

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.939/2012

Order Reserved on 19.10.2016
Order Pronounced on 21.10.2016

HON'BLE MR SHEKHAR AGARWAL, MEMBER (A)
HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Darshan Kumar,
Conductor, B.No.17285, KPD,
S/o Sh. Mool Chand,
R/o A-97, Ganesh Nagar,
Tilak Nagar, 239-D,
New Delhi-110018.

...Applicant

(By Advocate: Ms. Komal Agarwal)

VERSUS

Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002.

(through Chairman-Cum-Managing Director) ...Respondent

(By Advocate: Shri Manish Garg)

:ORDER:

DR BRAHM AVTAR AGRAWAL, MEMBER (J):

The applicant, who had joined the Delhi Transport Corporation (respondent) as a conductor in 1982, suffered departmental action initiated with the issue of the charge sheet dated 19.09.2007 (Annexure A-4) and was visited with the penalty of removal from service, vide the disciplinary authority's order dated 01.07.2008 (Annexure A-2), which was sustained in

appeal, vide the appellate authority's order dated 03.09.2008 (Annexure A-8).

1.2 The charge sheet dated 19.09.2007 (Annexure A-4) reads, *inter alia*, as under:

"That on 10.10.2005 you were on duty on Bus No.DL-1PB-5709, Rout No.871. For checking your bus, the checking employees boarded the bus at about 08.50 from District Centre Janakpuri and during the checking the following irregularities were found against you.

1. It was found on checking the above said bus that one passenger who had a ticket No.947/60173 (Original in the police record) of Rs.7/-, when did not tally with the Waybill. On inquiry from the passenger it was found that ticket had been sold by you, but you denied for this. Thereafter, checking your hand block, 16 tickets of Rs.7/- each of the series of 947 bearing No. Bi, 947/06184 to 06199 were found. Those all did not tally with the print of the tickets of the Corporation and were unpuncted and were forged. And two tickets No.947/60185 and 60199 were also found whereas Ticket No.06185 and 06199 should have been with you. From which it proves that during your duty you have been playing fraud with the Corporation and were selling the forged tickets.

2. Similarly on checking the tickets of Rs.10/- it was found that you in your hand block 71 tickets of Rs.10/- were found unpuncted forged tickets which you had not entered in the Way bill (the complete details of the same has been given in the report No.597412 dated 10.10.05) and at that time complete details and reference of cash was given at your Way-Bill No.6894 that on checking the cash Rs.298/- was found at the spot. From this it is proved that from your this act, the Corporation has suffered loss.

3. Due to your above said act, case No.442/05 has been registered against you at police station Vikaspuri under Section 467/474 of the Code of Criminal Procedure and you have been taken in police custody, later on you were released on bail.

4. Keeping in view the situation of selling forged tickets by you on the line, on 11.10.05 on checking of your allotted locker No.122 by the Board it was found that a sum of Rs.500/- (100x5) were found unauthorized in it and thereafter the above said amount has been deposited in the Cash Section Vide Receipt No.592495 dated 11.10.05. Apart from this on checking the tickets of the locker it was found that four tickets of green Code (Rs.25/- each) after selling them, its amount of Rs.100/-was not deposited. Later on you have deposited Rs.100/- in Cash Section vide Receipt No.631132 dated 14.11.2005. From this, it appears that you have tried to cause financial loss to the Corporation.

5. From the above irregularities committed by you, it is clarified that you are not devoted towards the Corporation and playing fraud with the Corporation, have caused financial loss and lowered down the reputation of the Corporation."

1.3 The aforesaid appellate authority's order was followed by the WP(C) No.7439/2008 filed in the Hon'ble Delhi High Court, transferred to this Tribunal and registered as TA No.1253/2009, which was first disposed of on 04.02.2010. The WP (C) No.4442/2010 was filed in the High Court against the Tribunal's order dated 04.02.2010. The High Court remanded the matter, vide its order dated 18.11.2010 and the said TA was again disposed of, vide the Tribunal's order dated 16.08.2011 (Annexure A-9), some relevant excerpts wherefrom are reproduced hereinunder:

"Thus, as per the settled law, the inquiry report in this case is not found to be one warranting judicial intervention.

6.4 As regards the DA's order, since in this case no reply to the show cause notice had been given by the applicant despite sufficient opportunity (this aspect does not need any further consideration in view of the clear findings in this regard in the Hon'ble High Court's order) and the fact of the DA agreeing with the findings of the IO, no infirmity is found in this. However, the order of the AA, which rejected the appeal dated 23.7.2008 by the applicant against the punishment of removal is found to be cryptic and non-speaking. A perusal of the appeal produced before us in course of hearing reveals that the applicant had raised several contentions which in all fairness deserved to be considered by the AA before taking a final decision.

7. To conclude, on a very careful consideration of the entire case, in the light of the settled law on the subject we have not found any ground to interfere either with the inquiry report or with the order of the DA. However, the Appellate Authority's order in its present form being cryptic and non-speaking and not demonstrating the consideration of the contentions in appeal is not found to be in consonance with law and hence quashed hereby. The matter is remitted to the Appellate Authority for passing a fresh order after giving an opportunity for personal hearing to the applicant and due consideration of the appeal dated 23.7.2008. Needless to say, for this exercise to be carried

out the applicant would need to be reinstated in service, though the respondents would be at liberty to decide his status in accordance with law. Further, we are refraining from giving any direction as regards the treatment of the intervening period since that would depend upon the outcome of the revised order to be passed by the Appellate Authority. Our directions are to be complied within a period of three months from the date of receipt of a copy of this order.

The TA is thus allowed partly in terms of the aforesaid directions with no order as to costs."

1.4 Followed the appellate authority's 'Speaking Order' dated 02.12.2011 (Annexure A-3). It was concluded therein as under:

"In view of the above, also examining the complete case in depth, the following points have emerged:-

- i) The past record of the appellant reflects gloomy picture, which is very bad. (Copy of past record enclosed at annexure 'B')
- ii) He was also declared at fault by the Enquiry Officer (West) after giving him adequate opportunities. (Copy of the findings of the E.O. attached at annexure 'C')
- iii) He cheated the Corporation by way of sale of fake ticket, which caused the financial losses to the Corporation.
- iv) He also misused the Govt. Revenue.

Keeping in view above points, the seriousness of the offence committed by the Appellant and also considering the past record of the appellant, I do not find any reason to intervene into the matter at this stage, hence, the appeal of Sh. Darshan Kumar, Ex-conductor, b.no.17285 against the punishment of "Removal from the services of the Corporation" is hereby rejected, the appellant be informed accordingly."

1.5 The instant OA is a sequel to the appellate authority's 'Speaking Order' dated 02.12.2011 (Annexure A-3).

1.6 The reliefs sought in the present OA read as under:

- “(a) Quash inquiry report (Annexure A-1);
- (b) quash and set aside order dt.1-7-2008 (Annexure A-2);

- (c) quash and set aside order dt.2-12-2011 (Annexure A-3);
- (d) direct the respondent to reinstate the applicant in service with full back wages with interest and all other consequential benefits."

2. We have heard the learned counsel for the parties, perused the pleadings and given our thoughtful consideration to the matter.

3. As the matter as regards reliefs (a) and (b) is *res judicata* (vide Annexure A-9), during the course of her arguments, the learned counsel for the applicant submitted that the challenge in this OA be limited to the appellate authority's order dated 02.12.2011 (Annexure A-3) and the only ground for challenge would be that the same contains "no reasons".

4. *Per contra*, the learned counsel for the respondent submitted that the appellate authority's order dated 02.12.2011 (Annexure A-3) is a reasoned order and that the scope of judicial review in disciplinary cases is a limited one.

5. It is well-settled by a catena of judgments that the scope of judicial review in disciplinary proceedings is limited; judicial review is not akin to adjudication on merits by re-appreciating evidence as an appellate authority; judicial review is directed against the process of making the decision and not against the decision itself and court/tribunal cannot arrive at its own independent finding. Punishment also can be interfered with only

if the same shocks the conscience as to its proportionality. We may in this connection refer to the judgments of the Hon'ble Supreme Court in **Deputy Commissioner, K.V.S. Vs. J. Hussain** [2013 (12) SCALE 416] and **S.R. Tewari Vs. UOI** [2013 (7) SCALE 417].

6. We find that the appellate authority's order dated 02.12.2011 (Annexure A-3), called 'Speaking Order', contains reasons and the same cannot be said to be unsustainable on the said ground.

7. In view of the above, we are of the view that the OA is devoid of merits. The same is, therefore, dismissed. No order as to costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

(SHEKHAR AGARWAL)
MEMBER (A)

/jk/