

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.07.2012

+ LPA 949/2011

DELHI TRANSPORT CORPORATION

.... Appellants

versus

RAMESH CHAND

... Respondent

Advocates who appeared in this case:

For the Appellant : Mrs Avnish Ahlawat

For the Respondent : Mr Atul T.N.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. In this appeal, the appellant (Delhi Transport Corporation) is aggrieved by the judgment dated 08.08.2011 delivered by a learned Single Judge of this Court in W.P.(C) 8974/2003 whereby the appellant's said writ petition was dismissed. In the said writ petition, the appellant was

aggrieved by an order dated 29.03.2003 passed by the Industrial Tribunal (hereinafter referred to as the said Tribunal) whereby the appellant's O.P. No.200/1994 under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) was rejected. By virtue of that application under Section 33 (2) (b) of the said Act, the appellant had sought approval in respect its action of removing the respondent No.1 (Ramesh Chand) from service.

2. The charges leveled against respondent No.1 were that on 29.01.1993, the respondent No.1 was on duty in Bus No.9533 in Route No.GL-502. It was alleged that the said bus was checked and it was found that after collecting the due fare, the respondent No.1 had allegedly re-sold the tickets already sold by them earlier. It was also alleged that when the cash was checked it was found to be in excess by `38.25 paise. The stand taken by the DTC was that this amounted to misconduct within the meaning of Article 19 (b), (f), (h) and (m) of the standing orders governing the conduct of DTC employees. Thereafter the Disciplinary Authority removed respondent No.1 from service by virtue of its order dated 02.08.1994 and paid one month's wages to the respondent by way of the

impugned order.

3. The application being O.P. No.200/1994 had been filed by the appellant/DTC seeking approval of the said Tribunal in terms of Section 33 (2) (b) of the said Act.

4. After a reply had been filed to the said application on behalf of respondent No.1, wherein the respondent No.1 denied all the allegations leveled against him, a preliminary issue was framed by the said Tribunal on 27.02.1996 which was to the following effect:-

“Whether the applicant held a legal and valid enquiry against the respondent?”

5. The matter was then placed before the Tribunal for arguments on the preliminary issue. After hearing the arguments, the said Tribunal on 09.10.2002 passed, *inter alia*, the following order:-

“Admittedly the allegation leveled against the respondent are that he has resold the tickets bearing No.94819 to 94825. Admittedly as per the record the ticket bearing No. mentioned 94819 to 95825 have not been shown to be sold earlier prior to the passenger from which the ticket has been collected. The challan has been issued just on the basis of suspicion of reselling and same has been upheld by the enquiry officer without having any substance on the file.

Consequently the enquiry report is hereby held to be perverse and proceeding stand vitiated.”

6. After having held the enquiry report to be perverse and that the proceedings to have been vitiated, the said Tribunal went on to frame issues on merits, which were as under:-

- “1. Whether the respondent committed misconduct as alleged against him?
2. Whether the petitioner remitted full one month wage to respondent as per provision of Section 33 (2) (b) of I.D. Act?
3. Relief?”

7. On 29.03.2003 those issues were considered by the said Tribunal and the Tribunal after considering issue No.1 came to the conclusion that the appellant/DTC had failed to prove the misconduct against the respondent No.1 and, consequently, the issue was decided against the appellant and in favour of respondent No.1. Insofar as issue No.2 was concerned, the same was decided in favour of the appellant and against the respondent No.1, inasmuch as the said respondent had not produced any evidence in his favour and the appellant was able to establish and prove that one month's wages had been sent to respondent No.1. With regard to issue No.3, which was the issue concerning relief, the Tribunal came to the conclusion that in view of the finding on issue No.1, the approval sought by the appellant was

to be rejected and, consequently, the said application filed under Section 33 (2) (b) of the said Act was dismissed.

8. Being aggrieved by this order dated 29.03.2003, the appellant had filed the said writ petition which has been dismissed by virtue of the impugned judgment of the learned Single Judge dated 08.08.2011.

9. It is the contention of the learned counsel for the appellant that the Tribunal ought to have only considered the *prima facie* case and ought not to have gone on to frame issues and consider the case as a full-fledged industrial dispute, which according to the learned counsel for the appellant, should only be done in the case of a reference under Section 10 of the said Act.

10. On the other hand, the learned counsel for the respondent No.1 submitted that the Tribunal has acted with the four corners of law and particularly in view of the clear and settled principles as set out by the Supreme Court in the case of **M/s. Bharat Iron Works v. Bhagubhai Balubhai Patel and Others: AIR 1976 SC 98** and **Lalla Ram v. Management of D.C.M. Chemical Works Ltd.: AIR 1978 SC 1004**. It is submitted that these decisions bring out the legal position in the proper perspective and they enable the Tribunal to examine the matter on merits in

case the domestic enquiry suffers from any defect or infirmity or when the findings in the enquiry report are perverse.

11. In rejoinder, the learned counsel for the appellant referred to two decisions of the Supreme Court in **Martin Burn Ltd. v. R.N. Banerjee:** **AIR 1958 SC 79** and **Cholan Roadways Ltd. v. G. Thirugnanasambandam:** (2005) 3 SCC 241. She also referred to a decision of a Division Bench of this Court in the case of **Ramesh Kumar v. DTC** rendered in LPA No.90/2007 decided on 15.05.2007.

12. After hearing the learned counsel for the parties and going through the decisions cited, we feel that the issue stands covered and clinched by the decisions of the Supreme Court in the case of **Bharat Iron Works** (*supra*) and **Lalla Ram** (*supra*). In **Bharat Iron Works** the Supreme Court observed as under:-

“When an application under Section 33 whether for approval or for permission is made to a Tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding the Order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any, and also to the

workman to rebut it if he so chooses. In the latter event the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the Tribunal then will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's findings in the domestic enquiry will lapse and these will be substituted by them independent conclusions of the Tribunal on merits.

2. There is a two-fold approach to the problem and if lost sight of, it may result in some confusion. Firstly, in a case where there is no defect in procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an Order of dismissal on one or other of the following conditions:-

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at a conclusion of guilt on the charge leveled against the employee on the evidence recorded against him in the domestic enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic enquiry but there is no prima facie case of guilt made out against the person charged for the offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the condition No. 1 above. A prima facie case is not, as in a criminal case, a case proved to the hilt.”

(underlining added)

13. In ***Lalla Ram*** (*supra*) the Supreme Court held as under:-

“12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings Under S. 33 (2) (b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co, v. Ram Probesh Singh*, (1964) 1 SCR 709: (AIR 1964 SC 486): *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar* ((1961) 1 Lab LJ 511) (SC): *Hind Construction & Engineering Co. Ltd. v. Their Workmen*, (1965) 2 SCR 83: AIR 1965 SC 917: *Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management*, (1973) 3 SCR 587: AIR 1973 SC 1227, and *Eastern Electric and Trading Co. v. Baldev Lal*, 1975 Lab IC 1435: (AIR 1975 SC 1892) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions

are satisfied, the Industrial Tribunal would grant: the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

(underlining added)

14. As can be seen from the decision in ***Lalla Ram*** (*supra*) the scope of enquiry by the Industrial Tribunal under Section 33 (2) (b) of the said Act has been circumscribed by the five situations mentioned herein. It is then observed by the Supreme Court that if the five conditions are satisfied then the Industrial Tribunal is required to grant an approval and that such approval would relate back to the date from which the employer had ordered the dismissal. However, the Supreme Court further observed that in case the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds, it will grant approval of the order of dismissal which would also

relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above, applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

15. From this it is clear that in case the domestic enquiry suffers from any defect or infirmity, which would, in the light of the decision in ***Bharat Iron Works (supra)***, also include a perverse finding in the domestic enquiry, it would be open to the Tribunal to find out on its own assessment of the evidence adduced before it as to whether there was any justification for dismissal. It is in this light that we feel that the course adopted by the Tribunal was clearly in line with what has been observed by the Supreme Court.

16. First of all, the preliminary issue was decided as to whether the enquiry was legal and valid. The decision given by the Tribunal by virtue of its order dated 09.10.2002 was that the finding was perverse and which obviously means that the enquiry was neither legal nor valid. In such eventuality, it was open to the Tribunal to embark upon the merits of the matter and it was for this reason that the issues were framed and those

issues were considered by the Tribunal and conclusions arrived at after examining the evidence on record. Thus, the course of action adopted by the Tribunal cannot be faulted with. We do not agree with the learned counsel for the appellant that the Tribunal in these circumstances could have only examined the *prima facie* case. The decisions cited by the learned counsel for the appellant do not in any way detract from the position which has been indicated in ***Bharat Iron Works (supra)*** and ***Lalla Ram (supra)***.

17. For the foregoing reasons, we see no reason to interfere with the impugned judgment passed by the learned Single Judge of this Court. The appeal is dismissed. The respondent No.1 be reinstated immediately. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 31, 2012
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