

D.T.C. Vs Amarjeet Singh and Another

Court: Delhi High Court

Date of Decision: April 22, 2014

Acts Referred: Industrial Disputes Act, 1947 " Section 33(2)(b)

Citation: (2014) 209 DLT 699 : (2014) 142 FLR 837 : (2014) 3 ILR 1724 : (2014) 3 LLJ 112 : (2014) LLR 1101

Hon'ble Judges: Jayant Nath, J

Bench: Single Bench

Advocate: Adesh Kumar Gill, Advocate for the Appellant; Atul T.N, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Jayant Nath, J.

The present writ petition is filed seeking to quash the impugned order dated 18.03.2002 passed by the Industrial Tribunal

dismissing the petition of the petitioner u/s 33(2)(b) of the Industrial Disputes Act, 1947 by which petition the petitioner sought approval for its

directions for removal of the respondent from service.

2. The basic facts which lead to filing of the present petition are that the respondent was employed as a Conductor by the petitioner. On

04.05.1989 the respondent was performing his duty as a Conductor on the route of New Delhi-Bulandshahar. Members of the Ticket Checking

Staff of the petitioner inspected the Bus. It was found that two passengers were travelling in the Bus on the tickets of less denomination of Rs.

2.50/- each valid from Sikandrabad to Dadri. These two passengers had boarded the Bus at Sikandrabad for going to Ghaziabad. The two

passengers told the Checking Staff that they had paid fare charges of Rs. 5.00/- per ticket to the Conductor whereas they were issued tickets only

of the denomination of Rs. 2.50. On the basis of the report of the Checking Staff, the Manager of the concerned Depot i.e. BBM Depot, issued

charge-sheet dated 15.05.1989 to the respondent for causing financial losses to the employer and for committing irregularity and misconduct within

the meaning of Executive Instructions regarding the duties of a Conductor and the Standing Orders governing the conduct of DTC employees. An

enquiry was conducted into the charges. The Enquiry Officer found the charges proved. The Manager, BBM Depot acted as the Disciplinary

Authority and issued a show cause notice on 25.07.1989 to the respondent with proposed punishment of removal from service. The Disciplinary

Authority passed the order to confirm punishment of removal from service of the respondent on 29.05.1990 and on the same day remitted one

month's salary by way of Money Order and an appropriate petition u/s 33(2)(b) of the Industrial Disputes Act was also filed before the Industrial

Tribunal.

3. The Industrial Tribunal framed a preliminary issue on 06.03.1991 which reads as under:-

Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?

4. Vide order dated 29.03.2001 the issue was decided against the petitioner as the Report of the Enquiry Officer was found perverse inasmuch as

the Enquiry Officer admitted that letter Ex. RW-1/2 was received from one of the defaulting passengers before he submitted his findings. This letter

was written in response to summons issued to the said passengers by the Enquiry Officer. While finalising his report the Enquiry Officer did not

take into consideration the communication received from the said passenger. The said communication states that the said passenger had asked the

Conductor to issue him a ticket only till Dadri. He states that he had informed the Checking Team that he had slept and hence could not get off at

his destination point. He has said that the Checking Officer insisted upon him to disclose his address and he had complied with his request. He got

down from the Bus at Ghaziabad and the Conductor was not at fault. As the said document was not dealt with at all by the Enquiry Officer despite

receipt of the same, the report was held to be perverse.

5. On 29.03.2011 the following additional issues were framed by the Industrial Tribunal

1) Whether the respondent committed the misconduct as mentioned in the petition and alleged in the charge sheet, issued by the petitioner?

2) Whether the petitioner remitted one month's wage to the respondent at the time of his removal from service?

3) Relief.

6. The parties led their evidence. The petitioner filed evidence of Mr. Sanjay Saxena, Depot Manager Shahdara-I, Delhi, the Enquiry Officer AW-

1, Mr. Inder Pal Singh, AW-2 and Mr. Kanhaiya Lal, AW-3. Respondent filed his own evidence being RW-1.

7. The Tribunal held issue No. 1 against the petitioner. The impugned order relies upon communication dated 19.06.1989 being RW-1/2 which

was received from passenger Ranvir Singh. In the said letter the said passenger has stated that he had asked the Conductor to give a ticket only till

Dadri. He had gone to sleep and hence could not get off at the right stand and realised this when Checking Officer entered the Bus. These facts as

contained in the said letter were at variance with the statement recorded on the back of the challan of the said two passengers by the Inspecting

Team. The impugned order further holds that the petitioner had the residential address of the two passengers in their possession. The passengers

could have been summoned to make their statement before the Tribunal and to clarify the correct position. Needful was not done and no request

was made to summon the said passengers. Therefore, the facts as presented by the petitioner were held to be completely at variance with the un-

rebutted statement of the passenger as contained in letter dated RW-1/2. As it was for the petitioner to establish the facts, the impugned order

concludes that the petitioner had failed to do the needful. Based on these facts, the Tribunal concluded that the petitioner has not been able to

establish the charges that the respondent/Conductor collected fare charges of Rs. 5.00/- from two passengers for their journey from Sikandrabad

to Ghaziabad and then issued them a ticket of Rs. 2.50/- each for their journey from Sikandrabad to Dadri.

8. On Issue No. 2, the impugned order had held in favour of the petitioner.

9. In view of the finding on issue No. 1, the necessary approval as sought by the petitioner was not given for its action of removal of respondent

from service u/s 33(2)(b) of the Industrial Disputes Act and the petition of the petitioner was rejected.

10. Learned counsel appearing for the petitioner has strenuously urged that the finding in the impugned order is entirely misconceived. He relies

upon the judgment of the Supreme Court in the case of State of Haryana and Another Vs. Rattan Singh, and Divisional Controller, KSRTC

(NWKRTC) Vs. A.T. Mane, to state that in similar facts the Supreme Court has taken the view that the evidence of a ticketless passenger is not

necessary for the petitioner to prove the type of charges that were levelled against the respondent.

11. On the other hand, learned counsel appearing for the respondent submits that firstly there is no challenge in the present writ petition by the

petitioner to the order dated 29.03.2001 where the preliminary issue was decided against the petitioner and the report of the Enquiry Officer was

held to be perverse. Hence, it is submitted that the said order has attained finality.

12. Regarding the impugned order he submits that the judgments cited by the learned counsel for the petitioner can easily be distinguished on the

facts of the present case inasmuch as in the present case there was evidence on record before the Enquiry Officer to show that one of the two

passengers on the basis of whose statement Checking Team had made a report, had sent a written communication pointing out that the Conductor

was not at fault and that the passenger had asked him for a ticket which was given to him by the Conductor. This fact clearly falsifies the statement

of the Checking Team and there is no basis to disregard the findings recorded by the impugned order. He also relies upon the judgment of the

Division Bench of this High Court in the case of D.T.C. Vs. Anup Singh, where this Court had in somewhat similar facts pointed out that though it

may not be possible in every case for the passenger to be examined as witnesses, especially keeping in view the judgment of the Supreme Court in

the case of State of Haryana & Anr. vs. Rattan Singh (supra) but other forms of evidence can certainly be placed on record to prove that the fare

charges were collected without tickets being issued. For instance it should have been possible for the Checking Staff to tally the cash in the

Conductor's hand with the tickets issued etc. He also relies upon the judgment of Constitution Bench in the case of Jaipur Zila Sahakari Bhoomi

Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, to submit that when a permission u/s 33(2)(b) of the Industrial Disputes Act is declined, a

necessary consequence would be that the employee continues to be in service as if order of discharge or dismissal has never been passed and the

employee would be deemed to have continued in service and entitled to all consequential benefits. However, he submits that his client has spent a

lot of time in litigation and that he has instructions from the respondent who is present in court, to submit that his client would be willing to accept

50% of back wages as a gesture to try and sort out the matter, apart from reinstatement.

13. The only ground on the basis of which the impugned order has been challenged by the petitioner is that the version as given by the Checking

Staff has been disbelieved by the impugned order on the basis of the fact that evidence of the two passengers was not led. The Checking Staff has

on the challan, which is a small piece of paper, recorded statements of the two passengers claiming that they had paid a sum of Rs. 5.00/- but they

had been issued a ticket for Rs. 2.50/- (Ex. AW-3/3).

The evidence that has been led by the petitioner is of Mr. Sanjay Saxena, AW-1, the Depot Manager of Shahadara Depot who conducted the

enquiry and has proved the enquiry proceedings. AW-2 Mr. Inder Pal Singh has proved the dispatch of one month's salary to the respondent by

means of Money Order. The third witness is AW-3 Kanhaiya Lal.

14. AW-3 is the relevant witness regarding the issue urged by the petitioner. AW-3 Kanhaiya Lal was a member of the Vigilance Squad which

checked the Bus along with another traffic inspector on 04.05.1989. The said witness has proved the challan which was issued to the respondent

as AW-3/1, the statement of passengers which is AW-3/2, tickets AW-3/3 (colly.) and the report that was prepared pursuant to the checking is

exhibited as AW-3/4. Ex. AW-3/2 i.e. the statements of the passengers noted on the reverse of AW-3/1 reads as follows:-

(Translated)

I boarded the bus from Sikandrabad for Ghaziabad and gave Rs. 5 to the conductor. The ticket given to me had ticket no. 69134.

Anil Kumar s/o

Shri Ram Kumar c/o

House No. 232,

Mauhalla Sabji Vada,

Sikandrabad

Bulandshahr

I boarded the bus from Sikandrabad for Ghaziabad. I gave Rs. 5 to the conductor and he gave me ticket bearing number 69132.

Ranvir Singh c/o

Village & PO Bilas Pur

Dist. Bulandshahr

15. In contrast to the above evidence, the communication that was received from the passenger, Ranvir Singh which is RW-1/2 reads as follows:-

(Translated)

To,

Delhi Transport Department

Indraprastha Depot

Date: 19.06.89

Sir,

I am writing in response of your letter no. E.O. (I-A)..... dated 12.06.89. As enquired by you in your letter stated above, it is true that I travelled in

your bus on 4.05.89. I asked the conductor to give me a ticket for Dadri and took back the rest of the money. A little ahead of Dadri the

Checking Team came and asked me for my ticket. I showed them my ticket to which they asked as to why I have travelled beyond Dadri. I told

them that I suddenly fell asleep and the conductor at that time was doing some work and was sitting in the front seat of the bus. I asked them to

issue me a ticket till Ghaziabad, but they did not do so. The Checking Team started enquiring and I had to give my address to them. The bus

dropped me off at Ghaziabad.

The conductor is at no fault here and I request you to not take any action against him.

Thanking You,

Yours Faithfully,

Ranvir Singh

Village Bilaspur

District Bulandshahr

Uttar Pradesh.

The respondent RW-1 who tendered the said letter RW-1/2 has not been cross-examined on the same by the petitioner.

16. Considering the two conflicting statements, the impugned order records a finding disbelieving the version of the petitioner and hence holds that

the petitioner has not been able to establish the charges against the respondent.

17. In my view there is no perversity in the said conclusion drawn by the impugned order. The appreciation of evidence is within the domain of

Tribunal. The findings of fact recorded by a fact-finding authority duly constituted for the said purpose cannot be disturbed for the reason of having

been based on materials or evidence not said to be sufficient by the Writ Court as long as the findings are based on some materials on record

which are relevant for the said purpose. Merely because another view was possible would not be a ground to set aside the said findings. The

petitioner failed to show as to why the finding recorded by the Tribunal is liable to be set aside.

18. The judgments relied upon by the learned counsel for the petitioner pertaining to the case of State of Haryana & Anr. vs. Rattan Singh (supra)

and Divisional Controller, KSRTC vs. A.T. Mane (supra), would not apply to the facts of the present case. It is true that in this case also there is

evidence of the inspecting staff which carried out the checking to show that two of the passengers had been given tickets of less denomination. Yet

in the present case one of the passengers has written a communication to the petitioner clearly pointing out that he had been issued a ticket which

he had requested for and the conductor did nothing wrong. This evidence of the passenger has gone un-rebutted. There is nothing on record to

show that the statement of the passenger was obtained under any influence. In the light of this evidence, the statement of the Inspecting staff cannot

be unequivocally accepted.

19. The judgment of the Division Bench of this High Court on the facts of this case would be applicable to the present case, i.e., the judgment in

the case of DTC vs. Anup Singh (supra). That case also pertains to an employee of the petitioner who was working as a Conductor. Four persons

were found to be travelling in the Bus without tickets. In those facts this court in para 16 held as follows:-

16. We may add here that we may not be understood as holding that in every such case the passengers will have to be examined as witnesses. We

are aware that it may not always be possible to examine the passengers themselves. We are also conscious of the decision of the Hon"ble

Supreme Court in this regard in State of Haryana and Another Vs. Rattan Singh, . But, surely, there are other forms of evidence which can go to

prove that fare charges were collected without tickets being issued. For instance, it should have been possible for the checking staff to tally the

cash in the conductor"s hand with the tickets issued and record this contemporaneously in writing in any known and acceptable form which can be

proved in the enquiry by the author of the document. This is only one possible method, there might be others too. We are, in the facts of this case,

unable to accept the plea of the learned Counsel for the appellant that there is enough evidence on record to prove the guilt of respondent.

Accordingly, we see no reason to interfere with the award of the Tribunal or the impugned order of the learned Single Judge.

20. The present petition is without merit and is dismissed. The order of the Tribunal dated 18.03.2002 is upheld. However, in case the petitioner

implements the order of the Tribunal dated 18.03.2002 within three months from today, the respondent shall remain bound by the statement made

by the learned counsel, namely, that he will be satisfied in case 50% of back wages plus relief of re-instatement is given to him.

21. All interim orders stand vacated. Any money deposited in the Court by the petitioner pursuant to any interim orders shall be released to the

respondent.