

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

+ W.P.(C) 5997/2003

% Reserved on: 14th December, 2012
Decided on: 7th February, 2013

D.T.C.

..... Petitioner

Through: Ms. Saroj Bidawat, Advocate.

versus

OM PRAKASH & ORS.

..... Respondents

Through: Mr. Aman Panwar, Advocate for
Respondent No. 1.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the order dated 6th November, 2000 whereby the application of the Petitioner under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (in short the ID Act) was rejected.

2. Learned counsel for the Petitioner contends that the scope for adjudication in an application under Section 33 (2) (b) of the ID Act is limited and the learned Tribunal could have only looked into the fact whether the workman was victimized or not. Reliance is placed on *Delhi Transport Corporation vs. Shyam Lal*, WP (C) No. 3633 of 2004 decided on 1st July, 2010. There were 16 passengers in the bus in two groups of five passengers and 11 passengers each. Statements of the leader of the each group were taken who stated that they had paid the fair of Rs. 1.50 each to the Conductor but no tickets were issued to them. Their statements were duly exhibited as AW1/R1 and AW1/R2. Thus the learned Tribunal erred in discarding their statements recording before the Enquiry Officer and

insisting that the statements of the passengers ought to have been recorded before the Tribunal contrary to the law laid down in *State of Haryana vs. Rattan Singh*, AIR 1977 SC 1512 and *Delhi Transport Corporation vs. N.L. Kakkar, Presiding Officer and others*, 2004 (73) DRJ 568. Relying upon the *B.C. Chaturvedi vs. Union of India*, 1995 (6) SCC 749 it is stated that the Tribunal could not have gone into the sufficiency of evidence and could have interfered only if it was a case of no evidence. Besides this misconduct of Respondent No. 1, there were 21 adverse entries and hence the Petitioner was justified in removing Respondent No. 1 from the service.

3. Learned counsel for Respondent No. 1 on the other hand contends that the scope in an application for approval under Section 33 (2) (b) of the ID Act and a reference under Section 10 of the ID Act is same and the learned Tribunal has to come to its own independent conclusion as to whether misconduct has been proved or not. There is no perversity in the order passed by the learned Tribunal and hence no interference is called for. Reliance is placed on *Air India Corporation, Bombay vs. V.A. Rebellow and another*, 1972 (1) SCC 814, *Workmen of Motipur Sugar Factory (Private) Limited vs. Motipur Sugar Factory*, AIR 1965 SC 1803, *Messrs Bharat Iron Works vs. Bhagubhai Balubhai Patel and others*, 1976 (1) SCC 518 and *Lalla Ram vs. D.C.M. Chemical Works Ltd. and another*, 1978 (3) SCC 1.

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

5. Respondent No. 1 was employed with the Petitioner as a conductor. On 14th October, 1991 while Respondent No. 1 was on duty on Bus No. 9096 of Route No. 467 checking staff checked the bus at 6.15 hours at Jamuna Bazar and found that there were 16 passengers in two groups of 5 and 11 passengers from whom Respondent No. 1 had collected due fare but

did not issue them the tickets. Since Respondent No. 1 had mis-conducted within the meaning of para 19 (b) (f) (h) & (m) of the standing orders governing the Respondent No. 1, on a report from the Assistant Traffic Inspector, a charge sheet was issued to Respondent No. 1. An inquiry was conducted in which the allegations against the Respondent No. 1 were substantiated. The disciplinary authority issued a show cause notice to Respondent No. 1 as to why he should not be removed from service. On the explanation being not found satisfactory, Respondent No. 1 was removed from services of the Petitioner vide order dated 27th July, 1992. The Petitioner filed an approval application before the learned Tribunal as disputes of the union were pending adjudication. The Petitioner relied upon the inquiry proceedings, narrated the facts stated above and also that Respondent No. 1 misbehaved with the checking staff also at the time of raid. In the written statement filed Respondent No. 1 admitted being an employee of the Petitioner however, he stated that he neither committed any irregularity nor mis-conducted himself. It was stated that all the passengers travelling in the bus were having tickets of correct denomination and one of the officials collected the tickets of the passengers and torn them off. No passenger was without ticket. Challenging the inquiry proceedings it was stated that the Inquiry Officer acted as a prosecutor as there was no Presenting Officer of the Management and the inquiry proceedings were not correctly recorded. Further the Depot Manager was not the appointing authority and thus was not competent to take disciplinary action and issue the show cause notice to the Respondent. The findings of the Inquiry Officer were perverse as the concerned passengers were not examined.

6. During the proceedings, preliminary issue with regard to the validity of inquiry was framed and on the said preliminary issue the Petitioner did not lead any evidence by way of affidavit or otherwise till 4th July, 1996 and thus the evidence of the Petitioner was closed on 12th July, 1996. Since there was no evidence in support of the case of the Petitioner the issue was held against the Petitioner and inquiry was held to be valid and legal. On the same day additional issues were framed as under:

“1. Whether the Respondent committed misconduct for which he was charge sheeted? OPA

2. Relief.”

7. The Petitioner examined its witness Om Prakash the reporter, filed his evidence and the documents were exhibited including 16 unpunched tickets as Ex. AW1/1 to AW1/16, report of the checking staff, charge sheet, copy of the challan etc. Respondent No. 1 filed his affidavit by way of evidence and appeared in the witness box. The Tribunal in view of the fact that the statements of all the passengers were not recorded before the learned Tribunal and the statements of the leaders of the two groups Ex. AW1/R1 and AW1/R2 were recorded at the back of the challan which did not bear the signatures of the conductor nor were counter signed by other passengers or the second member of the checking staff, came to the conclusion that the Petitioner could not take benefit of the statement of the two leaders, particularly in the absence of the statements of the passengers being recorded before the learned Tribunal. Since the case of the Petitioner was based only on the statement of AW1 Om Prakash which statement was disputed by Respondent No. 1 hence in view of the solitary statement of AW1, there was

no sufficient evidence on the file to hold that Respondent No. 1 committed misconduct as alleged. Hence the application of the Petitioner under Section 33 (2) (b) of the ID Act was rejected.

8. Before advertng to the facts of the case it would be appropriate to note the scope of interference by the Tribunal in an approval application under Section 33 (2) (b) of the ID Act. In *Lalla Ram* (supra) it was held:

“12. The position that emerges from the abovequoted decisions of this Court may be stated thus: In proceedings under Section 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 Prabesh Singh* [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291: 24 FJR 406] , *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar* [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , *Hind Construction & Engineering Co. Ltd. v. Their Workmen* [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management* [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and *Eastern Electric & Trading Co. v. Baldev Lal* [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] 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.”

9. In the case in hand, there is no finding of the Tribunal that there was victimization or an unfair labour practice meted out. The Tribunal re-appreciated the evidence and came to the conclusion that since the passengers were not summoned, there was no corroboration to the statement of the checking official AW1, the statements of the two passengers were not counter signed by the Conductor, if Respondent No. 1 could sign the challan under protest he could have also signed the statements of the passengers under protest and thus held that the mis-conduct was not proved. Thus the learned Tribunal travelled into the realm of appreciation of evidence which it could not have done. This was not a case of no evidence as according to the

Tribunal AW1 stated about the case of the Petitioner however, there was no corroboration to the said evidence. Moreover the judgment of the learned Tribunal is also contrary to the decisions in *State of Haryana vs. Rattan Singh* (supra) and *Delhi Transport Corporation vs. N.L. Kakkar* (supra) wherein it has been clearly held that examining the passenger witnesses would be totally impracticable. In *Rattan Singh* (supra) it was held:

“3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as borne out by the record, is that the inspector of the flying squad had said that they had paid the fares but they declined to give such written statements. The third ground which weighed with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However,

the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The ‘residuum’ rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there *some* evidence or was there *no* evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of *any evidence* in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is *some* evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

10. In view of the legal position the impugned order is liable to be set aside. The petition is accordingly disposed of setting aside the impugned order and granting approval to the Petitioner under Section 33 (2) (b) of the ID Act. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

FEBRUARY 07, 2013
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