

**(2010) 07 DEL CK 0351**

**Delhi High Court**

**Case No:** Writ Petition (C) No. 8610 of 2007

Harpal Singh, Conductor

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

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**Date of Decision:** July 6, 2010

**Acts Referred:**

- Delhi Road Transport Laws (Amendment) Act, 1971 - Section 4
- Road Transport Corporations Act, 1950 - Section 45

**Hon'ble Judges:** Manmohan Singh, J

**Bench:** Single Bench

**Advocate:** Prashant Katara, for the Appellant; Bhakti Pasrija, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Manmohan Singh, J.

The workman Harpal Singh has filed the present writ petition seeking the direction for quashing of orders dated 18.5.2007 and 1.8.2007. Further prayer is made that the petitioner be reinstated by the respondent in service and all the back benefits such as arrears of salary, seniority and promotion be granted to him.

2. The brief facts are that the petitioner/workman was employed with the respondent as conductor in the year 1982. He was chargesheeted on 5.8.1993 on the allegation that on 26.7.1993 when he was on duty on Bus No. 9703 en-route Delhi to Kutana, at about 11.35 hours when his Bus was checked by the checking officials at Village Jaunmana it was found that four passengers were travelling without tickets, though they had paid fare @Rs.1.50/- each but the petitioner had not issued them tickets, as a result of which he maligned the image of the corporation, caused financial loss and violated the rules of the corporation having caused misconduct under para 19(b)(f) and (h) of Delhi Road Transport Authority.

3. On the basis of the said charges the petitioner was removed from the service of the respondent vide order dated 14.6.1995. In 1997 the petitioner raised an

industrial dispute which was referred for adjudication to the Labour Court, Delhi. The terms of the reference were whether the removal of petitioner from service was illegal and/or unjustified, and if so, to what relief was he entitled to.

4. The reference proceedings were conducted before the Labour Court and after filing the statement of claim, the petitioner took the plea that no fair and proper inquiry was conducted by the respondent and the punishment imposed upon the petitioner by the respondent was in violation of the respondent's own circular dated 3.1.1966 in which it was stated that if the conductor was held guilty of cheating for the first time, he would not be removed from service. As per the petitioner, under the said circular there is an obligation on the part of the respondent to follow the instructions contained therein.

5. Vide order dated 18.5.2007, the Labour Court held that the respondent had conducted a fair and proper inquiry and there had been no violation of the principles of natural justice or any perversity in the findings.

6. Thereafter, on 1.8.2007, the Labour Court held that the punishment awarded to the petitioner was sufficient and no interference in the inquiry was called for. Challenging both the orders, the petitioner has filed the present writ petition.

7. The contention of the petitioner is that on the basis of the charge sheet a domestic inquiry was conducted against him. According to him, the same was in violation of the principles of natural justice and the findings given by the inquiry officer were perverse. His further contention is that punishment of removal from service with effect from 25.10.1993 which was awarded to him is in contravention of DTC circular dated 3.1.1966 and that he has been unemployed from the date of termination.

8. The grounds raised in the petition for quashing the orders dated 18.5.2007 and 1.8.2007 mainly are that the respondent is under obligation to follow its own rules and regulations and official orders which have the force of statute in view of Section 4(e) of Delhi Road Transport Laws (Amendment) Act, 1971 and the circular dated 3.1.1966 being statutory in nature was bound to be considered by the respondent before passing the removal order. Since it was the second case of the alleged cheating of the petitioner, therefore, extreme punishment of removal from the service could not have been awarded to the petitioner as per the circular dated 3.1.1966. Another ground taken by the petitioner is that the inquiry officer did not conduct the inquiry free from bias, without prejudice and with open mind and the findings of the same are in violation of the principles of natural justice as the petitioner was not given full opportunity to defend himself in front of the inquiry officer.

9. The inquiry proceedings Ex.WW1/M-3 show that the petitioner was given the opportunity to take the help of his co-worker but he declined the same. It is also recorded that the charges had been read over and explained to the petitioner and

he had admitted the charges. The statement of witnesses Sh. Tej Pal, Sh. Balbir Singh and Sh. Zile Singh were recorded in the presence of the petitioner and he cross-examined all the witnesses. In his defence, he examined Sh. Khem Chand and Ishwar Singh. In the cross-examination, he had admitted that he had received the copy of the chargesheet along with the report which are Ex.WW1/M-1 and Ex.WW1/M-2.

10. As per the record and the copy of the inquiry proceedings which is Ex. WW1/M-3, he admitted that he had cross-examined the management's witnesses and received a copy of the show cause notice as well as the inquiry report. As far as his contention about the violation of rules is concerned, he was unable to show any violation of the procedural rule before the inquiry officer or before the Labour Court. The petitioner has referred the circular dated 3.1.1966 which reads as under:

- i) In case of commission of irregularity involving cheating for the first time, the Inquiry Officer should take corrective action by sending for the employee and personally cautioning him to avoid the recurrence of such a nature in future;
- ii) In case the offence involving cheating in the manner indicated above is committed for the second time, any of the penalties out of warning, reprimand or censure be imposed keeping in view the extent of the gravity of the offence committed;
- iii) In case the offence is repeated for the third time, more severe action of stoppage of increment with or without cumulative effect, keeping in view the seriousness of the offence committed by accused employee, be taken; iv) In case the corrective action and the imposition of penalties, as mentioned in sub-paras 1 to 3 above have not yielded the desired results and there is repetition of commission of irregularity involving cheating the question of imposition of extreme penalty of removal or dismissal from the services of the undertaking will be considered provided the case stands fully established against the employee concerned.

11. His contention is that his case is of second time cheating and not third time, therefore, the order of his termination is in violation of the above mentioned circular.

12. Before dealing with the circular, it is appropriate to refer the provision of Section 4(e) of Delhi Road Transport Laws (Amendment) Act, 1971 which reads as under:

All rules, regulations, appointment, notification, bye-laws, schemes orders, standing orders and forms relating to transport services, whether made under the Delhi Road Transport Authority Act 1950 or under the Delhi Municipal Corporation Act, 1957, and in force immediately before such establishment, shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force and be deemed to be regulations made by the new Corporation u/s 45 of the Road Transport Corporations Act, 1950, unless and until they are superseded by regulations made

under that section.

13. A mere reading of the provision of Section 4(e) of the Act shows that it does not say anything about the circulars issued by the respondent having force of law. I am of the view that the circular is merely advisory in nature and, therefore, directory and not binding in nature. The said circulars are not framed under some statutory rule making powers.

14. In the case of [State of Haryana and Another Vs. Rattan Singh](#), and Mahavir Singh v. D.T.C. 139 (2007) DLT 569, the Courts have not accepted these circulars having force of law. Therefore, the contention of the petitioner has no force that the said circular being statutory in nature, the respondent is under an obligation to follow the said circular.

15. From the record of the trial court it appears that the inquiry officer had conducted a fair and proper inquiry against the petitioner in accordance with the principles of natural justice. Therefore, the submission of the petitioner is without any substance. It is pertinent to mention that the petitioner had admitted his guilt as a second case of cheating.

16. With respect to the contention that the inquiry must stand vitiated for the reason that the passengers were not examined as witnesses, the case of D.T.C. v. N.L. Kakkar W.P.(C) No. 1485/1979 decided on 17th March, 2004 can be referred to wherein after considering previous judgments it was held that production of passengers either in a domestic enquiry or before the Labour Court is not at all necessary and in most cases would be highly impractical.

17. The Supreme Court recently in UP State Corporation v. Suresh Chand Sharma in Civil Appeal No. 3086/2007 decided on 26.5.2010 has held that on a charge of corruption, the punishment of dismissal should always follow.

18. Considering the overall facts and circumstances in the present case, I am of the considered view that no case of interference in the orders dated 18.5.2007 and 1.8.2007 is made out.

19. Writ petition is dismissed with no order as to costs.