

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

+ **W.P.(C) NO. 7614/2005**

% **Date of Decision : 24.03.2009**

SH.AMAN SINGH

.... Petitioner

Through Ms. Rekha Palli, Advocate

Versus

**THE MANAGEMENT OF DELHI TRANSPORT
CORPORATION**

.... Respondent

Through Mr. G.S. Chaturvedi, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

V. K. SHALI, J.(Oral)

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1. Rule.

2. With the consent of the parties the writ is taken up for disposal.

The petitioner/workman was a Conductor with the respondent/DTC.

3. I have heard the learned counsel for the parties and perused the record.

4. The point in controversy between the parties is very short one. The question which arise for consideration is that in case an employee is proceeded against departmentally by the management and he is

found to have mis-conducted himself resulting in imposition of punishment of removal or dismissal from service but the management does not obtain the requisite approval of the competent authority under Section 33(2)(b) of the Industrial Disputes Act, 1947 whether such punishment can be deemed to be valid punishment and if not then what are the necessary consequence.

5. This issue has been set at rest by the Apex Court in ***Jaipur Zila Sahakari Boomi Bank Ltd. Vikas Vs. Shri Ram Gopal Sharma & Ors.*** JT 2002 (1) SC 182, wherein it has been observed as under:

“14. Where an application is made under section 33(2) (b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employees continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking section 33(2) (b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority order the said provision. In other words, his relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position, there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under section 33A challenging the order granting approval on any of the grounds

available to him. Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to section 33(2) (b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to section 33(2) (b), section 33A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.”

6. In the light of the aforesaid authoritative pronouncement the legal position is very clear that in case a disciplinary proceedings initiated against a delinquent employee and culminating into imposition of punishment, if he is falling within the definition of Section 2(s) of the Industrial Disputes Act, 1947, the said punishment will not be valid and enforceable unless and until permission of the competent authority under Section 33(2)(b) of the Industrial Disputes Act, 1947 is obtained, provided any other industrial dispute is pending. Similar proposition has been laid down by the Full Bench Judgment of this Court in **Delhi**

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wherein it has been observed:

“Now, it cannot be stated that the workman is remedy-less in a situation where application of the employer under Section 33(2) (b) of the Act has been rejected. He could invoke provisions of Section 33 C (2) as far as the monetary benefits are concerned and approach the High Court for issuance of a prerogative writ jurisdiction of the High Court under Article 226 of the Constitution of India.”

7. In the light of the aforesaid legal position, the question which arises for consideration is where the petitioner/workman was visited with a punishment of removal from services of the respondent/DTC, however, the management did not obtain the requisite permission under Section 33 (2) (b) of the Industrial Disputes Act, 1947 on the ground that the two disputes pending before the learned Labour Court pertaining to stoppage of increment and reduction to a lower stage in the time scale which was subsequently decided in their favour were pending does the punishment of removal from service is bad.

8. It was contended by Mr. G.S. Chaturvedi both these disputes were actually private disputes between the petitioner/workman and the respondent/DTC, and therefore, there was no necessity of obtaining the permission under Section 33 (2) (b) of the Industrial Disputes Act, 1947.

9. I have carefully considered the submissions made by the respective sides. There is no dispute about the legal position that if a delinquent employee is visited with the punishment of removal or dismissal or termination as a consequence of disciplinary proceedings initiated against him such a punishment becomes operative only if

approval of the competent authority is obtained under Section 33(2)(C) of the Industrial Disputes Act, 1947. Reliance in this regard can be placed on the two judgments of **Jaipur Zila Sahakari Boomi Bank Ltd Vikas Vs. Shri Ram Gopal Sharma & Ors** JT 2002 (1) SC 182 and **Delhi Transport Corporation Vs. Jagdish Chander** 2005 V AD (Delhi) 217.

10. The respondent/management not having obtained the requisite approval under Section 33(2)(b) of the Industrial Disputes Act, 1947, the necessary consequence of the same are that the petitioner/workman is deemed to be reinstated in the service of the respondent/DTC. That being the position the order dated 14th September, 2004 removing the petitioner from the service of the respondent/DTC is accordingly set aside and petitioner is deemed to be in service of the respondent/DTC with all benefits of continuity of service except the payment of back wages. So far as the question of back wages is concerned, the benefit of the same is not given to the petitioner/workman on account of the fact that the petitioner/workman has not worked as a Conductor, and therefore, the petitioner is granted 20% of the total back wages from 14th September, 2004 till the actual resumption of his duties.

No order as to costs.

MARCH 24, 2009
KP

V.K. SHALI, J.