on duty at bus no. 9963, wherein it was found by the petitioner's checking staff that the respondent had collected Rs. 11/- each from a group of nine passengers, total amounting to Rs. 99/- but did not issue any ticket against the amount collected.



- b. Thereafter, the petitioner issued a charge sheet dated 5th August, 1994 to the workman for the aforesaid misconduct and thereafter, the enquiry officer conducted an enquiry and found the workman guilty of misconduct.
 - c. Accordingly, the respondent workman was removed from his services w.e.f 3rd July, 1995. Subsequently, the respondent workman raised an industrial dispute under the Act which was referred for adjudication and was numbered as ID no. 319/18/96.
 - d. Vide order dated 27th February, 2009, the learned Labour Court decided the preliminary issue of validity of enquiry against the petitioner. The learned Labour Court passed an award dated 26th April, 2010 holding the respondent workman's termination illegal directing the petitioner to reinstate him with continuity of service on the same post.
 - e. Being aggrieved by the impugned order dated 27th February, 2009, as well as the award dated 26th April, 2010, (hereinafter "impugned award") the petitioner has approached this Court seeking aside of the same.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and is liable to be set aside since the same has been passed without taking into consideration the entire facts and circumstances of the matter.



4. It is submitted that as per the impugned order dated 27th February, 2009, the learned Labour Court vitiated the enquiry by observing that the petitioner management did not appoint any presenting officer, however, the learned Court below failed to appreciate that the mere absence of a presenting officer would not vitiate the enquiry.

5. It is submitted that it is a settled law that checking of cash is not the only way to prove that the bus conductor had taken the due fare but did not issue ticket. Even where cash is not checked, cheating can be proved by the testimony of the checking team. Reliance in this regard has been placed upon the judgments passed in *UPSRTC vs Suresh Chand Sharma, (2010) 6 SCC 555* and *UPSRTC vs Gajadhar Nath (2022) 3 SCC 190*.

6. It is submitted that the respondent workman was issued the charge sheet dated 5th August, 1994 for the misconduct and the learned Labour Court failed to appreciate that a detailed oral enquiry was held in which the workman fully participated following which he was found guilty of the charges levelled against him.

7. It is submitted that the impugned award is perverse and call for the interference of this Court as the learned Labour Court failed to appreciate the fact that the misconduct of cheating has been proved against the respondent workman and he was not only charged for non- issuance of ticket but also that he charged the passengers without issuing them tickets, thereby, demonstrating his dishonest intention. It is further submitted that the respondent workman, in fact, had admitted to the misconduct by surrendering nine un-punched tickets to the checking staff.



8. It is submitted that the learned Labour Court failed to appreciate that it is now settled principle of law that the Courts should not interfere with the administration decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the Court. It is further submitted that the learned Labour Court went beyond its jurisdiction in holding the enquiry itself and substituting itself for the enquiry officer for the determination of the preliminary issue and called for evidence from the parties which was not at all necessary.

9. It is submitted that the learned Labour Court failed to appreciate that the enquiry had been properly concluded and a proper opportunity was given to the respondent to cross examine the petitioner witness and an opportunity was further given to the respondent workman to bring his defence witnesses and even the letters dated 22nd November, 1994 and 15th December, 1994 were sent to the passengers to appear before the enquiry proceedings but they failed to appear.

10. It is submitted that the respondent workman superannuated on 31st October, 2015 and he has already received an amount of Rs. 1,34,069/- under Section 17-B of the Industrial Disputes Act, 1947 (hereinafter “the Act”) from 26th April, 2010 to 31st January, 2012 and an amount of Rs. 20,000/- towards litigation expenses.

11. Therefore, in view of the foregoing submissions, it is submitted that the impugned orders may be set aside and the instant petition be allowed.



12. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

13. It is submitted that the impugned orders have been passed in accordance with the law and the instant petition is merely an abuse of the process of law.

14. It is submitted that despite the fact that the petitioner had submitted a satisfactory reply to the charge sheet, a defunct enquiry was conducted in which the petitioner was not supplied with the relevant documents and list of witnesses despite being demanded, thereby, denying the respondent an opportunity to defend himself in utter violation of principles of natural justice.

15. It is submitted that the cash which was collected by the respondent workman after issuance of tickets was not checked or verified by the checking staff to establish the alleged charges and the enquiry officer had absolutely omitted the irregularities committed by the checking staff. Thus, the enquiry was rightly vitiated by the learned Court below.

16. It is further submitted that the statement of passengers were written on plain papers and not on the overleaf of the challan which is violation of executive instruction issued to the checking officials vide a circular dated 8th March, 1994 issued by the petitioner entity.

17. It is submitted that there is no error of jurisdiction which is apparent on the face of the record and the petitioner has failed to make out any case to



show any illegality in the impugned award. It is further submitted that being a writ Court, this Court cannot sit in appeal to re-appreciate any evidence.

18. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

19. Heard the learned counsel appearing on behalf of the parties and perused the record.

20. It is the case of the petitioner that the impugned orders are bad in law and the same are liable to be set aside since the learned Court below failed to appreciate the fact that the enquiry was conducted in accordance with the law and vitiating the same amounts to perversity as the learned Labour Court exceeded its jurisdiction by substituting itself in place of the enquiry officer. The petitioner contends that the in case of non- issuance of ticket, even where cash is not checked, cheating can be proved by the testimony of the checking team. It has been further submitted that in the instant case, the charge of cheating was proved by the (a) testimony of checking staff, (b) the fact that the respondent workman gave un-punched tickets to the checking team, thereby, admitting to his misconduct, (c) copy of the statement of the passengers and challan issued, and (d) the fact that the respondent workman has accepted in his concluding statement before the enquiry officer and during the enquiry that there were 9 ticketless passengers in the bus travelling from Fatiabad to Hissar.

21. In rival submissions, the respondent workman has opposed the contentions advanced by the petitioner submitting to the effect that he was not provided with the list of documents and witness during the enquiry



proceedings conducted against him which tantamount to violation of principles of natural justice and the same has been rightly considered by the learned Labour Court. It is thus, prayed that the instant petition may be dismissed.

22. Therefore, the issue that falls for adjudication before this Court is whether the impugned orders passed by the learned Labour Court require interference of this Court under Article 226 of the Constitution of India.

23. Now this Court will peruse the impugned orders.

24. The relevant extracts of the impugned order dated 27th February, 2009 are as follows:

“..1. This reference dated 17.06.1996 was received vide No. 24 (1643)/96-Lab./32402-07 from the government as under :

"Whether the removal of Sh. Azad Singh from service is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

2. The case of the workman as per the original claim statement is that he was employed with the DTC as a conductor in the year 1968. He was served with a charge sheet for not issuing tickets to four passengers after collecting fare and further that he refused to sign the statement of passengers written on plain paper. Workman contends that he was not given with the list of witnesses and list of documents. The workman denied the charges. The cash was not checked and the charges were totally baseless. He also relies on a circular dated 06.12.72 of DTC that in case the conductor refusing to sign the statement of the passengers, no cognizance is to be taken to such statements unless the passengers participated in the enquiry. Passengers have not participated in the enquiry. The findings of the enquiry Officer are perverse and not based on evidence. Workman



further contends that he was not given a chance to explain regarding the past record. The Depot Manager has awarded highest penalty of removal of service by his order dated 03.07.95. Workman further contends that the penalty is disproportionate and uncalled for.

3. The management filed the reply to the original claim statement. It contends that the workman was appointed on monthly rate w.e.f. 02.02.79. Management denied the allegations except admitting the charge sheet and the charges framed. Management contends that all the documents were supplied and the charges are supported by the evidence of checking staff. Management further admits that cash of the conductor was not checked and the passengers having been not examined during the enquiry. Management contends that the enquiry findings are based on legal evidence and fair and proper which have been arrived at after complying all the principles of natural justice. Workman has also filed the rejoinder denying the allegations found against him in the written statement.

4. Based on the pleadings my Ld. Predecessor had framed the following three issues on 10.12.1997.

- a) Whether the domestic enquiry is not valid, fair and proper?*
- b) Whether the removal of workman from service is illegal and unjustified.*

8. The examination of passengers, according to the AR for the management, during the enquiry, is almost dispensed by various rulings. In the State of Harayana vs. Ratan Singh, AIR 1977 SC 1512 and various rulings were relied by him to urge this point. The ARM submits that the enquiry issue be decided in the favour of the management and he also made an oral request based on the earlier written pleadings that in case the



enquiry issue is to be held against the management to give an opportunity to prove the misconduct.

9. I have gone through the oral and documentary evidence. WW 1 has filed his affidavit and contended that the enquiry is vitiated since the documents were not to him. He further contended that the passengers were not examined and that the assistance of co-worker was not given to him. In the cross-examination by the management, he admits that he had received the charge sheet and that he has cross-examined the witnesses. MW 1 S.K. Jacob in his affidavit deposed that he was entrusted to conduct the enquiry and that the charge sheet was given to the workman and that he participated in the proceedings, he further deposed that the charges were read over to him and that the workman refused to take the help of a co-worker. MW 1 further deposed that workman was given an opportunity to give his final statement.

10. In the cross-examination by the workman, he admits that the workman demanded certain documents on 19.09.1994 and he had not supplied the documents. He further volunteered to say that it was the duty of the disciplinary authority. He further admits that along with the charge sheet, no list of documents were given to the workman. There is further admission by the enquiry officer that some of the passengers have given their statements against the high handedness of the checking officials and that enquiry officer had summoned the claim book nor examined it in the enquiry. At the same breath, this witness volunteered to say that the extracts of complaint book were examined which is at Ex. MW 1/D.

11. From the evidence available on record and from the totality of the circumstances based on the arguments advanced, the following points would glaringly reflect from the record.



a) the findings of the enquiry officer as regards the statements of the passengers is misconceived for the reason that the enquiry officer had rejected in totality the statement of certain passengers agitating the high handedness only on the ground that this as an afterthought. Ex. MW 1/D found on record ought to have been considered on record and the same must have been looked into independently along with the evidence of management witnesses in the enquiry.

b) that in the ruling of DTC vs. Anoop Singh, 133 (2006) DLT 148 our Hon' High Court had held that the explanation that they had not checked the Conductor's cash and that the checking staff does not check the cash in a moving bus is not acceptable.

c) that no presenting officer is appointed.

d) in the unreported ruling of DTC vs. Maha Singh, WP No. 2228/04 (DD : 28.04.2005) our High Court has held that appointment of presenting officer would vitiate the enquiry.

e) enquiry findings also reveal that the enquiry officer went a step ahead in considering the service antecedents of the workman which was beyond the scope of the enquiry. Having considered the same, it is common prudence that he was prejudiced in arriving at the findings. More so, in the context of having not discussed the contents of Ex. MW 1/D juxtaposing the entire evidence available on record.....

ORDER

The Issue no. 1 is held in favor of the workman and against the management..."

25. Now advertent to the impugned award dated 26th April, 2010, relevant extracts of which are as under:



“..4. Based on the pleadings my Id. Predecessor had framed the following two issues on 10.1.^199/.

- a) Whether the domestic enquiry is not valid, fair and proper?
- b) Whether the removal of workman from service is illegal and unjustified.

5. ISSUE NUMBER 1 : By a detailed order on issue no. 1 based on the evidence led on the aspect of enquiry, I have already answered the same in favour of the workman and against the management vide my order dated 2.02.2009.

6. Now I am to answer the issue no. 2 which would also cover the terms of reference. After answering issue no. 1 in favour of the workman, I allowed the management to lead management evidence to prove the case of management on merits. Consequently the management has examined one K. C. Gupta as MW-2, the Depot Manager who relied on the documents already marked through the evidence of MW-1 Sh. S.K. Jacob. Management further examined MW-3 Kohar Singh who was one of the checking staff. The workman had examined himself in rebuttal. Heard the arguments on behalf of both the parties. With the available oral and documentary evidence, I am now to find out whether the misconduct against the workman is proved or not.

7. ISSUE NUMBER 2 ; Prior to answering issue no. 2, it is pertinent to note the charges against the workman. Ex. WW 1/M-1 is the charge sheet. The charges are that:

- a) That group of the nine passengers had paid conductor Rs. 99/ @ of Rs. 11/ each for tickets from Fatehabad to Hisar but he did not issue the tickets. Conductor admitted his guilt when the group leader was confronted to him and he gave nine unpunched tickets bearing no 001/08233 to 08261.
- b) When the checking staff asked the complaint book, conductor refused to give the same and also refused to take the challan.
- c) Workman also refused to sign on the statements of the passengers.



d) By the above irregularities, the workman had shown negligence towards the duties and caused financial loss to the corporation.

8. The only witness to speak about the irregularities as per the charge sheet is MW-3. He testified that he checked the bus of the workman and found nine passengers without tickets. According to him the passengers told MW 3 that they paid Rs. 100/- to the conductor for traveling between Fatehabad to Hisar. The statement of passengers is marked through him at Ex. MW 3/1. The copy of the challan at Ex. MW 1/ and the unpunched tickets given by the conductor admitting the guilt at MW 3/ 3. In the cross examination he admits that he is not the reporter and that the said report was prepared at ISBT in the absence of the workman. He denies a suggestion that the challan was also prepared in the absence of the workman. He admits that one J.R Mishra prepared the challan who was one of the checking staff. He admits that no statement of other passengers was recorded to show that the conductor refused to sign the chalan and the passengers' statements. According to him MW-3 statement of the passengers was not recorded by the checking staff but by the passengers. He denies a suggestion that Ex. MW 3/ 3 the unpunched tickets were not surrendered voluntarily by the conductor. He is unable to say that the distance between Fatehabad and Aroha is 4-5 km and that 55 passengers had boarded the bus. He also admits the departmental instruction that the statement of the passengers are to be recorded in the book of the challan. He also admits that they have not written on the challan or in the complaint book regarding the conductor not giving the complaint book to them. He admits that the cash was not checked since the bus was a running bus which might have caused inconvenience to the passengers.



9. In the rebuttal evidence, the workman deposed in his affidavit at Ex. WW 1/B that he did not commit any mistake and that the unpunched tickets were taken away by the checking staff from the hand block forcibly. He testified that he had issued tickets to all the passengers who paid him the fare. He further refutes that he refused to sign the passenger statement. According to him he did not commit any misconduct and the allegations are false. Workman further testifies that the passengers had lodged a complaint against the high handedness of the checking staff in the complaint book and that the statement of the passengers were obtained under threat. Workman relied on Ex. MW 1/B and MW 1/C. In the cross examination by the management certain suggestions were made which were denied concerning the irregularities. Workman volunteer to say that the statement was never recorded in his presence. He further admitted that there is no enmity between him and the checking staff and denies the adverse entries in his past record.

10. With the above available evidence, now I am to find out whether the conductor who was on duty on 19.07.94 had committed the irregularities as found in the charge sheet or not. Ex. MW 1/ D is the extract of complaint book, the same was got marked during the course of evidence of MW 1 S.K. Jacob since MW-2 the disciplinary authority K.C. Gupta had stated on oath that he relies on the documents already marked, I can not ignore this document Ex. MW 1/D. This document is admitted by MW 1 in his cross examination recorded on 12.07.2000. This is an extract of complaint book which the management does not dispute. The author of this document is Ram Chander of Delhi. According to this document Ramchander, was also one of the commuters in the said bus on the dale of checking. This document speaks that the conductor was in the process of issuing the tickets and the checking staff prevented the



conductor from issuing the tickets who was still in the process of issuing the tickets.

11. The allegation of the management that the workman had not issued tickets to the group of the nine passengers, who had paid conductor Rs. 99/- (g) of Rs. 11/- each for tickets from Fatehabad to Hisar but did not issue the tickets is not substantiated since MW-3 has not stated as to which was the stage have completed the issuance of tickets for the passengers boarding from Fatehabad. It is clear that the bus was intercepted at Amroha mode (Amroha crossing). The distance between Fatehabad and the stage by which the conductor ought to have completed the issuance of tickets is not forthcoming from the testimony of MW 3. The suggestions made to MW-3 in the cross examination plays a significant role in this context. MW-3 is unaware the distance between the place of checking and Fatehabad and that it is only 4-5 km. Though it is stated that in the interstate routes, the issuance of tickets is to be completed within 2 to 2 ½ km, it is denied by the MW 3 that the conductor was still in the process of issuing tickets. A suggestion was made to this witness that in the interstate buses, the conductor should complete issuance of tickets within 12 km from the starting point,

12. The MW-3 further admitted that the cash was not checked despite the request from the conductor. In the cases where the conductor had requested for tallying the cash, It was in the common prudence of such of the chocking staff to find the cash and tally the same with the number of tickets issued. This is very (significant) especially when the conductor pleads that he has not caused any financial loss to the corporation, when is facing such a charge. E.x. MW 3/ 3 are perused. These documents consisting of nine unpunched tickcts (photocopies) will not conclusively establish that they were handed over by the conductor voluntarily when the challan was not signed by



the conductor. The challan can not be believed without any corroborative evidence merely on the basis of the oral testimony of MW-3.

13 To impute and sustain a charge that the conductor refused to sign the statement of the passengers, it is safe to look into the statement of the passengers. Ex. MW 3/ 1 is the statement of the passengers can not be believed since the address of the passengers for all the nine passengers are not completely taken. Two addresses are made out, one resides in Kalupur, PO Achundi, Hisar Distt. Other address is that of Papu S/o Amir Chand, village and post office Mund Disk, hlisar and certain illegible writings perhaps signatures of four persons are found. If the entire group have traveled together who paid Rs. 100/-, it becomes very difficult to believe as to why this group traveled together who belonged to different villages. Furthermore Ex. MW 3/ 1 is not identified by MW-3 with the signatures of the author. MW-3 deposed that statements were written by passengers themselves. The verification part found on the passenger statement is not proved.

*14. With the above short falls to believe the case of the management regarding non issuance of tickets despite collection, the checking staff ought to have tallied the case especially in the wake of ruling of our Hon'ble High Court in **DTC vs. Anoop Singh, 133 (2006) DLT 148**. Hence, the first charge falls to the grounds. Consequently the other charges also can not be believed in view of the complaint book for which the document at Ex. MW 1/D which I have already discussed. Since the misconduct is not proved, the workman is entitled to be reinstated.*

15. I have considered the grant of back wages in this case, though the workman had pleaded that he remained unemployed despite best efforts and the same is so affirmed in Ex. WW 1/B,



it is to be noted that in the original claim statement he simply stated that he is unemployed. He has not even stated that he made sincere efforts to get alternate employment. It is elicited in the cross examination that the workman has not mentioned as to where he has applied for jobs. Granting of back wages is purely a matter discretion which is to exercised dependent on several factors including the nature of employment, past record, duration of service etc.....I have considered the past record. The workman had suffered stoppage of next increment in the year 1980. He was censured in the year 1985. He was warned several times. Therefore it can not be said that the post rccord of the workman is clear. Furthermore, in the recent ruling of our High Court in Ramesh Chand v/s DTC in WP No. 14148 of 2009 DD : 23.02.2010, held that "therefore, there as a long gap of 13 years and due to this gap the petitioner should have led a positive evidence to plead and prove that he was not gainfully employed after the date of his termination. In the absence of any evidence led by the petitioner, I do not find that the finding given by the Ld. Labur Court denying the back wages to the petitioner can be held to be perverse or illegal.

16. After having given careful thought to the entire facts of the case, I am of the opinion that the workman is not entitled for back wages but litigation expenses of Rs. 40,000/- (Rs. Forty thousands only) payable by the management. Accordingly, I pass the following award :-

AWARD

The removal of the workman from service is held as unjustified. Consequently the management is directed to reinstate the workman with continuity of service in the same post. No back wages are awarded. The management shall pay a sum of Rs. 40,000/- (Rs. Forty thousands only) to the workman towards litigation expenses.....”



26. Upon perusal of the above extracts of the impugned orders, it is made out that the issue before the learned Court below was two-fold. Issue no. 1 was to decide whether the domestic enquiry is invalid and issue no. 2 was to decide whether the removal of workman from service is illegal and unjustified. The issue no. 1 was adjudicated as a preliminary issue in the impugned order dated 27th February, 2009 and issue no. 2 was decided vide the impugned award dated 26th April, 2010.

27. Whilst adjudicating issue no. 1, the learned Court below observed that the findings of the enquiry officer pertaining to the statements of the passengers is misconceived for the reason that the enquiry officer had completely rejected the statement of certain passengers where the high handedness of the checking staff was claimed. It also observed by the learned Court below that the above said rejection of statement of certain passengers is an afterthought and that the enquiry officer had failed to peruse Ex. MW1/D, i.e., the extracts of the complaint book which amounts to perversity. It further observed that no presenting officer was appointed during the enquiry and also that not tallying the cash with the conductor is not a legally sustainable argument.

28. The learned Court below held that the findings of the enquiry also reveal that the enquiry officer went a step ahead in considering the service antecedents of the respondent workman which was beyond the scope of the enquiry. Taking the aforesaid observations into consideration, the learned Labour Court held that the respondent workman had been prejudiced and



accordingly, the issue no. 1 was decided against the petitioner entity and in favour of the respondent workman.

29. While adjudicating upon the issue no. 2, the learned Labour Court, vide the impugned award dated 26th April, 2010, directed the petitioner to reinstate the respondent workman. The said finding of the learned Court below is backed by the reason which is the lack of substantial evidence against the workman's alleged misconduct. It was observed by the learned Labour Court that the checking staff had admitted in his deposition that he did not check the cash despite request from the conductor/workman and since the same is a common practice where such kind allegations are advanced by the checking staff, therefore, the said act of the checking staff is of great significance as it fails to conclusively establish that the tickets were handed over by the conductor voluntarily when the workman refused to sign the challan. Based on the said reasons, the learned Court below passed the award in favour of the workman.

30. The manner and procedure *qua* the conduction of a domestic enquiry has been laid down by the Hon'ble Supreme Court in a catena of judgments. A domestic enquiry is conducted against the employees for certain acts of alleged misconduct and the same is of a great significance in an industrial adjudication.

31. The Hon'ble Supreme Court in *Khardah & Co. v. Workmen, 1963 SCC OnLine SC 100* observed that usually the evidence on which the charges are sought to be provided must be led at such enquiry in the presence of the workman itself. It was also observed that the basis on which



the said view is founded is that the enquiry conducted by the management must be fair and just, and the principles of natural justice have to be observed strictly. The relevant extracts of the said judgment are as under:

“..8. It would be noticed that the essential basis on which this view is founded is that the enquiry conducted by the management before a domestic tribunal must be a fair and just enquiry and in bringing home to the workman the charge framed against him, principles of natural justice must be observed. Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in State of Mysore v. Shivabasappa Shivappa Makapur [AIR 1903 SC 375] , that if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is given to him, and an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded, that would conform to the requirements of natural justice; but as has been emphasised by this Court in Kesoram Cotton Mills Ltd. v. Gangadhar [Civil Appeals Nos. 425 and 426 of 1962 decided on 4-4-1963] these observations must be applied with caution to enquiries held by domestic Tribunals against the industrial employees. In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his



evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct...”

32. Insofar as the law is concerned, in a domestic enquiry, certain rules ought to be followed to set out general practice in order to conduct a fair enquiry within the four corners of law. The department concerned with conducting the enquiry must have a set of norms and provide adequate opportunity to the person against whom enquiry is being conducted allowing him to defend his case and the proceedings so conducted have to mandatorily abide by the principles of natural justice.

33. In a recent judgment passed by the Division Bench of High Court of Calcutta in *Sri Saurav Krishna Basu v. The State of West Bengal & Ors.*, **WPST 71/2024** dated 25th April, 2024, it was observed that fairness and reasonableness are paramount issues for any administrative action. In a disciplinary proceeding, the employer is under an obligation to ensure that no prejudice is caused to its employee. The principle said principles impels a duty to act fairly.



34. With regard to the issue no. 1 which pertains to the legality of the domestic enquiry, the respondent workman had claimed innocence regarding the charges brought against him emphasizing procedural irregularities such as not being provided with lists of witness and documents. The respondent workman also argued that his removal from services is disproportionate as the enquiry officer passed the order of termination by taking into account the past antecedents and the same was erroneous. The petitioner management on the other hand asserted that the charges are supported by evidence and the disciplinary process was fair and just.

35. The learned Labour Court evaluated the evidence and arguments presented before it and held that the enquiry officer wrongly disregarded statements given by few of the passengers regarding the high handedness of the checking staff and further, the enquiry officer failed to take into consideration the complaint book marked as Ex. MW1/D.

36. Accordingly, the learned Labour Court was of the opinion that the statements of the passenger alleging high handedness of the checking staff made in the above said complaint book ought to have been taken into account by the enquiry officer and failure to do the same is contrary to the principles of natural justice.

37. It was further observed by the learned Court below that the enquiry officer wrongly considered the respondent workman's past antecedents and the same is beyond the scope of enquiry as the enquiry officer's decision was biased and prejudiced.



38. This Court does not find any perversity with the above findings of the learned Labour Court as in the impugned order, the learned Court below has rightly outlined the flaws in the disciplinary proceeding which ultimately compromised the fairness of the enquiry proceedings. Failure to consider the relevant evidence, failure to check the conductor's cash, absence of a presenting officer, and consideration of irrelevant factors are the shortcomings and infirmities which are apparent on the face of the enquiry proceedings conducted against the respondent workman and the same is against the principle of procedural fairness as rightly held in the impugned order.

39. With regard to the issue no. 2 which pertains to the legality of the termination of respondent workman's services, the same was decided in favour of the workman. In context of the said issue, this Court has referred to the judgment passed by the Hon'ble Supreme Court in *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491, wherein, it was observed that sufficiency of evidence in proof of the finding in a domestic enquiry is beyond scrutiny, however, absence of any evidence in support of a finding is certainly available for the Courts to look into because it amounts to an error apparent on the record. In the said judgment it was observed by the Hon'ble Court that merely because statements of passengers were not recorded, the order imposing the penalty cannot be invalidated. The relevant extracts is as under:

"..4. It is well settled that in a domestic enquiry 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 commonsense 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 levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground



5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re- evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal....”

40. This Court is of the view that although the statement of passengers is not necessary to prove the misconduct of non-issuance of tickets, however, there are multiple factors which could be taken into consideration, either to prove the alleged misconduct or to put a defence against the alleged misconduct. Factors such as tallying of cash, record of complaint book, stage at which the checking staff entered the bus to during the journey between two destinations, signature on challan etc.

41. In view of the above, it is observed by this Court that in the instant matter, the learned Labour Court's decision to term the workman's removal from his services as illegal was based upon multiple factors as discussed in the preceding paragraphs.

42. Whilst adjudicating upon issue no. 2, the learned Court below had observed that evidence from a complaint book (Ex. MW1/D) which contain



statement of certain passengers regarding the high handedness of the checking staff was not taken into consideration.

43. It is observed by this Court that the above said document, which was written by one Ram Chander of Delhi who was also a commuter in the bus on the date of the incident in question, was a crucial evidence and the same has also been opined by the learned Labour Court.

44. The afore mentioned documents is of significance as it recounts that the respondent workman was prevented from issuing tickets by the checking staff, suggesting innocence on the workman's part and *mala fide* on the part of the petitioner entity.

45. In this regard, this Court is of the view that the said document provides crucial information regarding the conductor's actions during the incident in question and the fact that this document was admitted by a key witness, i.e., MW1 and not disputed by the petitioner entity adds weight to its credibility as rightly appreciated by the learned Court below.

46. With respect to the allegation regarding non-issuance of tickets, the petitioner alleged that the respondent workman failed to issue tickets to a group of nine passengers. However, it is argued that the testimony of MW-3, i.e., one of the members of the checking staff, lacks clarity on whether the ticket issuance was completed at the appropriate stage during travel between the destinations. Additionally, there is ambiguity about the distance between relevant locations, affecting the assessment of the respondent workman's actions.



47. It was observed by the learned Labour Court that as per the general rules of the petitioner entity, tickets are issued at particular locations and therefore, due to overt and obvious inconsistencies in the testimony of MW3, it was observed that the workman's contention that he was stopped from issuing tickets is more appropriate than the petitioner's averment that the workman did not issue tickets.

48. It is observed by this Court that the learned Labour Court examined the specific allegations made by the petitioner against the workman, such as the failure to issue tickets to a group of passengers and further scrutinized the testimony of MW-3, and found inconsistencies, and lack of clarity regarding the completion of ticket issuance, and the distance between relevant locations.

49. Further, the act of not tallying the cash with ticket numbers casts doubt on the allegations of financial irregularities against the workman. Moreover, the un-punched tickets presented as evidence do not definitively prove misconduct without corroborating evidence. Additionally, the learned Court considered the workman's plea of innocence, emphasizing the lack of evidence to substantiate the charges which in the opinion of this Court is consistent with the law and principles of natural justice.

50. Furthermore, the learned Court below identified several procedural irregularities in the conduct of the checking staff, such as the failure to check the workman/conductor's cash despite his request and also the absence of proper documentation to support the charges which includes the testimonies



of the passengers, signature and statement of the workman on the challan etc.

51. A perusal of the Trial Court's record shows the veracity of the statement of passengers (Ex. MW 3/1) due to their incomplete addresses and unclear signatures and it was also held by the learned Court that the passenger group's composition raises doubts about the authenticity of the statement and that there is no proof to substantiate or verify the passengers' statements.

52. Based on the analysis of the evidence, procedural irregularities, and legal precedent, the learned Labour Court arrived at the conclusion that the charges against the respondent workman are not substantiated. Therefore, the misconduct is not proven, entitling the workman to be reinstated.

53. At this juncture, this Court shall briefly revisit the scope of its power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to assume itself with the powers of an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a particular kind.

54. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued



where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

55. Having considered the above discussions, this Court is of the view that the learned Labour Court has passed the impugned orders after taking into consideration the entire facts and circumstances as well as documentary evidence along with the oral testimonies of the witnesses. After taking into account the entire material available on its record including the settled position of law, it reached to the conclusion by vitiating the enquiry proceedings conducted against the respondent workman and holding his termination as illegal.

56. It is held that the impugned orders are well reasoned and have been passed in consonance to the settled legal principles and the petitioner has failed to prove otherwise. In view of the said terms, this Court does not find any perversity in the impugned orders which merits the interference of the extraordinary writ jurisdiction of this Court.

57. At this stage, it is pertinent to mention that vide the impugned award, the petitioner was directed to reinstate the respondent workman with continuity of service and the petitioner has paid to the respondent workman an amount of Rs. 1,34,069/- under Section 17-B of the Act w.e.f. 26th April, 2010 to 31st January, 2012. Further, the petitioner has submitted before this



Court that the respondent workman got superannuated on 31st October, 2015.

58. In view of the above and considering that the respondent workman superannuated during the pendency of the present writ petition, i.e., in the year 2015 as well as taking into account that he was paid under Section 17-B of the Act only till January, 2012, the respondent workman is at liberty to approach the appropriate forum of law in accordance with the law to recover the arrears of money due to him, if any, in terms of the impugned award dated 26th April, 2010.

59. In view of the foregoing discussions of facts as well as law, the impugned order dated 27th February, 2009 and impugned award dated 26th April, 2010 passed by the learned Presiding Officer, Labour Court, Karkardooma Court, Delhi in ID No. 318/08/96 is upheld.

60. Accordingly, the instant petition stands dismissed, along with the pending applications, if any.

61. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 8, 2024
dy/ryp/db