

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 26th March, 2012
+ LPA No.211/2012, CM No. 4942/2012 (for stay) , CM No.4943/2012
(for exemption) & CM No.4944-45/2012 (for condonation of delay).

% **DELHI TRANSPORT CORPORATION** Appellant
Through: Mr. Anand Nandan, Advocate.

Versus

SHYAM SINGH Respondent
Through: Mr. K.C. Dubey, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K.SIKRI, ACTING CHIEF JUSTICE.

1. The respondent workman was appointed as a conductor with the appellant on 2nd September, 1989. He was on 24th June, 1993 served with a charge sheet for not issuing tickets to the passengers inspite of collecting the fare. Departmental inquiry was held and the Inquiry Officer found the respondent workman guilty of the charge. The Disciplinary Authority of the appellant DTC vide order dated 18th July, 1994 imposed the punishment of removal from service on the respondent workman.

2. It appears that an application under Section 33(2)(b) of the Industrial Dispute Act, 1947 was preferred by the appellant. The respondent workman also raised an industrial dispute in which the following reference was made:-

“Whether the removal of Sh. Shyam Singh, from service is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?

3. The record further shows that the Industrial Adjudicator dismissed the application of the appellant DTC under Section 33(2)(b) and passed an award dated 8th November, 2001 of reinstatement of the respondent workman with full back wages. The appellant filed W.P.(C) No. 6095/2002 challenging the said award and W.P.(C) No. 1420/2002 challenging the order of dismissal of the application under Section 33(2)(b) of the ID Act. It further transpires that both the said writ petitions were decided on 29th September, 2004 and while the award was set aside and the matter remanded to the Industrial Tribunal for fresh decision including the claim of back wages, permission under Section 33(2)(b) was granted. It further transpires that against the order setting aside the award, the respondent workman preferred an LPA No.1007/2004 which was disposed of on 5th November, 2007. The Division Bench though maintained the order of setting aside of the award with remand to the learned Single Judge, clarified that the observations made by the learned Single Judge in allowing the application under Section 33(2)(b) of the Act will not affect the decision of the Industrial Adjudicator pursuant to remand.

4. Pursuant to the aforesaid remand the following issues were framed by the Industrial Adjudicator on 8th December, 2004:-

- (1) Whether the inquiry was conducted in accordance with principle of natural justice?
- (2) As per the terms of reference i.e. whether the removal of Sh. Shyam Singh from service is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this regard?

5. Evidence was led by the appellant as well as the respondent workman on the aforesaid issues. The Industrial Adjudicator vide order dated 17th December, 2009 decided the first of the aforesaid issue and though held that the respondent workman had been given proper opportunity and the departmental inquiry was in compliance with the principles of natural justice, further held that the Inquiry Officer had not given cogent reasons for disbelieving the testimony of the witnesses and that in the absence of cash having been checked, the charges against the respondent workman could not have been held by the Inquiry Officer to have been proved. It was also held that no Presenting Officer was appointed by the appellant. Consequently the findings of the departmental inquiry were held to be perverse for the reasons that (a) the passengers having not supported the case of the checking staff in the inquiry; (b) cash having not been checked by the checking staff; (c) there being no Presenting Officer appointed by the management. Accordingly the issue no.1 (supra) was decided in favour of the respondent workman and against the appellant and the case posted for evidence on merits.

6. The Industrial Adjudicator thereafter vide award dated 7th October, 2010 held the appellant to have failed to prove before the Industrial Adjudicator the misconduct with which the respondent workman was charged; accordingly the order of the appellant of removal of the respondent workman was held to be unjustified and the respondent entitled to reinstatement. However the Industrial Adjudicator did not find the respondent workman entitled to any back wages.

7. The appellant filed W.P.(C) No. 5188/2011 impugning the aforesaid award. The said writ petition was dismissed vide order dated 27th July, 2011 holding that re-assessment of evidence was beyond the scope of judicial review.

8. LPA No.848/2011 was preferred by the appellant against the dismissal of the writ petition. It was the argument of the appellant in the appeal that the Industrial Adjudicator while deciding the first of the aforesaid issue had to confine itself only to the question whether departmental inquiry was conducted in accordance with the principles of natural justice and which was decided in favour of the appellant. It was argued that the Industrial Adjudicator after having so held erred in holding the findings of the departmental inquiry to be perverse and on which aspect no issue had been framed. It was thus the contention of the appellant that the Labour Court after holding the departmental inquiry to have been conducted in accordance with the principles of natural justice exceeded its jurisdiction in holding the findings of the departmental inquiry to be perverse. It was further the contention of the appellant then that the said aspect had not been considered by the learned Single Judge while dismissing the writ petition. Accordingly, the Division Bench vide order dated 31st October, 2011 relegated the appellant to review and dismissed LPA No.848/2011 as withdrawn.

9. The appellant thereafter preferred review and which review application has now been dismissed by the learned Single Judge vide order dated 13th January, 2012.

10. Aggrieved therefrom the present Intra-Court appeal has been preferred. Though there is a delay of 39 days in preferring the present appeal and further delay of 24 days in re-filing but since we have heard the counsels, we ignore the delay.

11. The argument of the counsel for the appellant before us is again the same i.e. the Industrial Adjudicator having held the departmental inquiry to have been conducted in accordance with the principles of natural justice, could not have further held the findings of the departmental inquiry to be perverse. It is argued that the Industrial Adjudicator after holding the departmental inquiry to have been conducted in compliance of the principles of natural justice ought to have upheld the order of the Disciplinary Authority of removal of the respondent workman from service; the occasion for the appellant DTC proving misconduct before the Industrial Adjudicator would not have arisen then.

12. We are unable to accept the aforesaid contention. Firstly, the Industrial Adjudicator in the order dated 17th December, 2009 (supra) has given as many as three reasons for holding the departmental inquiry to be bad i.e. of the passengers during the inquiry having not supported the case of the checking staff; cash having not been checked by the checking staff and the appellant having not appointed the Presenting Officer. Merely, because sufficient opportunity of hearing had been given to the respondent workman alone is not sufficient for upholding the departmental inquiry. The Supreme Court in *Indian Iron & Steel Co. Ltd. v. Their Workmen* AIR 1958 SC 130 has held that though the management of a concern has power to direct its own internal administration and discipline but the power is not

unlimited and when a dispute arises, the Industrial Adjudicator has the power to see whether the termination of service of a workman is justified. It was further held that though in cases of dismissal on misconduct the Industrial Adjudicator is not to act as a court of appeal and substitute its own judgment for that of the management but the Industrial Adjudicator will interfere:

- A. when there is want of good faith;
- B. when there is victimization or unfair labour practice;
- C. when the management has been guilty of a basic error or violation of a principle of natural justice; and,
- d. when on the material on record the finding is completely baseless or perverse.

13. The Supreme Court yet again in *Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association* (2000) 5 SCC 65 held that the requirements of the principles of natural justice which are required to be observed are:-

- (i) workman should know the nature of the complaint or accusation;
- (ii) an opportunity to state his case;
- (iii) the management should act in good faith which means that the action of the management should be fair, reasonable and just.

14. It would thus be seen that the principles of natural justice which are required to be observed are not confined to opportunity of hearing alone, giving of opportunity of hearing alone cannot bar the Industrial Adjudicator

from interfering with the disciplinary action of the management/employer. If inspite of giving appropriate opportunity of hearing the action of the management is found to be arbitrary and unreasonable, it would qualify as perverse and on which ground it is interferable as also held in *Apparel Export Promotion Council v. A.K. Chopra* AIR 1999 SC 625.

15. In the present case each of the three reasons given by the Industrial Adjudicator for holding the inquiry to be bad was sufficient for setting aside the same. The Industrial Adjudicator has held that the non-appointment of the Presenting Officer led to the truth having not been **unraveled**. The principles of natural justice are not confined to opportunity of hearing only but extend to effective hearing. The purport of the order dated 17th December, 2009 of the Industrial Adjudicator is that no effective hearing was possible or held in the absence of the Presenting Officer. We are also of the view that the inquiry can also be held to be bad when the outcome thereof is not in consonance with its content and that is precisely the finding of the Industrial Adjudicator in the present case. The Supreme Court in *M.V. Bijlani v. Union of India* (2006) 5 SCC 88 held the findings of the departmental inquiry to be interferable if there is no evidence to prove the charge or where the relevant facts have not been considered. A Division Bench of this Court also in *Union of India v. S.R. Tewari* MANU/DE/0345/2012 held a finding of the departmental inquiry based on no evidence to be perverse. It was further observed that if on the basis of the material available no reasonable person could have recorded the finding, it would qualify as perverse. Reference in this regard can also be made to in *M/s Bharat Iron Works v. Bhagubhai Balubhai Patel* (1976) 1 SCC 518.

16. The Supreme Court in *The General Secretary, South Indian Cashew Factories Workers' Union v. The Managing Director, Kerala State Cashew Development Corporation Ltd.* (2006) 5 SCC 201 held that with the introduction of Section 11 A, after the judgment in *Indian Iron & Steel Co. Ltd.* (supra), the Industrial Adjudicator has ample power to re-appraise the evidence adduced in the inquiry and also sit in appeal over the decision of the employer in imposing punishment, in cases of dismissal or discharge.

17. We are even otherwise of the view that the aforesaid ground is even otherwise not available to the appellant. As set-out herein above, there is a history of litigation in the present case. In the earlier round of litigation concluding with the order dated 29th September, 2004 in the writ petitions preferred by the appellant and the order dated 5th November, 2007 in LPA No.1007/2004 thereagainst preferred by the respondent workman, the matter was expressly remanded to the Industrial Adjudicator for decision after recording of evidence. In the light of the said orders it cannot be said that the Industrial Adjudicator went beyond its jurisdiction in going into the question of perversity of the findings on the basis of which removal order was passed.

18. No other ground has been urged.

19. We find no merit in the appeal which is accordingly dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

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