

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

+ **W.P.(C) 7084/2001**

% **Date of decision: 3rd June, 2010**

DILBHAG SINGH. Petitioner
Through: Mr. Sushil Dutt Salwan with Mr.
Neeraj Chaudhary, Advocates.

Versus

D.T.C. & ANR. Respondents
Through: Mr. Vinay Sabharwal with Ms. Neha
Sabharwal, Advocates.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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 |

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman by this writ petition impugns the order dated 10th May, 2001 of the Industrial Tribunal allowing the application of the respondent no.1 DTC under Section 33(2)(b) of the ID Act and thereby approving the action of the respondent DTC of removal of the petitioner workman from service. The petitioner workman contends that the said application of the respondent DTC under Section 33(2)(b) is liable to be dismissed and consequently the petitioner workman entitled to be reinstated in service with continuity etc.

2. The petitioner workman was working as a Conductor with the respondent DTC; it is his case that he was on 24th March, 1989 implicated in a false case on the basis of the report of the Checking Staff. A charge sheet dated 10th April,

1989 was issued to the petitioner workman. In the chargesheet, it was mentioned that the bus of the petitioner workman was intercepted by the Checking Staff and it was found that a group of three passengers, who had boarded the bus from Railway Station for B-Block, Mangol Puri, were issued three tickets, each of Rs.1/- denomination instead of Rs.1.50/- paise, though they had paid full fare of Rs.4.50/- paise for the three tickets. It was also a charge, that the cash with the petitioner workman was found short by Rs.18.25 paise. The third charge was that the petitioner workman was not issuing tickets to the passengers by moving in the bus.

3. The Inquiry Officer conducted and concluded the inquiry and gave findings against the petitioner workman. Upon receipt of the report of the Inquiry Officer, the Depot Manager of the respondent DTC issued notice to show cause to the petitioner workman as to why he should not be relieved from the service of the respondent DTC. Not finding the reply of the petitioner workman to the show cause notice to be satisfactory, the Depot Manager of the respondent DTC on 18th October, 1989 imposed the penalty of removal of service on the petitioner workman and filed the application aforesaid under Section 33(2)(b) of the ID Act.

4. The Industrial Tribunal framed a preliminary issue as to the legality and validity of the inquiry against the petitioner workman. The said preliminary issue was decided vide order dated 27th October, 1999. The Industrial Tribunal found that the petitioner workman had admitted receiving the charge sheet along with the copy of the report; the report contained the facts of the allegations, names of Checking Staff and the nature of the documents; that the respondent DTC did not examine any other witness or document than those mentioned in the said

report/charge sheet; that the petitioner workman had all the documents and list of witnesses at the time of joining the inquiry proceedings; that the petitioner workman filed reply to the charge sheet; that though the plea of the petitioner workman was that the passengers travelling in the bus had not been examined as their addresses were incomplete but the statement of the group leader of the passengers was recorded on the front of the challan and the same was countersigned by the petitioner workman; that the petitioner workman in the reply to the charge sheet had not stated that he had not countersigned the said challan or that the statement was not made voluntarily; that thus the non-examination of the passengers before the Inquiry Officer is not fatal; that the petitioner workman had admitted the short fall of Rs.18.25 paise in the cash and had explained that he has spent the same in entertaining his relatives. The Industrial Tribunal thus held the enquiry to have been conducted as per rules and the principles of natural justice having been followed.

5. The Industrial Tribunal thereafter in the order dated 10th May, 2001 held that the respondent DTC had remitted one month wages to the petitioner workman at the time of his removal from service; that the Depot Manager was the competent disciplinary authority of the petitioner workman; that the procedure prescribed in the office order dated 3rd January, 1966 of the respondent DTC relied on by the petitioner workman was the general procedure which was not mandatory; that the petitioner workman was guilty of cheating and defrauding the employer and no fault could be found on the part of the disciplinary authority in removing the petitioner workman from service.

6. Aggrieved from the above, the present writ petition was filed. Notice thereof was issued on 10th December, 2001 on the basis of the office order dated

3rd January, 1966 having not been complied with. The respondent DTC has filed a counter affidavit, to which rejoinder has been filed by the petitioner workman. Rule was issued on 3rd March, 2004. The matter could not be settled before the Lok Adalat. The counsels for the parties have been heard.

7. The petitioner workman impugns the order allowing the application under Section 33(2)(b) on the following grounds:-

- (i) That the Checking Staff did not record independent evidence.
- (ii) The passengers were not called for examination.
- (iii) That the disciplinary authority of the petitioner workman was the General Manager, while the Inquiry Officer was appointed by the Depot Manager and who was not the disciplinary authority of the petitioner workman.
- (iv) That the Inquiry Officer acted against law and the principles of natural justice and did not offer full opportunity to the petitioner workman in terms of the office order dated 13th October, 1965 because the statement of the passenger witnesses was not recorded.
- (v) That the Depot Manager was also not the competent person to remove the petitioner workman from service.
- (vi) Because the initiation of enquiry against the petitioner workman was in violation of the office order dated 3rd January, 1966.

8. The counsel for the petitioner workman during the hearing has contended that as per the office memorandum dated 13th October, 1965 of the respondent DTC, the punishment is to be commensurate with the gravity of the offence committed, taking into consideration all the circumstances and also the past record of the accused employee. It is urged that though in the charge sheet issued

to the petitioner workman it was mentioned that past record will be taken into consideration at the time of passing final orders but the only observation qua past record in the report of the Inquiry Officer is of the petitioner workman having punched the ticket in the wrong direction. It is contented that the same is not a misconduct and that no weightage to the clean past of the petitioner workman has been given.

9. Attention is next invited to office order dated 3rd January, 1966 providing for the procedure for dealing with the cases of non issue of tickets/possession or sale of used tickets and issue of tickets of lesser denomination on the part of the conductors involving cheating. As per the said office order, in cases of such cheating, for the first time the Inquiry Officer should take corrective action by cautioning the employee, in case of second offence the penalty of warning, reprimand or censure is to be imposed; in the case of third offence mere severe action of stoppage of increment with or without cumulative effect is to be taken; on further repetition of the offence punishment of removal from service is to be considered. It is urged that even though it was the first offence of the petitioner workman but straightway the penalty of removal from service has been imposed. It is urged that the punishment is thus disproportionate and the Tribunal ought to have held that the own office order of the respondent DTC having not been complied with, the petitioner workman had not been dealt with fairly. It is further contended that the charge sheet against the petitioner workman is self contradictory; while on the one hand it is contended that the petitioner workman had collected more money but issued tickets of lower denomination but on the other hand it is contended that the cash with the petitioner workman was short; it is suggested that if the petitioner workman had collected more money, the cash

with him should have been in excess. It is also explained (though there is no basis, thereof in the pleadings) that since at the time of interception the bus was near its destination and there were no more stops in between, there was no need for the petitioner workman to keep moving in the bus. It is also contended that for such a meager difference of Re.1.50 paise in the issued tickets and shortage of Rs.18.25/- paise, the petitioner workman should not be meted out the harsh punishment of dismissal from service.

10. It is also contended that the monthly wage was Rs.1800/- but only Rs.1700/- were tendered and the order of dismissal was bad for this reason also. Reliance in this regard is placed on *M/s Podar Mills Ltd. Vs. Bhagwan Singh* AIR 1973 SC 2224. The respondent DTC in the counter affidavit has stated that in a proceeding under Section 33(2)(b), only a *prima-facie* view is to be taken and the petitioner workman is at liberty to raise an industrial dispute if aggrieved by the action of the respondent DTC of terminating his services. The same argument was made by the counsel for the DTC. Reliance is placed on *Martin Burn Ltd. Vs. Banerjee* 1958 I LLJ 247 (SC) and *DTC Vs. Ram Kumar* 1982 II LLJ 191 (Del.). In response to the other contentions, the counsel for the respondent DTC has contended that the office order dated 3rd January, 1966 itself provides that it is for guidance only and otherwise the procedure is upto the discretion of the Inquiry Officer. It is further urged that it was not necessary to record the statement of the passengers. It is also contended that the past record of the petitioner workman is only relevant for determining the quantum of punishment and which cannot be considered in a proceeding under Section 33(2)(b). It is urged that Section 11A of the ID Act is not applicable to such proceedings.

11. The petitioner workman in the present case has definitely raised matters which fall beyond the scope of enquiry under Section 33(2)(b). The Courts have consistently held that the scope of jurisdiction of the Tribunal under Section 33(2)(b) is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and a *prima-facie* case for dismissal is made out, the approval has to be granted. The jurisdiction of the Tribunal/Labour Court under Section 33(2)(b) cannot be wider than this. Reference in this regard may be made to ***Lalla Ram Vs. Management D.C.M. Chemical Works Ltd.*** AIR 1978 SC 1004 and ***Cholan Roadways Limited Vs. G. Thirugnanasambandam*** AIR 2005 SC 570. The Tribunal/Labour Court must not sit in appeal over the findings of the Enquiry Officer. Where the Enquiry Officer has considered all aspects of the case and finds the employee guilty of misconduct, the Industrial Tribunal cannot reappraise the evidence and refuse approval. All that can be examined by the Tribunal is that liberty is given to the workers concerned to establish his innocence and there is *prima-facie* case made out against him on the basis of the record of the domestic enquiry. The Tribunal is not to see whether on the weight of evidence a different conclusion is possible. The Tribunal is not empowered to review the decision of the management. The Tribunal is to look only to ensure that there is no lack of *bona-fide* or victimization on the part of the management. The Tribunal can overturn the findings handed over by the by the Enquiry Officer only if they are perverse. A finding can be said to be perverse, in case it is not supported by any legal evidence. If a finding arrived at by the Inquiry Officer is such that no reasonable person could have arrived at that finding on the material before him, then also the finding can be said to be perverse. If the finding is not a

perverse one in the said sense and if there is *prima-facie* evidence to support the finding, the Tribunal cannot refuse to grant approval to the order passed by the management.

12. Seen in the aforesaid light, it was enquired from the counsel for the petitioner workman whether he has made out any case for victimization. The counsel fairly admits that no reason has been given by the petitioner workman, neither before the Inquiry Officer nor before the Industrial Tribunal nor before this Court as to why the respondent DTC would have a grudge against the petitioner workman or want to remove him. From the narrative aforesaid, it is clear that it is not in dispute that the bus of the petitioner workman was intercepted by the Checking Staff of DTC. Thus it is not as if the incident leading to the charge against the petitioner workman has been fabricated or had never accrued. It is also not disputed that the cash found with the petitioner workman was short. The petitioner's own explanation is of having spent the same on entertaining his relatives. The counsel for the petitioner workman contended that the punishment of recovery of the said amount or any other amount could have been imposed. It is also urged that the money was still with the petitioner workman and it is not as if the money deposited by the petitioner workman was short. However, the fact remains that the petitioner workman was not authorized to spend the money collected from sale of tickets to the passengers for entertaining his relatives. There was thus definitely an illegality on the part of the petitioner workman. The ticket money was to be with the petitioner workman in trust and which trust the petitioner workman breached by misappropriating the money. The question is not of the quantum of money. The question is of the integrity of the petitioner workman. Thus the arguments of the counsel for the

petitioner workman of the shortage being of only Rs.18.25/- paise is of no avail. The said misconduct on the part of the petitioner workman is grave in nature. The Supreme Court recently in ***U.P. State Road Transport Corporation Vs. Suresh Chand Sharma*** in Civil Appeal No.3086/2007 decided on 26th May, 2010 has held that on a charge of corruption the punishment of dismissal should always follow.

13. It would thus be seen that the cause of action by the respondent DTC against the petitioner workman was *bona-fide* and there also appears to be a *prima-facie* case against the petitioner workman. Both pre-requisites of Section 33(2)(b) are made out.

14. As far as the argument of the counsel for the petitioner workman of the Depot Manager not being the disciplinary authority of the petitioner workman is concerned, the Tribunal has in this regard relied on ***Raghunandan Sharma Vs. D.T.C.*** 1994 (29) DRJ 151 (DB) where a Division Bench of this Court has found the General Manager to have delegated the authority to the Depot Manager to take disciplinary action against the Class-III and Class-IV employees and in which category the petitioner workman would fall. It is thus not as if the Tribunal has totally ignored the said contention of the petitioner workman. The view taken by the Tribunal is a possible view. The counsel for the petitioner workman responds that the respondent DTC has not placed on record the documents showing the delegation in favour of the Depot Manager in question. The counsel for the respondent DTC states that if an opportunity is given the said document can be produced. However, no case for calling for such records or for interference in writ jurisdiction is made out.

15. With respect to the contention of the inquiry being vitiated for the reason of the passengers witnesses having not been examined, I find that in the present case the statement of the passengers witnesses was recorded by the Checking Team of the respondent DTC in the presence of the petitioner workman and the same has been countersigned by the petitioner workman. The said witnesses could not be examined before the Inquiry Officer because while recording their address the name of the village they hailed from was not recorded and the address was thus found to be incomplete. The counsel for the respondent DTC in this regard has relied on ***D.T.C. Vs. N.L. Kakkar*** W.P.(C) No. 1485/1979 decided on 17th March, 2004, laying down after consideration of previous judgments 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. Reliance in this regard is also placed on ***D.T.C. Vs. Om Pal*** W.P.(C) No.5849/2003 decided on 2nd August, 2004. In my view the said contention of petitioner workman does not fall within the ambit of Section 33(2)(b) and in the circumstances it is not deemed appropriate to express any opinion on the same lest the same interfere with future actions, if any, initiated by the petitioner workman.

16. That brings me to the next plea of the petitioner workman of the office order having not been followed and the punishment of dismissal having been made out in case of first offence only. Though in my view the same also does not fall in the ambit of Section 33(2)(b), nevertheless the office order is only directory and not binding.

17. The contention regarding monthly wage being Rs.1800/- and not Rs.1700/- has been dealt in detail by the Industrial Tribunal and the factual finding is not capable of interference.

18. There is therefore no merit in the writ petition, the same is dismissed. However the same shall be without prejudice to the rights of the petitioner workman to raise an industrial dispute and it is further clarified that nothing contained herein and/or in the order of the Tribunal shall come in the way of the petitioner workman in the said industrial dispute.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd June, 2010
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