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

DECIDED ON : 5th AUGUST, 2014

+ **LPA 497/2014**

DELHI TRANSPORT CORPORATION Appellant

Through : Ms.Avnish Ahlawat, Advocate.

versus

SH.AMARJEET SINGH Respondent

Through : Mr.Atul T.N., Advocate.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

CM No.12347/2014

For the reasons mentioned in the application, the delay in filing the present appeal is condoned.

The application stands disposed of.

LPA 497/2014, CAVEAT No.641/2014 & CM No.12346/2014 (Stay)

1. In this intra – Court appeal, the appellant – Delhi Transport Corporation (herein after referred as ‘DTC’) impugns a judgment dated 22.04.2014 delivered by a learned Single Judge of this Court in W.P.(C) 400/2003 whereby the appellant’s writ petition to quash the order dated 18.03.2002 passed by the Industrial Tribunal dismissing its petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 by which approval

was sought for its directions for removal of the Respondent from service was dismissed.

2. Shorn of details, the facts which are essential to be stated are that the appellant – DTC filed a petition under Section 33(2)(b) of the Industrial Disputes Act before Industrial Tribunal. The charges levelled against the Respondent were that on 04.05.1989 while on duty as a Conductor on route New Delhi – Bulandshahr, he issued tickets to two passengers of less denomination of ₹ 2.50/- each. The said passengers had boarded the bus at Sikandrabad to go to Ghaziabad. Members of the Ticket Checking Staff of the appellant inspected the bus and found that the tickets issued to the said passengers were only in the denomination of ₹ 2.50/- which were valid from Sikandrabad to Dadri. The passengers told the Checking Staff that they had paid fare charges of ₹ 5.00/- per ticket to the Conductor whereas they were issued tickets only in the denomination of ₹ 2.50/-. On the basis of the report of the Checking Staff, the Manager of the concerned Depot i.e. BBM Depot, issued charge-sheet dated 15.05.1989 to the Respondent for causing financial loss to the employer and for committing irregularity and ‘misconduct’ within the meaning of Executive Instructions regarding the duties of a Conductor and the Standing Orders governing the conduct of DTC employees. In an enquiry conducted, the Enquiry Officer found the charges proved. The Manager, BBM Depot acting as a Disciplinary Authority issued a show cause notice on 25.07.1989 to the Respondent with proposed punishment of removal from service. The Disciplinary Authority passed the order to confirm punishment of removal from service of the Respondent on 29.05.1990 and remitted one month’s salary by way of Money Order and an appropriate

petition under Section 33(2)(b) of the Industrial Disputes Act was also filed before the Industrial Tribunal.

3. Record reveals that on 06.03.1991, a preliminary issue was framed which reads as under :

“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice? ”

4. After hearing the arguments, the Tribunal on 29.03.2001 decided the said issue against the Appellant as the report of the Enquiry Officer was found perverse, inasmuch as the Enquiry Officer admitted that letter Ex.RW-1/2 received from one of the defaulting passengers was not taken into consideration while submitting his findings. The said communication revealed that the said passenger had asked the Conductor to issue a ticket only till Dadri and the Checking Team was informed that he could not get off at his destination as he had slept over.

5. On 29.03.2001, the following additional issues were framed by the Industrial Tribunal :

*“1. Whether the respondent committed the misconduct as mentioned in the petition and alleged in the charge-sheet, issued by the petitioner?
2. Whether the petitioner remitted one month’s wage to the respondent at the time of his removal from service?
3. Relief.”*

6. The parties led their respective evidence. On appreciation of the evidence and considering the rival contentions of the parties, the Tribunal held issue no.1 against the Appellant and came to the conclusion that DTC had failed to prove the charge of ‘misconduct’ against the

Respondent. Issue No.2 was decided in favour of the Appellant. In view of the findings on issue No.1, the necessary approval as sought by the Appellant was not given under Section 33(2)(b) of the Industrial Disputes Act and the petition was rejected. Aggrieved by the said order, the Appellant preferred writ petition before the learned Single Judge. The learned Single Judge did not find any merit in the writ petition and upheld the order of the Tribunal dated 18.03.2002. However, it was ordered that in case the order dated 18.03.2002 is implemented within three months, the Respondent would remain bound by the statement made by his counsel i.e. he will be satisfied in case 50% of back wages plus relief of re-instatement was given to him.

7. We have heard learned counsel for the parties and have examined the record. Only contention of the Appellant's counsel is that the Tribunal had no jurisdiction to consider the case as a full-fledged industrial dispute which could have been done only in case there was reference under Section 10 of the Industrial Disputes Act. The Tribunal ought to have only considered the prima facie case to find out if the Respondent was given fair and reasonable opportunity in the enquiry proceedings initiated against him. The object behind the legislation under Section 33(2)(b) of the Act was to enable the Tribunal to oversee that no unfair labour practice of victimization has been practised by the management and no mala fides were involved in passing the orders. It is further urged that inability of the Appellant to examine the defaulting passengers was inconsequential as in '*State of Haryana & anr. vs. Rattan Singh*', (1977) 2 SCC 491, it has been categorically held that the Courts

should not insist to produce defaulting passengers before recording a valid finding.

8. After hearing the learned counsel for the parties and going through the decision cited, we feel that the issue stands covered and clinched by the decision of this Court in LPA 949/2011 (Delhi Transport Corporation vs. Ramesh Chand), decided on 31.07.2012, on similar grounds. Reliance was placed in the said judgment on '*M/s.Bharat Iron Works vs. Bhagubhai Balubhai Patel and ors.*', AIR 1976 SC 98, and '*Lalla Ram vs. Management of D.C.M. Chemical Works Ltd.*', AIR 1978 SC 1004. In '*M/s.Bharat Iron Works vs. Bhagubhai Balubhai Patel and ors.*' (supra), 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 the 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 levelled 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.”

9. In ‘*Lalla Ram vs. Management of D.C.M. Chemical Works Ltd.*’ (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. RamNaresh 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.”

10. This Court in ‘*Delhi Transport Corporation vs. Ramesh Chand*’ (supra) held :

*“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.”*

11. 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 29.03.2001 was that the finding was perverse and which obviously means that the enquiry was neither legal nor valid. It is apt to note that DTC did not challenge the findings on the preliminary issue. In such an 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 considered by the Tribunal. The conclusion was arrived at after examining the evidence on record. Thus, the course of action adopted by the Tribunal cannot be faulted with. It cannot be inferred that the Tribunal overstepped jurisdiction under Section 33(2)(b) of the Act to frame issues and record its findings. It was open for the Tribunal to find out its own assessment of the evidence adduced before it whether there was any justification for dismissal order or not.

12. In ‘*Kuldeep Singh vs. The Commissioner of Police & ors.*’, AIR 1999 SC 677, it was held :

“6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent

man or the findings were perverse or made at the dictate of the superior authority."

13. In the instant case, the Appellant did not produce cogent legal evidence to establish 'misconduct' on the part of the Respondent. The crucial testimony was that of two passengers Ranvir Singh and Anil Kumar to whom allegedly tickets of less denomination were issued. However, none of them was examined during enquiry. Contrary to that Ranvir Singh sent communication dated 19.06.1989 (Ex.RW1/2) to the Appellant in which he exonerated the Respondent and took the blame on himself for getting ticket for Dadri for a sum of ₹ 2.50/- only. This communication was not taken into consideration by the Enquiry Officer before arriving at his conclusion about 'misconduct'. It appears that the Checking Staff considered the statements of the defaulting passengers as gospel truth and believed their version without independent corroboration. There was every possibility of the passengers to have obtained tickets for that particular amount and to save their own skin and to avoid penalty for getting tickets of less denomination to have accused the Respondent. It is unbelievable that the passengers would pay complete fare of ₹ 5.00/- and would not insist for the ticket for the destination for which the payment was made in full. The defaulting passengers were not fined for performing journey beyond the destination for which tickets in their possession permitted. During the process of checking, the cash collected by the Respondent was not checked to tally it with the tickets issued.

14. In view of the aforesaid analysis, we find no merit in the appeal to interfere with the impugned judgment which is based upon fair

appraisal of the evidence. The appeal is dismissed. Pending applications also stand disposed of. There shall be no order as to costs.

(S.P.GARG)
JUDGE

(REVA KHETRAPAL)
JUDGE

AUGUST 05, 2014
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