

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

Judgment Reserved on January 21, 2014

Judgment Delivered on April 16, 2014

+ **W.P.(C) 6218/2001**

D.T.C.

..... Petitioner

Represented by: Ms.Arati Mahajan Shedha, Advocate

versus

RAJPAL AND ANR.

..... Respondents

Represented by: Ms.Rashmi B.Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the orders dated September 23, 1995, October 04, 1997, May 26, 2000 and award dated April 25, 2001 passed by the Industrial Tribunal from time to time in Complaint No.121/89 (Industrial Tribunal-III), later on numbered as 339/89 (in Industrial Tribunal-II).

2. The brief summary of the impugned orders is as under:

Order dated September 23, 1995

Vide this order the application filed by the petitioner seeking permission to place on record certain documents like inquiry proceedings, inquiry report, previous service record of the respondent No.1, show cause notice dated August 18, 1988 and its reminder dated September 02, 1988 and order of removal of the respondent No.1 was rejected.

Order dated October 04, 1997

By means of this order the Industrial Tribunal has held that the complaint filed by the respondent No.1 under Section 33-A of the Industrial Disputes Act, 1947 ('Act' in short) as maintainable, since the petitioner had violated Section 33(2)(b) of the Act.

Order dated May 26, 2000

Vide this order the Industrial Tribunal had decided the preliminary issue '*whether the inquiry conducted by the respondent was not fair and proper as claimed by the complainant?*' against the petitioner.

Award dated April 25, 2001

By means of this award, the Industrial Tribunal has held that the petitioner had failed to prove that the respondent had committed misconduct due to which he was removed from service vide order dated September 06, 1988 and directed his reinstatement in service with full back wages and continuity in service of service.

Facts

3. The brief facts are that the respondent No.1 was appointed by the petitioner corporation as Conductor on September 24, 1979 and was brought on monthly rates of pay with effect from September 01, 1980. On April 27, 1985 the respondent No.1 was charge-sheeted for the following misconduct:

"That on 8.4.1985 you were performing duty with Bus No. DET-9078 on Delhi – Shimla Route. The checking officials intercepted your bus at Kalka Stand and intercepted a group of 3 passengers alighted from the Bus without ticket. On inquiry from ticket-less passengers they stated that they boarded the bus from Chandigarh to Kalka and had already paid the due fare @ Rs.2.60p. each but you did not issued any ticket to them after collecting the due fare.

That on demand by the checking officials you surrendered three unpunched ticket No.98929 to 98931 of Rs.2.60 paise

each for which the fare was already collected by you. You refused to accept the challan slip, refused to give complaint book, refused to get your cash checked and also you lodged a false police report against the checking officer at Dhally Police Station. This shows your dishonesty in dealing with the Corporation's business and misappropriation of the revenue.

Thus your aboe action tantamount to misconduct within the meaning of para 6 and 7 of the duties of Conductor and executive instructions read with para 19(a), (b) and (m) of the Standing Orders governing the conduct of D.T.C. employees."

4. It may be necessary to point out here that the charge-sheet also stipulated, that the respondent No. 1's past record will also be taken into consideration at the time of passing of the final orders in the case. The respondent No.1 was called upon to file reply to the charge-sheet within a period of 10 days.

5. The respondent No.1 submitted his undated reply to the charge-sheet (AnnexureP-4) (Page 45 English Translation).

6. Suffice to state here that the reply of the respondent No.1 was on merit of the charge framed against him. In other words, no objection of any manner was taken by the petitioner in his reply. The inquiry proceedings started on September 10, 1987. Suffice to note, a specific query was put to the respondent No.1 whether he wants any assistance. The respondent No.1 stated that he need not have any assistance and he will do himself. Further the statements of Mr.Ram Kumar, T.I, No.3820 and Mr.Hari Bilas, A.T.I were recorded. The respondent No.1 was given opportunity to ask questions to the said witnesses, which he refused to avail. On September 10, 1987 the inquiry was postponed for producing complaint book and calling the passengers who were not issued tickets.

On the next date of inquiry i.e. February 22, 1988 it was noted that despite letters the passenger had not appeared. Further the respondent No.1 was asked whether he wants to produce anybody in his defence, which he refused. In token of receipt of the inquiry proceedings of September 10, 1987 and February 22, 1988 the respondent No.1 had put his signatures. The next date of inquiry was fixed as March 16, 1988, on which date the respondent No.1 appeared and gave his final statement in Hindi pursuant thereto inquiry proceedings were closed.

7. The Inquiry Officer submitted his findings that the charges against the respondent No.1 have been proved. On August 18, 1988 the Depot Manager issued a show cause notice calling upon the respondent No.1 to make a representation on the proposed punishment. The respondent No.1 gave two representations dated August 30, 1988 and August 31, 1988, which according to the Depot Manager need to be rejected. He was once again called upon by the Depot Manager to give reply to the show cause notice, which he failed to submit. The Depot Manager passed a final order dated September 06, 1988 thereby imposing a penalty of 'removal' on the respondent No.1 from the services of the petitioner corporation. On September 21, 1988 the respondent No.1 filed a complaint under Section 33 of the Act and thereby seeking setting aside of the order of removal dated September 06, 1988 with a further prayer for reinstatement in the services with continuity of service and with full back wages. The petitioner corporation filed a reply opposing the same. The Industrial Tribunal framed an issue on the preliminary objection taken by the petitioner corporation. The parties were allowed to lead their respective evidences. During the pendency of the proceedings before the Industrial Tribunal, an application was moved by the petitioner

corporation for filing of certain documents, details of which have been referred above. As the matter was fixed for evidence of the management and the management was desirous to examine the Inquiry Officer to prove the inquiry proceedings, the Industrial Tribunal rejected the application of the petitioner corporation on September 23, 1995.

8. The following issues were framed by the Industrial Tribunal:

(a) Whether this tribunal has no jurisdiction as alleged in preliminary paras Nos.1,1.2, 2.3, 3.2 and para 8 of the written statement?

(b) Whether the reference itself is not maintainable as alleged in preliminary para No.2.1, 4.1 and 5.2 of the written statement?

(c) What is the effect of pendency of Civil Writ Petition Nos.320 and 396 of 1987 before the Supreme Court?

(d) Is Delhi Administration not the appropriate Government to make the reference? If so, to what effect?

(e) Is Industrial Disputes Act, 1947 not applicable in the instant case?

(f) Whether the respondent committed violation of the provisions of section 33 of I.D. Act?

9. The issues were also decided against the petitioner corporation, whereby the Industrial Tribunal held that the complaint filed by the respondent under Section 33-A of the Act is maintainable. On October 22, 1997 an additional issue was framed, as to whether the inquiry which has been conducted by the petitioner was not fair and proper as claimed by the respondent No.1. The Industrial Tribunal was of the view that the inquiry stands vitiated as the competency of Mr.R.D.Bhardwaj, Inquiry Officer to conduct inquiry could not be proved and further the petitioner could not be able to produce postal record evidencing sending of the letters to the passengers. Further the statement of the car driver is unsigned. There is no evidence that the statement by the car driver was

recorded in his own handwriting. Therefore, the statement of the car driver was of no help to the management and further the statement of the passengers is neither witnessed by the checking staff nor by the conductor or the driver of the car who helped the checking staff at that time. The oral evidence was of no help to the Inquiry Officer to hold the employee guilty. After the evidence of respondent No.1, who was cross examined by the representative of the petitioner, the Industrial Tribunal passed an award dated April 27, 2001 in favour of the respondent No.1 holding that the petitioner has failed to establish that the respondent No.1 has committed any misconduct as alleged against him and directed reinstatement of respondent No.1 with full back wages and continuity of service.

10. It is the contention of learned counsel for the petitioner that the impugned orders and the award passed by the Industrial Tribunal is totally perverse, contrary to the facts and law. According to her, it was specifically stated in the application filed by the petitioner dated August 04, 1994 that management is desirous of examining the Inquiry Officer. However, the application was wrongly rejected, as a result when matter came up for evidence on misconduct, the Inquiry Officer who stood relieved, the petitioner had to examine the Depot Manager only. Non-appearance of the Inquiry Officer was held against the petitioner seriously prejudicing its case. She would further state that the Industrial Tribunal wrongly held that it could not go into the question of validity of reference. The said reference being invalid there was no question of invoking Section 33(2)(b) of the Act. She would state that the respondent No.1 is not a 'concerned workman' in the reference pending before it, inasmuch as the reference was with respect to implementation of the 4th

Pay Commission recommendations with respect to all the employees of the corporation. It would be preposterous, if the petitioner could not remove any single employee of its for any misconduct without moving application under Section 33(2)(b) of the Act to prevent victimization of the workman due to pendency of the Industrial Dispute. Surely, pending of an industrial dispute with regard to grant of benefits in terms of the recommendations would not give rise to victimization. It is her contention that any objection qua the Inquiry Officer should have been taken at the first instance, which the respondent No.1 did not take. According to her the respondent No.1 even failed to place on record copy of the alleged complaint to the Depot Manager, contending that inquiry has not been conducted properly. Learned counsel for the petitioner would further state that the respondent No. 1 had admitted his signatures in the inquiry proceedings, however, the Industrial Tribunal wrongly held as the Inquiry Officer had not appeared into the witness box to deny the allegations of respondent No.1 and the Depot Manager who was not present at the time of inquiry and therefore he cannot say anything about the procedure adopted during the inquiry and hence the allegations of the respondent No.1 had gone unchallenged. She states, even the conclusion of the Industrial Tribunal that no evidence has been placed regarding sending of the letters to the passengers is not correct as the respondent No.1 had placed the same on record and drew my attention to page 59, 60 & 61 of the writ petition. According to her, it is not a case of 'no evidence' but some evidence in the form of statement of T.I Ram Kumar was on record to prove the misconduct against the respondent No.1, which went unchallenged as he was not cross-examined. Just because, the order of appointing the Inquiry Officer was

not placed on record, would not mean that the Inquiry Officer was incompetent. The Officer was AO(East). No objection was ever taken by the respondent No.1 in this regard. She would state that even otherwise, challan, the checking report, unpunched tickets, statement of passenger, statement of the car driver and checking officials were filed and available before the Labour Court for proving misconduct. She would further submit that the Industrial Tribunal has while dealing with the cases of mis-conduct was required to accept the finding arrived at in the inquiry unless it is perverse or unreasonable. The Industrial Tribunal while arriving to such a conclusion could not have acted as a Court of Appeal. It could have interfered when there is a victimization or violation of principles of natural justice. That apart she would submit that the respondent No.1 had 13 adverse entries to his credit and the penalty of removal against such a person could not have been set aside thereby directing his reinstatement. She would rely upon the following judgments in support of her contentions.

(a) Karnataka State Road Transport Corporation vs. Smt. Lakshmiddevamma & Anr. (2001) 5 SCC 433

(b) Lakshmiratan Cotton Mills Co. Ltd. vs. Its Workmen (1975) 2 SCC 761

(c) Delhi Cloth and General Mills Co. vs. Ludh Budh Singh (1972) 1 SCC 595

(d) Karnataka State Road Transport Corporation vs. B.S.Hullikatti (2001) 2 SCC 574

(e) The Cooper Engineering Limited vs. Shri P.P.Mundhe (1975) 2 SCC 661

(f) State of Punjab & Ors. vs. Dr. Harbhajan Singh Greasy (1996) 9 SCC 322

(g) *State of Haryana vs. Ratan Singh* (1977) 34 FLR 264

(h) *Punjab Beverages Pvt. Ltd., Chandigarh vs. Suresh Chand & Anr.* (1978) 2 SCC 144

11. On the other hand, learned counsel for the respondent No.1 would support the award of the Industrial Tribunal and would urge that in the absence of any material perversity and also questions of law in the writ petition, the present petition under Article 226 of the Constitution of India is not maintainable. She would state that the Industrial Tribunal has rightly ordered the maintainability of the complaint under Section 33-A of the Act and in support of this contention she would rely upon the judgment of the Supreme Court in the case reported as AIR 2002 SC 643 *Jaipur Zila Sekhari Bhoomi Vikas Bank Ltd. vs. Sh. Ram Gopal Sharma & Ors* and 2001(90) FLR 27 SC *Managing Director Tamil Nadu State Transport Corporation vs. Neethivilangam*.

12. Insofar as the merit of the case is concerned, it is her case that the charges framed against the respondent No.1 were totally vague and incorrect. She would state that the charge that the bus was intercepted at Kalka stand and a group of 3 members alighted from the bus whereas the report of Inquiry Officer states that the checking official had observed that the passengers alighted from the bus and bus was intercepted at Kanda Ghat whereas the true position was that no passenger had alighted at Kalka and two passengers had alighted at Pinjor Garden where the checking staff had alleged that the driver had not stopped the bus upon giving signal. She would rely upon the vagueness of the charge-sheet and judgments of the Supreme Court in the case reported as 1986 LAB Industrial Cases 855 SC *Sawai Singh vs. State of Rajasthan* and 1971 SLR 103 SC *Surath Chandra Chakraborty vs. State of West Bengal*. She

would further state that this Court would not sit as an appellate authority over the finding of fact given by the Industrial Tribunal. In this regard she would rely upon the following judgments:

(a) Sadhu Ram vs. Delhi Transport Corporation AIR 1984 SCC 1967

(b) Harbans Lal vs. Jagmohan 1985 (4) SCC 333

(c) Calcutta Port Shramik Union vs. Calcutta River Transport Association & Ors. 1998 (Supp) SCC 768

(d) Ramnik Lal N Bhutta & Anr. vs. State of Maharashtra & Ors. 1997 CLT 302 (SC)

(e) Khardah & Co. Ltd. Vs. The Workman 1963 (1) LLJ 452 SC

13. She would also state that the principles of natural justice were violated by the Inquiry Officer and in that regard she would state as under:

(a) There was no Presenting Officer in the inquiry and the Inquiry Officer adopted the role of both Presenting Officer and the prosecutor which vitiates the inquiry and in this regard she would rely upon the judgment reported as (2009) 1 LLJ 235 (SC) *State of Uttranchal & Ors. vs. Kharak Singh*.

(b) The documents demanded by the respondent No.1 were not supplied. In that regard she would rely upon the judgment reported as JT 1998 (6) SC 55 *State of U.P vs. Shatrughan Lal & Anr.*

(c) The Inquiry Officer did not permit him to lead his evidence and he was made to sit outside the room and he was not given proper opportunity to cross examine the witnesses and these averments of the respondent No.1 have gone unchallenged.

According to her the statement of Harbilas was never recorded in the inquiry proceedings and which is against the judgment of the Supreme Court in the case reported as AIR 1964 SC 719 *M/s Khardah & Co. Ltd. vs. The Workman*.

(d) The respondent No.1 requested the checking staff to check the cash which was not done and as such the allegation of cheating cannot stand. In that regard she would rely upon the judgment of the Division Bench of this Court in the case reported as 133 (2006) DLT 148 *Delhi Transport Corporation vs. Anup Singh*.

(e) The petitioner did not produce any document or witness to prove the misconduct of the respondent No.1. She rely upon the judgment of the Supreme Court in the case reported as 1999 LLR 122 SC *Neeta Kaplish vs. Presiding Officer, Labour Court & Anr.*, wherein the Supreme Court held that after vitiation of inquiry records pertaining to domestic inquiry could not constitute material on record.

(f) She would state that the past record should have been found part of the second notice so that he can give explanation. In that regard she would rely upon the judgment of the Supreme Court in the case reported as 1963 (4) SCR 540 *State of Mysore vs. K.Manche Gowda*.

14. Having considered the rival submissions made on behalf of the parties, insofar as the order dated September 23, 1995 is concerned, I note that the application was moved by the petitioner to bring on record the inquiry proceedings, inquiry report, previous service record of the complainant, show cause notice dated August 18, 1988 and its reminder dated September 02, 1988 and the order of removal. The only objection

taken against the said application was that no reasons have been disclosed as to why the documents could not be filed at proper stage. Alternatively it was pleaded that the documents are not relevant for deciding the controversy. The Industrial Tribunal was of the view that one of the issues framed so far is about the contravention of the provisions of Section 33 of the Act and no issue has been framed on the merit of the removal of the respondent No.1 from service and the Court is yet to decide as to whether the petitioner herein has contravened the provisions of Section 33 of the Act or not and so at that stage of proceedings those documents have no relevance for deciding the alleged contravention of Section 33 of the Act. The Industrial Tribunal may be correct while holding so but could not have rejected the application. The Industrial Tribunal could have at the most said that such an application is pre-mature so as to enable the petitioner to file the application at an appropriate stage. I note that the purpose of filing application was to get the documents proved by the Inquiry Officer. Since the Inquiry Officer had retired, neither the documents could be proved nor he could come in the witness box, which surely has prejudiced the petitioner's case and in the absence of Inquiry Officer, the Industrial Tribunal has vitiated inquiry proceedings. I note that the said documents, 5 in total, were placed by the Disciplinary Authority on record, who was not the Inquiry Officer, which had not helped the petitioner corporation in justifying the proceedings which ultimately led to the removal of the respondent No.1.

15. Even otherwise while concluding that application under Section 33-A of the Act is maintainable, vide order dated October 04, 1997 the Industrial Tribunal could have still granted liberty to the petitioner to place on record the relevant records including the inquiry proceedings,

inquiry report, previous record of the respondent No.1, show cause notice dated August 18, 1988, its reminder dated September 02, 1988 and order of removal. As stated above while adjudicating an application under Section 33-A of the Act, the Tribunal would have the same jurisdiction as it has under Section 10 read with Section 11-A of the Act. To that extent the order of the Industrial Tribunal rejecting the application and not giving liberty to the petitioner to move application at appropriate time for placing on record certain documents is clearly untenable.

16. Insofar as the impugned order dated October 04, 1997 is concerned, this Court do not see any infirmity in the same as the Industrial Tribunal has come to a conclusion that an industrial dispute with regard to extension of benefits under 4th Pay Commission espoused by the union was pending consideration of the Industrial Tribunal and the respondent No.1 being a concerned workman as the conclusion of the Industrial Tribunal in the pending dispute with regard to extension of benefits of the 4th Pay Commission would also be granted to the respondent No.1, the petitioner was required to take approval/permission before discharging or dismissing the respondent No.1 from service. This is the position of law as laid down by the Supreme Court in the case of *New India Motors Pvt. Ltd. Vs. K.T. Morris*, (1960) 1 LLJ 551 wherein the Supreme Court held as under:

“In dealing with the question as to which workman can be said to be concerned in an industrial dispute, we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of

workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it.... Therefore, we are not prepared to hold that the expression 'workmen concerned in such dispute' can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all work on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute".

17. Insofar as the order dated May 26, 2000 whereby the Industrial Tribunal has decided the preliminary issue as to whether the inquiry conducted by the respondent was not fair and proper as claimed by the complainant. It was the stand of the respondent No.1 that the inquiry officer was not appointed by the Competent Authority; he was not allowed to engage his defence assistant; the charge-sheet was not issued by competent officer; he was not given proper opportunity to cross examine the witnesses of the management; the Inquiry Officer obtained his signatures under threat and duress; the concerned passengers were not examined and he was not allowed to summon those passengers. The Industrial Tribunal in this order has come to a conclusion in para No.11 that the petitioner has failed to place on file any document of appointment of Mr. R.D.Bhardwaj as Inquiry Officer or letter of entrustment of inquiry to Mr.R.D.Bhardwaj. The Industrial Tribunal also observed that the departmental file does not contain any order of the Depot Manager appointing Mr.R.D.Bhardwaj as Inquiry Officer. It relied

upon the deposition of MW1 (Depot Manager) who in his testimony had stated that he cannot say if Mr.R.D.Bhardwaj was competent person to conduct inquiry. In other words, the plea of the respondent No.1 was accepted by the Industrial Tribunal.

18. The Industrial Tribunal also accepted the plea of the respondent No.1 that the Inquiry Officer did not permit him to conduct his defence and was not given proper opportunity to cross examine the witnesses of the management. The Industrial Tribunal further states that even though the respondent No.1 had put his signatures on the inquiry proceedings, the respondent No.1 has an explanation that he was forced to sit outside the room where the inquiry was being conducted and asked to sign the proceedings. The Industrial Tribunal accepts this contention of the respondent No.1 on the ground that the Inquiry Officer had not appeared in the witness box to deny the allegations of the respondent No.1 and concludes that the allegations of the respondent No.1 in that regard have gone unchallenged. The Industrial Tribunal was also of the view that the passengers were not produced during the inquiry. The Industrial Tribunal has held that the letters which were supposed to have been sent by the petitioner to the passengers could not be proved as no postal record in that regard have been placed on the file. In other words, the Industrial Tribunal holds that it cannot be said, genuine efforts were made to call the passengers to participate in the inquiry. Ultimately it was the conclusion of the Industrial Tribunal that the respondent No.1 was denied an opportunity to defend himself by putting questions in the cross examination to the concerned passengers. The Industrial Tribunal was of further view that the challan issued against the respondent No.1 has got the statements of the passengers and car driver recorded on its back was

not signed by the car driver. It also holds that there is no evidence to show that the statement was recorded by the car driver in his own handwriting and as such the statement given by the car driver on the back of the challan is of no help to the petitioner corporation to establish the case against respondent No.1. It also holds that the statement given by the passengers is neither witnessed by the checking staff nor by the conductor nor the driver of the car who helped the checking staff all the time. The passengers did not appear in the inquiry to confirm the statement made by them nor any statement was given by the checking staff for not obtaining the signatures of the conductor or the car driver on the statement of the passenger. It holds that the statement of the alleged passengers and of the car driver were not genuine evidence before the Inquiry Officer to hold the respondent No.1 guilty and thereby vitiates the inquiry proceedings and the report thereon.

19. I note that insofar as the competency of Mr.R.D.Bhardwaj to conduct the inquiry proceedings has never been challenged by the respondent No.1 in reply to the charge-sheet or during the inquiry proceedings or during the final statement given by him. The respondent No.1 had initially filed a reply to the charge-sheet. Assuming that the Inquiry Officer was not appointed by that time and his competency could not have been challenged at that time, the respondent No.1 in his representation dated March 16, 1988 which was his final statement in inquiry proceedings, has stated as under:

*To
The Enquiry Officer,
East Zone, I.P.Depot,
New Delhi.*

Sir,

It is submitted that on 8.4.1985 the charges levelled against me on bus No.9078 when I was going from Delhi to Shimla. Those are totally false. I have already given my final reply/statement in the charge-sheet that is my reply. Rest passengers and driver had been on my enquiry. My chargesheet No. is IPO/AI(T)/CS311/85/3260.

Yours conductor

*Sd/-Rajpal Singh,
B.No.13863, W.P.II.
Dated 16.3.1988.*

20. A perusal of the aforesaid statement would show that he has referred to his earlier reply given to the charge-sheet. I find that no objection of any sort has been taken with respect to the competency of even the Depot Manager to issue the charge-sheet. Even in this letter dated March 16, 1988, which was given at the time of closing of the proceedings, no objection with regard to the Inquiry Officer; with regard to denial of proper opportunity; with regard to denial of documents and with regard to denial of cross examination was ever taken by the respondent No.1. Rather I find that in the inquiry proceedings held on September 10, 1987 a specific query was asked about any assistance being required to him. The answer of the respondent No.1 was in the negative. Further he qualifies his statement that he do not need any assistance by saying that he will do himself. It is also noted that he was asked to put questions to the witnesses which he refused. I find that he has put signatures on the order sheets. In fact, the respondent No. 1 had not placed on record any complaint or representation at least till the filing of the complaint under Section 33-A of the Act showing he had raised all the issues which he had for the first time raised in his complaint before the Industrial Tribunal. In the absence of such grounds

being raised by him, the Industrial Tribunal could not have considered those issues while vitiating the inquiry. Further the conclusion of the Industrial Tribunal that since the Inquiry Officer had not appeared in the witness box to deal with the allegations of the respondent No. 1 which have gone unchallenged being another ground for the Industrial Tribunal to vitiate the inquiry, I find that the absence of Inquiry Officer could not have advanced the case of the respondent No.1 in view of my aforesaid conclusion to the extent that the respondent No.1 had not taken any such plea in his representations to the Inquiry Officer, neither he has placed one such representation to the Disciplinary Authority wherein he has pleaded the denial of principles of natural justice. In the absence of such objections by the respondent No.1, even if the Inquiry Officer was not present surely the Industrial Tribunal could not have vitiated the enquiry.

21. I may state here that even the conclusion of the Industrial Tribunal that the absence of the concerned passengers in the inquiry amounted to denial of opportunity to the respondent No.1 to defend himself is concerned, the same is perverse as it has come on record that letters were sent to the passengers at the available address. Even assuming that there is no evidence filed by the petitioner showing dispatch of the letters by the petitioner, the effect would be that passengers were not called to depose in inquiry. The law is well settled on this aspect that it is not necessary that passengers need to be called as witnesses during the inquiry. In this regard reference is made to the following judgments:

(1) 2004 (10) DLT 493, Delhi Transport Corporation Vs. N.L.Kakkar

(2) 1979 (XVI) DLT 220, Delhi Transport Corporation Vs. Presiding Officer, Additional Industrial Tribunal.

22. The allegation of the respondent No.1 that inquiry was held at the behest of T.I Ram Kumar has no basis. No such contention has been raised by the respondent No.1 in the application under Section 33-A of the Act. If such an allegation is made, surely T.I Ram Kumar was a necessary party so as to controvert the allegations made. The finding insofar as the statement of car driver was unsigned is concerned, the same would not effect the conclusion of the Inquiry Officer inasmuch as there is a report of the T.I Ram Kumar and Harbilas A.T.I. It is not a case of no evidence but there is some evidence before the Inquiry Officer in the form of statement of Ram Kumar T.I and Harbilas A.T.I i.e. the report prepared by them. It is noted that the Industrial Tribunal has not approached the issue in right perspective and fell into error. It is not a case of a perverse finding. The Supreme Court in the case of *State of Haryana vs. Rattan Singh* Civil Appeal No.922/1976, wherein the Supreme Court has held as under:

“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 common-sense 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.”

23. Having held that the order dated May 26, 2000 is bad, the award dated April 25, 2001 being a consequential one, also need to go. If the Inquiry proceedings are sustained, then the only aspect the Industrial

Tribunal was required to go into, is the quantum of punishment. The non-issuance of tickets after collecting the fare, is a gross misconduct (*Ref.: 2001 (2) SCC 574, Karnataka State Road Transport Corporation Vs. B.S. Hullikatta*). It would be a case of loss of confidence. The punishment of removal in the facts, would be justified. The Supreme Court in the cases reported as *AIR 1972 SC 1343, Air India Corporation, Bombay Vs. V.A. Rebellow and Anr.*, *AIR 1971 SC 2414 Francis Kalein & AMP Co. Pvt. Ltd. Vs. Their Workmen* and *AIR 2005 SC 2769 Bharat Heavy Electricals Ltd. Vs. M.Chandrasekhar Reddy & Ors.*, inter alia held that once an employer has lost confidence in the employee, the order of punishment must be considered to be immune from challenge for the reason that discharging the office of trust and confidence requires absolute integrity and in a case of loss of confidence, reinstatement cannot be directed. In the case in hand, it is not a case of bona fide loss of confidence in the employee inasmuch as the respondent No. 1 was holding the post of Conductor, issuing tickets on collection of fare. If a passenger gives the fare for travelling, he is required to get ticket, which was not given to the passengers by the respondent No. 1 in this case. In other words, the fare collected was not accounted for. It is case of abuse of position by the respondent No. 1. In such eventuality, continuance of such a person would be detrimental to the discipline of the establishment.

24. Insofar as the judgments relied upon by the learned counsel for the parties, first, I deal with the judgments relied upon by the learned counsel for the respondent No. 1. Insofar as the *Jaipur Zila Sehkar Bhoomi Vikas Bank Ltd.'s case (supra)* and *Managing Director Tamil Nadu State Transport Corporation's case (supra)* are concerned, the

issue decided by the Supreme Court is well known; the same would not be relevant in the facts of this case, moreso, when I have concurred with the view of the Industrial Tribunal about the maintainability of an application under Section 33-A of the Act. Insofar as the judgments in the cases of *Sawai Singh (supra)* and *Surath Chandra Chakraborty (supra)* are concerned, they primarily deal with the vagueness of charge sheet. I find that the charge framed against the respondent No. 1 is very specific, which could easily be understood by the respondent No. 1. In any case, no such plea was taken by the respondent No. 1 in his reply to the charge sheet nor during the course of the enquiry proceedings. Such a plea would be an after-thought and need to be rejected. Insofar as the judgments in the cases of *Sadhu Ram (supra)*, *Harbans Lal (supra)*, *Calcutta Port Shramik Union (supra)*, *Ramnik Lal N. Bhutta (supra)* and *Khardah and Co. Ltd. (supra)* are concerned, they relate to the proposition of law that this Court cannot sit as an appellate authority over a finding of fact given by the Industrial Tribunal. Such a proposition of law is well settled. The scope of certiorari proceedings has been held by the Supreme Court to be as under in *AIR 1964 SC 477*:

“12. In Syed Yakoob case, this Court delineated the scope of the writ of certiorari in the following words:

‘7. The question about the limits of the jurisdiction of the High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by

inferior courts or tribunals without jurisdiction, or is in excess of it, or as result of failure to exercise of jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In

dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath Vs. Ahmad Ishaque, Nagendra Nath Bora Vs. Commr. of Hills Division and Kaushalya Devi Vs. Bachittar Singh).

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said*

conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the fact of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the fact of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the fact of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the fact of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened”

Suffice to state, the conclusion of this Court is that the Industrial Tribunal has misdirected itself in not appreciating the records in proper perspective inasmuch as the conclusion as arrived at by the Industrial Tribunal could not have been arrived at in the given facts. Insofar as the reliance placed by the learned counsel in *Kharag Singh's case (supra)* is concerned, I find from the record that Enquiry officer had not acted as Presenting Officer and the Prosecutor, so as to vitiate the enquiry. Such objection has to be seen from the perspective of the Rules. In any case, not even an averment/allegation that the Enquiry Officer was bias. In the absence of any foundation in that regard, such a plea cannot be accepted.

25. The reliance placed by the learned counsel for the respondent No. 1 on *Shatrughan Lal's case (supra)* is also misconceived. I find that the enquiry proceedings have been held, giving proper opportunity to the respondent No. 1. In any case, no prejudice has been caused to the respondent No. 1. There is some evidence in the nature of a report by the TI/ATI. I find, neither in the reply to the charge sheet or in his final statement, the respondent No. 1 made any case of denial of documents. In fact, from the two statements, it is noted that no document has been asked for. It is contrary to the record that Enquiry Officer did not permit him to lead his evidence. To say that he was made to sit outside the room, is also not borne out from the record. Sufficient opportunity was given to the respondent No. 1 to cross-examine the witness, which he did not avail.

26. Insofar as the judgment of the Supreme Court in *Kardha & Co. Ltd.'s case (supra)* is concerned, the same would not be applicable in this case as I have already concluded that the order of the Industrial

Tribunal dated June 25, 2000, vitiating the enquiry is bad. Since the enquiry was properly held, there was no question for the petitioner to lead evidence before the Industrial Tribunal and the Industrial Tribunal would not try to examine the case on merit of the findings as in such an eventuality, it cannot sit as an appellate authority over the conclusion of the Inquiry Officer. Similarly, the ratio of the judgment of the Supreme Court in *K.Manche Gowda's case (supra)* would also not be applicable as the Supreme Court in the said case has held that if the punishment proposed is based on previous punishment or his previous bad record, this should be included in second notice, so that he may be able to give an explanation. I find that the charge sheet itself specify that his past record would be taken into consideration at the time of passing of final order. In any case, the Disciplinary Authority's order dated September 06, 1988 does not reflect that his past record was actually taken into consideration. Hence, no prejudice has been caused to the respondent No. 1 in that regard.

27. Insofar as the *Navyug Udyog (Plastics) (P) Ltd. Vs. State of U.P. & Ors., 2003 (6) AWC All.*, the Allahabad High Court was concerned with an ex parte award against the employer who could not provide satisfactory explanation for being absent before the Labour Court, whereby the Labour Court has directed reinstatement of workman with continuity of service and full back wages. Since I have set aside the order of the Industrial Tribunal vitiating the enquiry, no such order can be given in the facts of this case.

28. Insofar as the case of *Delhi Transport Corporation Vs. Shyam Singh, 190 (2012) DLT 91* is concerned, the ratio of the said judgment would not be applicable as the same is peculiar to the facts of that case.

In the present case, I find that the principles of natural justice have been followed by the petitioner while holding the proceedings against the respondent No. 1.

29. Similar would be the position in the case of *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through LRs*, (1982) 2 SCC 376. Even the case relied upon by the learned counsel for the respondent No. 1 in *Delhi Transport Corporation Vs. Maha Singh*, W.P.(C) No. 2228/2004, decided on April 28, 2005 would be of no help to the respondent No. 1 as no such contention was ever taken by the respondent No. 1 during the course of the proceedings before the Enquiry Officer nor with the Disciplinary Authority.

30. Insofar as the case of *M/s. Rajasthan Co-operative Dairy Federation Ltd. Vs. The Judge Industrial Tribunal and Labour Court, Bikaner*, 2001 (90) FLR 33 is concerned, the same has no applicability in the case in hand. The Division Bench of the Rajasthan High Court was primarily concerned with the definition of the word 'workman' to include workman employed by the Contractor. The answer was in affirmative.

31. In *Association of Indian Engineers' case (supra)*, the Bombay High Court has held that where the report in question nowhere disclosed analysis of evidence, nor was any effort on the part of the Enquiry Officer to link any part of the evidence with misconduct on the part of the employee, in that eventuality, the enquiry cannot be said to be fair and proper, which is not the case here nor such a plea was advanced by the respondent No. 1 before the authorities concerned.

32. On the other hand, insofar as the authorities relied upon by the learned counsel for the petitioner are concerned, in *Karnataka State*

Road Transport Corporation's case (supra), the Supreme Court was considering an issue, where in the eventuality the enquiry stands vitiated, then the right of employer to adduce additional evidence before the Labour Court or Industrial Tribunal must be availed by employer by making proper and prompt request. I find, the employer was given such an opportunity. Since I have held the order vitiating the enquiry as bad, the opportunity to the employer to lead evidence, would be nullified. This judgment would not be of any relevance here. Similarly, *Lakshmiratan Cotton Mill Ltd.'s case (supra)* had no applicability in the facts of this case. So also *Delhi Cloth and General Mill Company's case (supra)*. The judgment in *B.Hullikatti's case (supra)* has relevancy here in the facts of this case, wherein the Supreme Court has held that where bus conductors collect the fares and do not issue tickets, is a case of gross misconduct. The case of *Cooper Engineering Ltd. (supra)* also has no applicability in the facts of this case. Insofar as the judgment of the Supreme Court in the case of *Dr. Harbhajan Singh Greasy (supra)* is concerned, the Supreme Court was dealing with a case where, the enquiry was held to be faulty. The Supreme Court held that it is not proper to direct reinstatement with consequential benefits. In such an eventuality, the procedure is to remand the case back to the Disciplinary Authority and to follow procedure from the stage, at which, the case was pointed out and take action in accordance with law. In any case, the power of the Labour Court to call for fresh evidence is not denied. The judgment is not applicable in the facts of this case. The case of *State of Haryana Vs. Ratan Singh (supra)* is fully applicable to this case wherein the Supreme Court has held that, there must be a careful evaluation of such material and should not be glibly swallow what is strictly speaking

not relevant under Indian Evidence Act. The essence of a judicial approach is objectability, exclusion of external material and observance of principles of natural justice.

33. Having held that the order vitiating the enquiry dated May 26, 2000 is bad, so also the consequential order dated April 25, 2001, I find that the charge against the respondent No. 1 was for a misconduct, which stood proved, the present petition needs to be allowed. The order/award dated May 26, 2000, so also the award dated April 25, 2001 and order dated September 23, 1995 are set aside. I do so accordingly. The writ petition is allowed with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

APRIL 16, 2014

km/akb