

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 19, 2017

+ **W.P.(C) 5590/2003**

THE MANAGEMENT OF M/S.DELHI TRANSPORT
CORPORATIONPetitioner

Through: Mr. U.N. Tiwary, Advocate

versus

AMBIKA RAM & ANR.Respondents

Through: Mr. Anuj Aggarwal and Mr.
Tenzing Thinlay Lepcha,
Advocates

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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Impugned order of 18th December, 2002 rejects petitioner's application under Section 33 (2) (b) of *the Industrial Disputes Act, 1947* while holding that petitioner has failed to produce the passenger, who had allegedly disclosed before Checking Staff that he had paid ₹2, but ticket of ₹1 was issued to him. Impugned rejection is assailed on the ground of non-checking of cash despite offer made by respondent-herein.

The *Industrial Tribunal-II, Karkardooma Courts, Delhi* (hereinafter referred to as *the Tribunal*) has proceeded on the assumption that this would give rise to an inference that cash of respondent-conductor was intact. It is also noted in the impugned order that Departmental

Inquiry stood vitiated. However, the Tribunal has recorded the evidence of Checking Staff-Traffic Inspectors i.e. *Khacheru Singh (AW-1)* and *Roop Chand (AW-2)*. In the evidence recorded, the Report of checking staff (Ex.AW1/1) accompanied by statement of passenger-*Anand Prakash Luthra* and the *Challan (AW1/1 colly.)* have been proved. Even evidence of first respondent was recorded by the Tribunal. On the basis of evidence led, impugned order has been passed.

While entertaining this petition, operation of impugned order was stayed. It is a matter of record that during the pendency of this petition, first respondent had died in the year 2008 and his legal heirs have been brought on record.

The factual aspects already noted in the impugned order need no reproduction for the reason that the limited scrutiny is confined to as to whether recording of evidence of public witness and not checking of cash in hand justifies impugned order or not.

To assail the impugned order, learned counsel for petitioner contends that evidence recorded has not been adverted to. It is pointed out by petitioner's counsel that as per Checking Staff's Report (*Ex.AW1/1*), un-punched ticket was collected by the Checking Staff from respondent and so, there was no requirement of getting the passenger examined.

Learned counsel for petitioner places reliance upon Supreme Court's decision in *Union of India and Others v. Bishamber Das Dogra*, (2009) 13 SCC 102 to submit that the past record of a delinquent can be always considered while considering the quantum of punishment to be awarded and in view of the past conduct of respondent, punishment of

dismissal from service is justified. Lastly, it is submitted that non-checking of cash is inconsequential for the reason that there was no occasion for respondent to have handed over un-punched ticket, but it was done in view of the statement of passenger, which was recorded in the presence of respondent and the evidence in this respect remain unchallenged by respondent and so, approval for dismissal of respondent ought to be granted.

On the contrary, learned counsel for respondents supports impugned order and relies upon Supreme Court decision in *Neeta Kaplish v. Presiding Officer, Labour Court and Another*, (1999) 1 SCC 517 to submit that once Inquiry stands vitiated, then fresh evidence is to be recorded. Reliance is also placed upon a decision in *DTC v. Ranbir Singh*, 2015 SCC OnLine Del 13541 to submit that non-recording of statement of passenger is fatal.

To highlight the parameters governing the exercise of powers under Article 227 of the Constitution of India, reliance is placed upon decision in *Delhi Transport Corporation v. Sunil Kumar*, 2015 SCC OnLine Del 12958 and to submit that corroboration is needed, reliance is placed upon *DTC v. Anant Ram*, 2015 SCC OnLine Del 13018. Reliance is also placed upon decisions in *Delhi Transport Corporation v. Rajinder Singh*, 2015 SCC OnLine Del 12072, *Devender Kumar v. Union of India & Ors.*, 2012 SCC OnLine Del 2807, *Haryana Roadways, Delhi v. Thana Ram*, 2012 SCC Online Del 4431, *Jitender Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd. & Anr.*, (1984) 3 SCC 5 and *Gammon India Limited v. Niranjan Dass*, (1984) 1 SCC 509 to submit that

retirement benefits and full back wages ought to be paid to legal heirs of late *Ambika Ram*. Lastly, it is submitted that there is no infirmity in impugned order and so, this petition deserves dismissal. Nothing else is urged on behalf of either side.

After having heard both the sides and on perusal of impugned order, evidence on record and the decisions cited, I find that evidence has been recorded by the Tribunal and so, vitiation of Departmental Inquiry is of no consequence. In *Ranbir Singh (supra)*, statement of passenger was not recorded whereas in the instant case, the checking staff had recorded the statement of passenger and his address is also on record. Judicial notice can be taken of the fact that public persons i.e. passengers, etc., are not readily available and that they are reluctant to appear in courts and so, evidence of checking staff team ought to be relied upon unless it lacks in material particulars. Moreover this aspect does not assume importance in the instant case for the reason that recording of statement of passenger was not disputed by respondent before the Tribunal and so, the decision in *Ranbir Singh (supra)* is of no avail to petitioner.

This Court is conscious of the parameters which govern the exercise of powers under Article 227 of the Constitution of India. In *Sunil Kumar (supra)*, non-checking of the cash was held to be fatal, but in the instant case it is not fatal for the reason that the un-punched ticket was handed over by respondent to checking staff without any protest. The factum of handing over/collection of un-punched ticket from respondent to checking staff itself provide corroboration and dispenses with the requirement of checking of cash. Even non-recording of evidence of

passenger concerned, is not fatal in the instant case as respondent in his evidence is silent on this aspect. It is not the case of respondent that he was compelled or pressurized to hand over the un-punched ticket to the checking staff. The handing over of un-punched ticket by respondent to checking staff amply proves the charge against respondent and in view of past record of respondent, this Court finds that the punishment of dismissal from service inflicted upon respondent is well justified.

In view of aforesaid, reliance placed upon decisions in *Rajinder Singh (supra)*, *Devender Kumar (supra)*, *Thana Ram, (supra)*, *Jitender Singh Rathor (supra)* and *Gammon India Ltd. (supra)* pertaining to denial of back wages would not be subject matter of consideration as the impugned order is set aside and approval for removal of respondent from service is granted by allowing petitioner's application under Section 33 (2) (b) of *the Industrial Disputes Act, 1947*.

This petition is accordingly allowed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 19, 2017

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