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

Reserved on: 04th January, 2018
Pronounced on:7th May, 2018

\+ **W.P. (C) 17931/2004**

D.T.C ..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

SH. BIJENDER SINGH ..... Respondent

Through: Mr. Shanker Raju with Mr. Nilesh Gaur, Advocates.

\+ **W.P. (C) 20084/2004**

BIJENDER SINGH ..... Petitioner

Through: Mr. Shanker Raju with Mr. Nilesh Gaur, Advocates.

versus

D.T.C ..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
% JUDGMENT

C. HARI SHANKAR, J.

1. The order against which the Delhi Transport Corporation (hereinafter referred to as "DTC") is before this Court in WP (C) 17931/2004, was passed, on 19th December, 2003, by the learned Industrial Tribunal (hereinafter referred to as "the Learned Tribunal"),

in an application filed by the DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The same order constitutes subject matter of WP (C) 2008/2004, filed by Bijender Singh (hereinafter referred to as "the workman") which, predictably, seeks implementation of the said order and, consequently, issuance of a direction, to the DTC, to pay, to the workman, his entire arrears of salary, from the date of his removal, along with consequential benefits.

2. These writ petitions have been analogously heard by me, and are being disposed of by this common judgement.

3. The sequence of this litigation is required to be traced, at the outset.

4. The workman was, while he was employed as the Conductor in DTC, issued a charge sheet dated 12th January, 1990, proposing to take action against him, under the Delhi Road Transport Amendment Laws, 1971 read with the Delhi Road Transport Authority (Conditions & Appointment of Service) Regulations, 1952. It was alleged, therein, that, on 31st December, 1989, while he was on duty on Bus No.DVP-6486, which was running between Ajmer and Delhi, he had failed to issue tickets to two employees of Haryana Roadways, and that, on objection thereto being taken by Mr. Hari Raj Singh, Regional Manager (Technical) in the DTC, who was also travelling in the same bus, the workman "abused" him, "misbehaved" with him and employed "unparliamentary language". It was further alleged that, on

Hari Raj Singh objecting to the workman smoking in the running bus, the workman misbehaved with him. These acts, on the part of the workman, it was alleged, contravened Clauses 6 and 7 of the Circular in which the duties of conductors in the DTC were prescribed, and amounted, consequently, to misconduct. The workman was, therefore, directed to show cause against action being taken against him therefor. A copy of the report, dated 4th January, 1990, of Hari Raj Singh, on the basis of which, avowedly, the chargesheet had been issued, was appended to the chargesheet.

5. The workman submitted his response to the aforementioned charge sheet, in which he denied the allegations against him and sought to submit that, instead, it was Hari Raj Singh who exhibited abusive behaviour towards him.

6. A departmental inquiry inexorably followed, in which Mr. G.K. Sharma, Depot Manager, Pragati Maidan, of the DTC, was appointed as the Inquiry Officer (hereinafter referred to as "I/O"). The inquiry culminated in an Inquiry Report, dated 13th February, 1990, which held the charges against the workman to be proved. The report, to the extent it is relevant, deserves to be extracted as under:

> "On 12.2.90 a detailed enquiry was organised in which we Hari Raj Singh, Regional Manager Technical (South) in his statement during the enquiry said that on 31.12.89 at about 1115 hours he boarded DTC No. 6486 at Jaipur. When the conductor asked to passengers sitting in the seat ahead to buy tickets, the passengers said they were staff members of Haryana Roadways upon which the conductor did not issue any tickets to them. Because the conductor had not issued tickets to the staff of other Roadways, therefore, Sh. Singh showed his identity card to the conductor upon which the

conductor said that in this bus he would issue tickets even to the Chairman of DTC. When Sh. Singh told him that he had not issue tickets to the staff of Haryana Roadways then the conductor replied "They are my brothers"and started abusing the officials of DTC called them anti-labour and they have dismissed our brothers during strike. Since the conductor was using abusive words, Shri Singh thought it wise to remain quiet and Shri Singh paid Rs.82/- to the conductor and purchased tickets for himself and his wife. After issuing tickets, the conductor started smoking bidi while sitting on the bonnet of the bus and when it was objected to, he refused to hand over the Complaint Book and started talking in filthy language. Ahead of Kotputali, the conductor stopped the bus at an unauthorized roadside restaurant (Dhabha). The estables there were expensive and of poor quality. The driver and conductor alongwith one or two passengers ate there.

During enquiry, conductor was given all the opportunities to cross-examine the Regional Manager. During cross-examination the accused became highly agitated and started talking in loud voice and started pressurizing the undersigned for allowing him to ask irrelevant and inconsistent questions, on which the accused was asked to put only proper and reasonable question to the Regional Manager but the accused replied that he would get the enquiry done according to his desire and unless enquiry is done according to his desire, he would not let the enquiry go ahead and would also not put his signature to the same. Even on being repeatedly advised, the accused did not stop talking irrelevantly and created such a bad scene that it was not possible to conduct the enquiry any further. Despite assurances of giving all the opportunities for full cooperation and defence, the conductor did not agree for participating in the enquiry and while still talking irrelevantly, he got up and walked out due to which the enquiry had to be concluded.

CONCLUSION

On the basis of the above detailed enquiry, it is apparent that despite giving all the opportunities for his defence and placing his facts during the enquiry, the conductor did not cooperate and tried to force his view point. Despite being advised repeatedly by the undersigned, the accused did not agree to participate, which obstructed the proceedings and due to his walking out, the enquiry had to be concluded mid-way.

> During enquiry, the passengers mentioned in the Complaint Book were called by Registered Post but none of the passenger participated in the inquiry. Instead, Registered Letters have been back in this office. It seems that with a view to save himself, the conductor has got the wrong names and address written in the Complaint Book by the passengers. Since the accused walked out of the enquiry proceedings, it shows that the accused is not interested in the enquiry and he talked in the same vein during the enquiry. In these circumstances, his reply to the charge sheet was seriously perused, as a defence on behalf of the accused. But on perusal, it was found that the conductor, in contrast, complained against Shri Singh, Regional Manager, that he abused, misbehaved and threatened to have him dismissed. The accused in his reply has not given any substantial proof in his defence.
>
> In my opinion, the accused has definitely misbehaved with the Regional Manger, based him and used objectionable words and during enquiry also behaved in the similar vein. Therefore, in my opinion the charges leveled against the conductor are found to be proved. The case is submitted for further action."

7. The Depot Manager of the DTC, having perused the aforementioned Inquiry Report in his capacity as Disciplinary Authority, noted, thereon, his complete agreement therewith, as well as his "interim opinion" that the workman deserved to be removed from the services of the DTC. However, it was further observed that, before confirming the said proposed punishment, a Show Cause Notice deserved to be issued to the workman.

8. In accordance with the said "interim opinion" of the Depot Manager of the DTC, a Show Cause Notice was issued to the workman on 23rd February, 1990, proposing his removal from service and requiring him to show cause thereagainst. The workman,

apparently, showed cause whereafter, *vide* order dated 16th April, 1990, the Depot Manager, opining that the explanation of the workman was not found satisfactory, imposed, on him, the punishment of removal from the services of the DTC, w.e.f. the said date, i.e. 16th April, 1990. The said order also directed remittance, to the workman, of one month's wages, as required by Section 33(12)(b) of the "the Act"), and further stated that an application, under Section 33 (2)(b) of the Act would be moved, before the learned Tribunal in Reference No D No 17 of 1988, which was already pending before it, and which involved the workman.

9. Pursuant thereto, an application was filed, under Section 33(2)(b) of the ID Act, for approval of the decision of the DTC to remove the workman from service. The said application was registered as OP No.15/1990.

10. The workman filed a written statement, on 8th August, 1990, opposing the application, of the DTC, under Section 33(2)(b) the Act. It was emphasised, in the said written statement, that there was no independent witness/evidence, to support the allegations made by the DTC against him, and that no evidence of any of the passengers on the bus, had been obtained. Neither, it was pointed out, did the charge-sheet, issued to the workman, particularise the "abusive" and "unparliamentary" words alleged to have been employed by him against Hari Raj Singh. The allegations were, therefore, it was submitted, vague, and the charge-sheet itself, consequently, stood vitiated. Denying, in their entirety, the allegations against him, the

workman submitted, in his written statement that, contrary to the case sought to be built up against him by the DTC, in fact, it was Hari Raj Singh who started the altercation, by, without disclosing his identity, expressing unwillingness to purchase the ticket for the journey. It was further contended that, as a matter of fact, the passengers on the bus entered complaints, in the complaint-book, against Hari Raj Singh. For this purpose, the workman also requested for exhibiting of the complaint book in the enquiry, as also for summoning the passengers who had recorded the complainant, in the said complaint book, against Hari Raj Singh. It was further contended that no legally valid enquiry had been held, and that the workman had not been provided either with the proposed list of witnesses or documents, or their copies. It was further submitted that the workman had not been permitted to engage any Defence Assistant, and that the I/O himself acted as the Presenting Officer on behalf of the DTC. Equally biased and unfair, it was submitted, was the attitude of the Depot Manager, who desisted from looking into any of the submissions advanced by the workman in his defence. In the circumstances, the workman prayed that the request, by the DTC, for approval of its decision to remove him from service, be rejected by the learned Tribunal.

11. Consequent on completion of pleadings by the DTC and the workman in the said application of the DTC, the following preliminary issue was framed by the learned Tribunal:

> "Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice".

12. Evidence was led, on behalf of the DTC, by the I/O Mr. G.K. Sharma, as AW-1. Mr. Sharma deposed, in his examination-in-chief on 10th August, 1992, that (i) he had not supplied, to the workman, the list of witnesses to be examined by the DTC, (ii) he offered the workman the help of a Defence Assistant, which he declined, (iii) the passengers in the bus were summoned, by Registered Post, but the envelopes were received back, with the postal endorsement that the addressees could not be traced despite inquiry, (iv) the workman had himself got statements, in his favour, entered in the complaint book, from some of the passengers, (v) he did not summon the original complaint book, and only an extract, thereof, was filed before him, (vi) the complete statement of Hari Raj Singh was recorded, during inquiry, but cross examination of the said witness could not be completed, as the workman started quarrelling with him, and also alleged collusion, of the I/O, with Hari Raj Singh, (vii) in the circumstances, he had to conclude the inquiry, on 12th February, 1990, as the workman refused to take further part in the proceedings though he had not recorded the statement of the workman, to that effect, (viii) he had not lodged any complaint, to any other high official, regarding the conduct of the workman, (ix) he had not recorded the statement of any witness, regarding the conduct and behaviour of the workman, (x) he did not ask the workman for his defence statement, or his defence evidence, nor did he inform the workman of any further date of hearing, (xi) the workman refused to sign the proceedings of 12th February, 1990, (xii) he concluded the inquiry proceedings, on 12th February, 1990, only verbally informing the workman, without any recording, to the effect, in the proceeding of the said date, to that

effect and (xiii) the statements of Manju, Stenographer and Ram Kumar, Senior Clerk, were recorded, as evidence of the proceedings on 12th February, 1990. I may note, here, that the said statements of Manju and Ram Kumar have not been brought on record by the DTC.

13. Hari Raj Singh, as AW-1, filed his affidavit, by way of evidence, dated 27th May, 1998, in which it was alleged that the workman had "committed the following irregularities:-

(i) Double standard for staff Members.

(ii) Smoking Bidi in the Bus

(iii) Misbehaviour and use of abusive language."

14. The preliminary issue regarding the legality and validity of the inquiry held against the workman was decided against the DTC *vide* order dated 15th October, 1998, passed by the learned Tribunal. It is conceded, by the DTC, that the said order remains unchallenged and has, consequently, attained finality.

15. The DTC, thereafter applied to the learned Tribunal, for permission to establish, on merits, the factum of misconduct having been committed by the workman. Acceding to the said request, the following further issues were framed by the Ld. Tribunal:

"1) Whether the respondent had committed the misconduct for which he was removed form the service?

2) Relief.".

16. Both the above issues were decided by the learned Tribunal against the DTC *vide* order dated 26th May, 1999 on the ground that the DTC had failed to lead evidence in its favour by producing Mr. Hari Raj Singh and, consequently, approval was sought by the DTC under Section 33(2)(b) of the ID Act, was declined.

17. The DTC proceeded to challenge the said order, dated 26th May, 1999 of the learned Tribunal, before this Court, by way of CWP 4339/2000, which was disposed of, by a learned Single Judge of this Court, by the following brief order dated 28th July, 2003:

> "1. The impugned order dated 26th May, 1999 closes the evidence of the petitioner by way of affidavit as examination-in-chief because the deponent, Shri Hari Raj Singh was not present for cross-examination. The solitary instance of the absence of the Hari Raj Singh on 26th May, 1999 led to the impugned order. Based on no evidence led on behalf of the management, the application seeking approval for termination of respondent's services was dismissed by the Tribunal.
>
> 2. In my view, considering the facts and the circumstances of the case and the nature of the allegations against the respondent/workman and a solitary instance of the deponent Hari Raj Singh's absence, it is appropriate that the petitioner be given the opportunity to lead its evidence subject to the payment of the costs as it is due to the petitioner's fault that the respondent/workman has been dragged in this Court.
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> 3. Accordingly, the Order dated 26th May, 1999 is set aside as it denies an opportunity to the petitioner management to lead the evidence of Shri Hari Raj Singh. Hari Raj Singh is directed to present himself in the witness box for cross-examination before the Industrial Tribunal on 19th September, 2003. The Industrial Tribunal is directed to dispose of the petitioner's application under Section 33(2)(b) of the Industrial Disputes Act, afresh and expeditiously preferably by 31st December, 2003. Since the respondent/workman has been dragged to this Court for no fault of his and entirely due

to the conduct of the petitioner management, he shall be entitled to the costs, quantified at Rs. 15,000/- payable on the date on which the parties appear before the Tribunal.

4. The writ petition accordingly stands allowed and disposed of as such."

18. Consequent on the aforementioned order, Hari Raj Singh (who was also cited as AW-1) presented himself before the Learned Tribunal on 5th November, 2003. On the said occasion, he deposed that the affidavit dated 27th May, 1998, submitted by him, could be treated as his examination-in-chief. His cross-examination was conducted by the Authorized Representative of the workman and reads as under: -

"I informed about the incident on telephone to the depot manager on 1.1.90 and thereafter sent the written complaint. On 1.1.90 I was in Delhi. I made the telephone call to depot manager, IP Depot. from my office DTC, Sindhiya House, Connaught Place, Delhi. I do not know whether any action was taken after telephone call or not. No DTC officer was present except me at the time of incident. It is incorrect to suggest that I refused to show my I-card to the respondent/conductor at the time of incident. It is incorrect to suggest that the respondent was not smoking Bidi at the time of incident. It is incorrect to suggest that I threatened the respondent/conductor to get him removed from service. It is incorrect that I have made a false report. It is incorrect to suggest that I am deposing falsely. It is further incorrect to suggest that the respondent neither misbehaved nor abused me. It is incorrect to suggest that the respondent had issued the ticket to the staff member of Haryana Roadways at the time of incident. It is correct that the respondent/conductor had not issued the ticket to the staff member of Haryana Roadways on the production of their I-card. It is correct that I was issued the ticket despite being I was member of DTC. However, I had shown my I-card to the conductor, but he still issued the ticket to me. It is incorrect to suggest that I have

made the false complaint as the conductor issued the ticket to me despite me being the member of DTC staff. It is incorrect to suggest that I am deposing falsely."

19. Shanti Swaroop, the Bill Clerk of the DTC, also tendered his evidence as AW-2, by way of affidavit, and was cross-examined. His evidence was only to the effect that one month's wages had been forwarded to the workman, *vide* Money Order No 4247 and 4248 dated 16th April, 1990. Inasmuch as there is no serious contest, by the workman, on this aspect of the matter, the evidence of AW-2 need not detain this court.

20. The workman led his own evidence, as RW-1. He appeared before the learned Tribunal on 14th November, 2003 and proved the affidavit tendered by him on the said date, deposing that the same could be treated as his examination-in-chief. The workman was cross-examined, and the record of the cross-examination (on 14th November, 2003) is as under:

"It is correct that I had not issued the tickets to two passengers travelling in the bus. It is wrong to suggest that I intentionally and dishonestly did not issue the tickets to those two passengers. Vol : I did not issue the tickets as they were the staff member of Rajasthan Roadways and working as checking staff. It is wrong to suggest that Sh. Hari Raj Singh had shown me the identity card prior to issuance of ticket to him. It is correct that Hari Raj Singh took the ticket without any objection. It is correct that while the two staff members were exempted from issuance of ticket, Sh. Hari Raj Singh objected why he was issued the ticket.

Qus : I put it to you that Sh. Hari Raj Singh had objected that why those two passengers were not issued the tickets?

Ans : Yes, it is correct that and I explained to him that I had not issued the tickets as they were members of the checking staff of Rajasthan Roadways.

It is wrong to suggest that I misbehaved with said Shri Hari Raj Singh and also stated that I am the owner of bus on this route and my rules follows. It is wrong to suggest that I abused Sh. Hari Raj Singh. It is wrong to suggest that I said that those passengers were my passengers and I will not spare even the CMD of DTC for issuance of ticket.

RW-1

It is wrong to suggest that I had been smoking in the bus, and on the objection on smoking, I abused Sh. Hari Raj Singh. It is wrong to suggest that Sh. Hari Raj Singh told me that he will made the complaint to authorities. It is further wrong to suggest that I abused Shri Hari Raj Singh. It is wrong to suggest that I did not gave the complaint book despite asking by Hari Raj Singh. It is wrong to suggest that I have committed the alleged misconduct. It is wrong to suggest that I am deposing falsely."

21. *Vide* the impugned Order, dated 19th December, 2003, the learned Tribunal decided Issue No 2, i.e., regarding disbursal of one month's wages to the workman, in favour of DTC. However, Issue No. 1 was decided in favour of the workman and against the DTC; as a consequence, the request for approval, of the removal of the workman from service, was declined and the application of the DTC, under Section 33(2)(b) of the Act, rejected accordingly. The reasoning of the learned Tribunal, which is contained in para 9 of the impugned order, reads as under:

"I have gone through the evidence led by the parties. From the evidence led by parties, it is established Sh. Hari Raj Singh who happens to be officer of DTC. Whereas he exempted to other staff members of Roadways having the pass. The witness Sh. Hari Raj Singh shown his annoyance to the respondent/conductor in the bus as well as by filing the

> complaint. Firstly, he made the complaint on telephone but feeling dissatisfied he made the complaint in writing after 4 days. The conduct of the witness AW-1 Sh. Hari Raj Singh shows that he was annoyed on the issuance of the tickets to him despite being officer of the DTC. Rather the statement made by respondent/conductor that Sh. Hari Raj Singh threatened him in the bus to get the respondent dismiss, appears to be correct. The approach of Sh. Hari Raj Singh shows that he was after the respondent for not exempting him from issuance of ticket. Even otherwise, the testimony of AW-1 Sh. Hari Raj Singh neither has any corroboration law appears to be correct. Consequently, in the absence of any corroborative material it would not be justified to punish the respondent on his soul testimony who himself is a disgruntled person for being issuance of the ticket. Thus, I am of the considered opinion that the management has miserably failed to establish the misconduct alleged against the respondent. Issue is decided against the applicant."

22. As already noticed at the commencement of this judgement, the DTC has challenged the aforementioned order, dated 19th December, 2003, passed by the learned Tribunal, whereas the workman seeks the enforcement thereof.

23. Appearing on behalf of the DTC, learned counsel Mr. Sarfraz Khan would contend that the learned Tribunal grossly exceeded the scope of the jurisdiction vested in it by Section 33(2)(b) of the Act, which does not permit a detailed examination of the sustainability of the allegations, against the workman, on merits. He has pressed into service, for the said purpose, the judgements of this Court in ***D.T.C. vs Shyam Lal, ILR (2010) V Del 431*** and ***D.T.C. vs Presiding Officer***, ***ILR (2008) I Del 764.*** Without prejudice thereto, Mr. Sarfraz Khan submits that, even in the event of this Court upholding the impugned order, the workman would be entitled only to lump-sum

compensation, for which purpose he relies on the judgement of a Division Bench of this Court in ***D.T.C. vs Sanjeevan Kumar, 2013 (5) SLR 328 (Del)***.

24. Appearing for the workman, learned counsel Mr. Shanker Raju submits, while supporting the impugned Order, that the I/O Mr. G.K. Sharma had, in his evidence before the learned Tribunal, as much as admitted all the illegalities in the manner in which he conducted the enquiry proceedings. That apart, he would submit that the order of the disciplinary authority, whereby his client was removed from service was non-speaking and could not, therefore, sustain the scrutiny of law. He also relies on the judgement of the Supreme Court in ***Ram Kishan vs U.O.I., (1995) 6 SCC 157***, to contend that the charges against his client were vague, as the chargesheet made no reference to the specific "abusive" or "unparliamentary" words alleged to have been used by him. Such a vague chargesheet, it was sought to be submitted by Mr. Raju, could hardly form the basis of a decision to remove the workman from service.

25. Having heard learned counsel and perused the record, I proceed to address the issues that arise for consideration, *seriatim*.

26. I am of the opinion that, in the facts of this case, it would not be open to the DTC to advance, before this Court, the submission that, in exercise of its jurisdiction under Section 33(2)(b) of the Act, the learned Tribunal ought not to have examined the merits of the allegations against the workman, or the sustainability, on merits, of

the decision, to remove him from service. The DTC itself prayed for an opportunity, from the learned Tribunal, to establish, on merits, the factum of misconduct, having been committed by the workman, and the said prayer was allowed. Consequent, thereupon, the learned Tribunal subsequently framed, as a separate issue, the question of whether the workman had committed the misconduct for which he was removed from service. Evidence was led, by the DTC, of G.K.Sharma, the I/O, testifying as AW-1, who was also cross-examined. Affidavit-in-evidence was also filed by Hari Raj Singh. When the DTC was unable to produce Hari Raj Singh to testify in the witness box, and, resultantly, the application, of the DTC, under Section 33(2)(b) of the Act was dismissed by the learned Tribunal, the DTC carried the matter to this Court by way of CWP 4339/2000. The said writ petition was disposed of, by this Court, by its order dated 28th July, 2003, which already stands extracted in para 16 *(supra),* allowing the DTC to lead the evidence of Hari Raj Singh, directing him to present himself in the witness box, for cross-examination, on 19th September, 2003. Needless to say, this would also enure, in the workman's favour, the right to lead his evidence, which he chose to do, by way of his affidavit, regarding which he was subsequently cross-examined. At none of the above stages of the proceedings before the learned Tribunal, did the DTC choose to contend that the jurisdiction, of the learned Tribunal, under Section 33(2)(b) of the Act, was circumscribed or limited, and that it was not open to the learned Tribunal to enter into the merits of the case against the workman. It would not be far from the truth, in fact, to hold that it was the DTC itself which invited a judgment from the learned Tribunal, on

merits; and, having done so, the DTC would have to sink, or swim, with the said decision – subject, of course, of the prerogative of the DTC to prosecute its remedies, by way of seeking judicial review thereof, which it has, by right, chosen to do by way of the present writ petition.

27. In these circumstances, the DTC, at this stage of proceedings, cannot seek to urge that the learned Tribunal exceeded its jurisdiction in entering into the allegations, against the workman or the sustainability, on merits, of the finding by the DTC, of the said allegations to have been proved. It appears, on the face of it, that the DTC was having no objection to the Tribunal examining the case on merits – predictably, as the preliminary issue regarding legality and validity of the inquiry had been decided against it, and a decision on merits had been sought by the DTC itself by requesting for permission to establish, before the learned Tribunal, the fact of commission of misconduct by the workman – but, having found its attempt unsuccessful, a bogey regarding the jurisdiction, of the learned Tribunal, to examine the case on merits, is now being sought to be raised. This, in my view, is utterly unconscionable, on facts and in law.

28. Article 227 of the Constitution of India confers, on this Court a somewhat limited jurisdiction, the peripheries and parameters thereof, have been examined by various judicial authorities. I had, in ***DTC v. Mool Chand*** , ***MANU/DE/2016/2017***, had an occasion to look into the issue, and had observed that the following classic exposition of the

law relating to *certiorari*, as contained in ***Sayed Yakoob v. K.S. Radhakrishanan, AIR 1964 SC 447***, entirely applied to such proceedings.

> "7. The question about the limits of the jurisdiction of 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 a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, 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 can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to 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.

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; 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 face 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 face 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 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 face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face 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 misconducted or contravened."

(Emphasis supplied)

29. Thereafter, relying on the well-known decisions in ***Management of Madurantakam Cooperative Sugar Mills Ltd. vs S. Viswanathan, (2005) 3 SCC 193, P.G.I of Medical Education and Research, Chandigarh vs Raj Kumar (2001) 2 SCC 54*** and ***M.P State Electricity Board vs Jarina Bee, (2003) 6 SSC 141***, I had culled out the following principles, regarding the role of this Court while reviewing, judicially, the award or order of the Labour Court or Industrial Tribunal.

(i) The Labour Court/ Industrial Tribunal is the final fact finding authority.

(ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/ unacceptable evidence.

(iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/ Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

(vi) "Perversity", for its part, is attributed to a judicial/ quasi

judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality.

(vii) In examining whether a decision is, or is not, perverse, the classic test, of the reasonable man"s conclusion on the facts before the authority concerned would apply.

(viii) Inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.

30. ***Mool Chand (supra)*** was followed by me, later, in ***D.T.C. vs Chander Singh, MANU/DE/3444/2017***. The said decision was carried, in appeal, by the DTC, to the Supreme Court, by way of SLP No. 5306/2018, which was dismissed, by the Supreme Court, *vide* order dated 9th March, 2018, clearly holding that no case for interference, with the judgment of this Court, existed.

31. As such, the above extracted principles, governing the scope of interference, by this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, with orders/awards of the learned Tribunal, would have to guide this case as well. Pithily put, such interference would be justified only where the findings of the learned Tribunal are perverse or contrary to the evidence on record. The possibility of another view, on the evidence available before the learned Tribunal, is no ground for this Court to interfere with its decision.

32. Tested on the above touchstone, I am unable to hold that the decision of the learned Tribunal, in the present case, is vitiated on account of perversity.

33. That apart, even independently appreciating the material before me, I am unable to sustain the decision, of the DTC, to remove the workman from service. The manner in which the DTC as well as the I/O has proceeded in this case, is, in fact, in my view, seriously suspect. No attempt was made to procure the evidence of the officials of Haryana Roadways, to whom allegedly the workman did not issue tickets. As regards the co-passengers in the bus, the I/O holds that notices sent to them, requisitioning their attendance in the inquiry proceedings, were returned on the ground that they were not available at the addresses stated therein. The observation, of the I/O, that the workman, "with a view to save himself got the wrong names and addresses written in the complaint book by the passengers", is not only presumptuous but preposterous as well. It is absurd to suggest that a conductor in a bus could influence the passengers of the bus to enter wrong names and addresses in the complaint book. No basis, whatsoever, for such a finding is, predictably, forthcoming in the enquiry report of the I/O. Such an observation, without any factual foundation, would, in fact, seem to indicate that the I/O was not adopting an entirely impartial attitude in the matter.

34. Further, the inquiry proceedings themselves have not been signed by the workman, for which the explanation tendered in the inquiry report, is that the workman started misbehaving and walked

out of the inquiry proceedings, as a result of which the I/O had to abruptly conclude the proceedings halfway. In his cross-examination before the learned Tribunal, the I/O has conceded that he never passed any order concluding the proceedings, and never issued any further communication to the workman. Rather strangely, the I/O states, in his cross-examination, that he told the workman, verbally that the inquiry proceedings would be concluded; to my mind, such a procedure is unknown to law.

35. It is also conceded, by the I/O, that (i) the complaint book was neither exhibited nor requisitioned by him, (ii) he never recorded any statement of the workman, refusing to take part in the proceedings, and yet terminated the inquiry midway for that reason, (iii) he did not lodge any complaint with any senior official regarding the conduct of the workman, (iv) neither did he record the statement of any witness in this regard, (v) he did not ask the workman for his statement of defence or his defence evidence, and (vi) he did not communicate any further date of hearing to the workman, nor informed him, in writing, that the inquiry proceedings stood concluded, On the face of it, the procedure adopted by the I/O, in this case, is foreign to all known canons of due process and fair play.

36. Even otherwise, the DTC has not chosen to challenge the order dated 15th October, 1998, which decides the preliminary issue, regarding the legality and validity of the inquiry, conducted by the DTC, against it.

37. I am in agreement with the learned Tribunal that, having sought for, and having been granted an opportunity to establish, before the learned Tribunal, the factum, of commission of misconduct, as alleged, by the workman, the DTC miserably failed to do so. In view of the failure, on the part of the DTC, to cite, or produce in its favour, any evidence, to establish the charges leveled by it against the workman, the learned Tribunal was, in my view, certainly justified in refusing to accept the sole evidence of Hari Raj Singh, the complainant, as sufficient to prove the said charges. No independent witness, whatsoever, was cited by the DTC. On the sole statement of Hari Raj Singh, who was the complainant, and obviously, therefore, was inimically disposed towards the workman, it was entirely impermissible, on the part of the IO, to hold the charges against the workman to be proved. Such a decision, in the circumstances of the case, borders on perversity.

38. In this context, I also find substance in the submission of Mr. Shankar Raju that the charges against his client were themselves vague, with no particulars forthcoming, regarding the alleged "abusive" and "unparliamentarily" language used by the workman against Hari Raj Singh. It is trite that a charge sheet is required to contain all material particulars, so as to enable the charged officer to provide a complete and comprehensive response thereto. Due process and fair play must be apparent, in disciplinary proceedings, *ab initio*, and cannot be postponed to the stage of the actual inquiry.

39. The situation that emerges is that, while the allegation, against the workman, is of misbehaving with Hari Raj Singh, and using abusive and unparliamentary language, the record is entirely silent in this regard, and, to this day, the exact "abusive" or "unparliamentary" words, employed by the workman, are not known to this Court; neither, from the record, does it appear that they were ever disclosed to the learned Tribunal. All that is available is the uncorroborated and unsupported complaint of Hari Raj Singh. Even in his deposition before the I/O, the only words attributed, to the workman, by Hari Raj Singh, were a statement to the effect that, in that bus, he would even issue tickets to the Chairman of the DTC, that the officials of the Haryana Roadways, to whom he, allegedly, did not issue tickets, were his "brothers", and that the attitude of the DTC was anti-labour. If these were the words, which Hari Raj Singh felt were "abusive" and "unparliamentary", it would appear that the fault, if any, lay in the sensitivities of Hari Raj Singh, rather than in the words used by the workman. Significantly, Hari Raj Singh does not attribute any specific act of misbehaviour to the workman, either towards him, or towards anyone else travelling in the bus.

40. Equally uncorroborated, clearly, was the allegation, of Hari Raj Singh, that the workman was smoking in a running bus, seated on the bonnet. This allegation, too, remains suspended in the air, as it were, without a scintilla of material to support it. Apart from the fact that there is no evidence, of any passenger, having protested against the workman smoking in running bus, it would stand to reason that, if the workman were actually smoking seated on the bonnet, the first person

to query, in this regard, would be the driver. There can be no reason why, if this allegation were to, the evidence of the driver of the bus was not led by the DTC, in support thereof. To this court, it appears extremely unlikely that no other passenger would object, to such behaviour on the part of the workman, and that Hari Raj Singh would be the only passenger who would express a grievance in this regard. Equally, this court finds it difficult to believe that Hari Raj Singh would not disclose his identity, while berating the workman for his alleged misdemeanours. The possibility of the workman continuing to "misbehave", even after becoming aware of the identity of Hari Raj Singh, also appears, to this court, to be remote.

41. It is true that this court, while exercising jurisdiction under Article 227 of the Constitution of India, is not meant to reappraise the evidence against the employee or workman, who has been proceeded against departmentally and punished. However, it is equally axiomatic that, where the case appears to be one of no evidence, or the approach of the I/O and Disciplinary Authority appear to be tainted by lack of fairness and objectivity, and a perverse appreciation of the evidence available, in a manner which appears to deliberately favour of the management and blight the workman, this court case required, by its oath of office, to step in and redress the injustice.

42. In the absence of any corroborative evidence, by a single person, supporting the complaint of Hari Raj Singh, it is unfathomable how the I/O – and, later, the Disciplinary Authority – held the allegations, levelled by Hari Raj Singh against the workman, to be

proved. It is obvious that Hari Raj Singh had no material, whatsoever, to support his allegations, and that the I/O, while enquiring into the matter, exhibited pronounced lack of sensitivity, choosing to prefer, for no earthly reason whatsoever, the uncorroborated and unsupported allegations levelled by Hari Raj Singh, to the defence provided, thereto, by the workman. It appears clear, to the perception of this court, that a low paid workman has, in this case, been sacrificed at the altar of the ego of a Regional Manager, with the active and complicit assistance of the I/O. Even if the learned Tribunal has not said so in so many words, it is clear, to this Court, that the present case discloses clear victimisation, of the workman, by the DTC.

43. Even though I have already held that, in the facts of this case, the objection regarding exceeding of its jurisdiction under Section 33(2)(b) of the Act, by the learned Tribunal, was not available to the DTC, I have, nevertheless, examined the decisions cited by Mr. Khan. On such examination, I find that, the said judgments do not advance the case of the DTC; rather, if anything, they would support the case of the workman. In ***D.T.C.vs. Shyam Lal (Supra)***, this Hon'ble Court has held in para 11 of the report, thus:

> "The scope of jurisdiction of the Industrial Adjudicator under Section 33(2)(b), is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed *and a prima-facie case for dismissal is made out*; approval has to be granted."
>
> (Emphasis Supplied)

44. ***D.T.C. vs Presiding Officer (supra)***, on the other hand, was a case in which the allegation, against the workman, was of remaining absent from duty for 178 days, for which a charge-sheet was issued to him. An inquiry was held, pursuant whereto the workman was removed from service. An application followed, by the DTC, under Section 33(2)(b) of the Act, for approval of its decision to remove the workman from service, which was dismissed by the learned Tribunal on the ground that no misconduct had been committed by the workman. Aggrieved thereby, the DTC approached this Court. Significantly, *this Court did not fault the learned Tribunal for having examined the case on merits.* It is important to note that, as in the present instance, in the said case, too, liberty had been given to the parties to lead evidence, and it was only thereafter that the learned Tribunal concluded that no misconduct had been committed by the workman. This Court, while setting aside the decision of the learned Tribunal, did so, *on the basis of the finding that the decision of the Tribunal could not be sustained on merits – and not that the learned Tribunal had no jurisdiction to examine this issue*. Paras 15 to 17 of the decision, may in this context, may reproduced thus:

> **"15.** There is also no quarrel with the proposition that the scope of jurisdiction exercised under Section 33(2)(b) of the Act is very limited as the Tribunal before whom an application is made under the said provision, is not to adjudicate upon an industrial dispute arising between the management and the workman, but is only to consider whether the ban imposed on the right of the employer in the matter of altering conditions of service to the prejudice of the workman during the pendency of the proceedings referred to therein, should be lifted or not. Thus, *a prima facie case has to be made out by the employer* for the purposes of lifting of such a ban and in this background, the Tribunal is required to either allow or to refuse such a permission so as to ensure that

an employer is not acting in a *mala fide* manner or is not resorting to any unfair practice of victimization.

16. For the aforesaid reasons, this Court is unable to sustain the findings of the Industrial Tribunal to the effect that once absence of an employee is treated as leave of any kind, then the absence becomes 'stingless'. On the contrary, habitual absence is a factor which ought to be given weightage to establish lack of interest in work and can certainly be a ground to arrive at an adverse conclusion against a delinquent employee in departmental proceedings. Thus, treating the absence of the respondent/workman as leave without pay, cannot be equated with sanctioned and/or approved leave so as to exonerate an employee of charges of misconduct.

17. In the aforesaid circumstances and the position of law as discussed above, the writ petition filed by the DTC is allowed, and consequently, the petition filed by the workman is dismissed. The impugned order dated 7.3.2001 is set aside and the parties are directed to appear before the Industrial Adjudicator on 5th November, 2007 for further proceedings. The Industrial Adjudicator shall pass a fresh order after considering the evidence led by the parties including depositions made by both sides and the entire material placed on record, in the light of the judgment rendered by the Supreme Court in the case of *Sardar Singh* (supra)."

(Emphasis supplied)

45. The judgement of this Court in Court in ***D.T.C. vs. Rajbir Singh, 2016 (228) DLT 19***, rendered by a learned Single Judge, addressed a similar controversy. In that case, the workman, who, like the workman in the present case, was also a conductor in the DTC, was alleged to have committed misconduct by not issuing tickets to three passengers, after collecting fare from them. Inquiry was initiated, resulting in his being found guilty and, consequently, being removed from service. Approval, under Section 33(2)(b) of the Act,

was sought, by the DTC, from the learned Industrial Adjudicator, who passed an order, on 2nd June, 2003, holding the inquiry, as held against the workman by the DTC to be improper. The DTC, in that case too, did not challenge the said order and preferred, instead, to adduce evidence, before the learned Industrial Adjudicator, to prove the charges against the workman. The Depot Manager of the DTC was examined as AW-1, and the checking officials were examined as AW-2 and AW-3. The learned Industrial Adjudicator rejected the application, of the DTC under Section 33(2)(b) of the Act, holding that the evidence adduced by the DTC did not prove the commission of misconduct by the workman. The DTC petitioned this Court, thereagainst, relying, as in the present case, on ***D.T.C. vs The Presiding Officer (supra)*** and ***DTC v. Shyamlal (supra)***. The said reliance was repelled, by this Court, which rejected, consequently, the application of the DTC under Section 33(2)(b) of the Act, in the following terms :

> "**19.** The judgement relied upon by the petitioner-management, i.e., ***Delhi Transport Corporation Vs. The P.O., Industrial Tribunal No. II and Anr.*** **(Supra)** is not applicable in facts of the present case *as it pertains to the first order, i.e., the issue of inquiry, whereas instant is the case where the petitioner-management who themselves preferred to prove the misconduct before the learned Industrial adjudicator and had examined AW1, i.e., Shri Devender Saroop, Depot Manager.* Further, the judgment relied by the petitioner-management, i.e., ***Delhi Transport Corporation vs. Madan Gopal (Supra)*** is in the context of absence of victimization *qua* against the respondent-workman. However, it is the general principle in law to prove the *prima facie* allegation of the misconduct *qua* against the respondent-workman by the petitioner-management to inspire confidence. Mere absence of victimization *qua* against the respondent-workman *ipso facto* does not entitle the petitioner-management to obtain approval of its action under Section 33(2)(b) of the Industrial Disputes

> Act, 1947, as such the same is not applicable in the present case. So far as the judgment ***Delhi Transport Corporation vs. Shyam Lal (Supra)*** is concerned, it is stated that the passenger witnesses are not *sine qua non* to be examined during the proceedings, but the same could be dispensed with if the checking officials are examined. Instant is a case where the checking officials were witnesses to the incident and have not been examined. Therefore, the aforesaid judgment loses its significance in this context. The judgment relied upon by the petitioner-management, i.e., ***Delhi Transport Corporation vs. Sh. Rishi Prakash (Supra)*** is not applicable in the present facts and circumstances of the case.
>
> **20.** As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no illegality and perversity in the impugned order dated 02.06.2003."

46. In my view, the aforementioned decision of this Court in ***DTC vs Rajbir Singh***, substantially answers the objection of Mr Sarfaraz Khan, regarding the jurisdiction of the learned Tribunal, in the present case, to have proceeded as it did, while adjudicating on the approval application filed by the DTC.

47. Resultantly, the decision, of the learned Tribunal, that the DTC had failed to establish, on merits, the fact of the alleged misconduct having been committed by the workman, is upheld.

48. Adverting, now, to the appropriate order to be passed, in such a case.

Relief

49. Coming, now, to the question of relief, Mr. Sarafraz Khan, while conceding, forthrightly, that the Constitution bench of the Supreme Court had, in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs Ram Gopal Sharma***, ***(2002) 2 SCC 244,*** held that the inevitable sequitur, to setting aside of the an application, under Section 33(2)(b) of the Act, seeking approval of the dismissal or removal of a workman, would be reinstatement of workman with full back wages, submits that the said principle stands diluted by a judgment of a Division Bench of this Court in ***D.T.C. vs Sarjeevan Kumar***, ***2013 (5) SLR 328 (Delhi)*** (speaking through D. Murgesan, C.J.), which, after taking into account the judgement in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra),*** held, nevertheless, that payment of full back wages was not an inevitable consequence of the dismissal of an application under Section 33(2)(b) of the Act. As such, he submits that, even if the decision of the learned Tribunal were to be affirmed by this Court, it would not necessarily entail, in its inevitable wake, the reinstatement of the workman with full back wages. He urges this as an additional reason to press for fixation of a lump sum compensation, in the event this Court finds the award of the learned Tribunal to be impervious to interference on merits.

50. ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)*** addressed the following question, which was referred to the Constitution Bench for decision-

> "If the approval is not granted under Section 33(2)(*b*) of the Industrial Disputes Act, 1947, whether the order of dismissal

> becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33(2)(*b*) would not render the order of dismissal inoperative?"

51. The difference of opinion that necessitated reference of the matter to the Constitution Bench arose because, while two Benches, consist of three learned Judges each, in ***Straw Board Mfg. Co. Ltd. v. Govind, AIR 1962 SC 1500*** and ***Tata Iron and Steel Co. vs S.N. Modak, AIR 1966 SC 380***, opined that non-grant of approval, under Section 33(2)(b) of the Act resulted, *ipso facto*, in the order of dismissal of the workman becoming ineffective from the date when it was passed, and in the consequential entitlement, of the workman, to back wages from the date of such dismissal of the date of rejection of the application under Section 33(2)(b), another Bench, also of three learned Judges held, in ***Punjab Beverages (P) Ltd. v. Suresh Chand (1978) 2SS 144***, that failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and that the remedy available to the employee was either by way of complaint under Section 33-A or by way of a reference under Section 10(1)(d) of the Act. These two rival views have been followed subsequently, by other decisions as well.

52. The Constitution Bench, addressing the issue, held as under:

> "**13.** The proviso to Section 33(2)(*b*), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(*b*), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section

31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs 1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(*b*) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(*b*) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(*b*) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(*b*) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to

examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. *If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.* But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(*b*). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(*b*), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an

employee to make a complaint, if aggrieved by the order of the approval granted."

(Emphasis supplied)

53. The italicized sentences, in the above extracted paragraphs from the judgment of the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra),*** make it clear, beyond any scope for doubt, that refusal, on the part of the Industrial Adjudicator, to grant approval as sought under Section 33(2)(b) of the Act, would result, *ipso facto*, in the employee continuing to remain in the service of the Management, as if no order of dismissal or removal has ever been passed. This, the Constitution Bench has explained, is because, by virtue of Section 33(2)(b), any order of dismissal or removal passed against a workman in respect of whom an industrial dispute, is pending, would remain inchoate and would become complete only on grant of approval by the Industrial Adjudicator, before whom the said dispute is pending. Non-grant of such approval, or refusal of the application seeking such approval, would, therefore, necessarily result in the order of dismissal/removal of the workman perishing in the womb, as it were, so that the workman would be entitled to continue in service, as though no such order had ever been passed.

54. To what extent does this principle stand effected by the judgment of the Division Bench of this Court in ***D.T.C. v. Sarjeevan Kumar (supra)***?

55. In ***Sarjeevan Kumar (supra)***, the workman was removed from service on the ground of unauthorized absence, whereagainst he raised

an industrial dispute, contending that the inquiry conducted against him was not fair. The appropriate government *vide* order dated 30th August, 1996, referred the dispute for adjudication to the learned Tribunal, in the following terms:

> "Whether the removal from service of Shri Sarjeevan Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

The learned Tribunal framed a preliminary issue regarding fairness of the inquiry conducted against the workman in that case, and decided the issue against the DTC, holding that the inquiry was not conducted in a fair and proper manner or in accordance with the principles of natural justice. The DTC was, however, given an opportunity to lead evidence to prove the commission of misconduct by the workman. After examining the evidence, the learned Tribunal held that the DTC had failed to prove the commission of misconduct, by the workman and, consequently, held the removal of the workman, from service, to be illegal and unjustified, resulting in a direction, to the DTC, to reinstate him in service with full back wages and continuity of service.

56. During the pendency of the aforesaid industrial dispute, initiated by the workman challenging his termination from service, an application, under Section 33(2)(b) of the Act was filed, by the DTC, which was dismissed, by the learned Tribunal *vide* order dated 7th May, 1997. While doing so, the learned Tribunal, relying on the judgment of the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra),*** as also in view of the fact that the industrial dispute initiated by the workman had culminated in his favour,

directed, *vide* order dated 4th June, 2011, reinstatement of the workman with full back wages and continuity of service.

57. The DTC carried the award, dated 4th June, 2011, to this Court. A learned Single Judge, held, relying on ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra),*** that in view of the dismissal of the approval application filed by the DTC, the order of dismissal of workman had become *non est*. The said order of the learned Single Judge was challenged, by the DTC, by way of LPA, which came to be decided *vide* the judgement reported as and in ***D.T.C. vs Sarjeevan Kumar***, ***2013(5) SLR 328 (Delhi).***

58. The Division Bench, adjudicating the LPA, limited the controversy to determining whether the award of payment of full back wages, as confirmed by the learned Single Judge, would be justified, as the DTC restricted its challenge to the said aspect. In fact, during the pendency of the dispute, the workman had been reinstated in service.

59. Mr. Sarafraz Khan, relies on paras 19 and 20 of the judgment in ***Sarjeevan Kumar (supra),*** which read as under:

> "18. In the case of ***Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra)***, *the Apex Court held that the order refusing to give approval for dismissal on the ground of non-compliance with the provisions of Section 33(2)(b) renders it void and inoperative and the respondent would deem to have continued in service as if no order of dismissal was passed.* In our opinion, there cannot be any different approach as to the payment of backwages. Even *when the order of dismissal is held to be unjustified by the Industrial Tribunal on merits or*

such dismissal becomes inoperative by virtue of contravention of Section 33(2)(b), payment of full backwages is not automatic as the same depends on facts of each case and the Industrial Tribunal should also consider the reasons for awarding full backwages or for that matter lesser backwages and give its own reasons.

19. The above discussions lead to the following discussions:

i. Payment of full backwages is not automatic on Labour Court/Tribunal granting reinstatement of workman.

ii. The same principle is equally applicable in case an order of dismissal is set aside by the Labour Court/Tribunal on the ground of non-compliance of Section 25F of the I.D. Act.

iii. The Labour Court/Tribunal shall give reasons for determining the specified quantum of backwages.

iv. The burden is on the workman to show that he is entitled to full backwages or to a reasonable backwages and he is not gainfully employed during the period he was not in service of the management.

v. Once materials are placed by workman on the above, the burden shifts on to the Management to disprove such claim.

vi. In the event, the Labour Court/Tribunal fails to give any reason to quantify backwages, the High Court can go into the said issue and decide on quantum."

60. ***Sarjeevan Kumar (supra)*** was a case in which the merits of the charges against the workman were considered in the substantive industrial dispute raised by him, and, consequent to a finding that the factum of misconduct had not been proved, his reinstatement, with full back wages, was directed. This Court, in the present matter, is not

concerned with an adjudication of the industrial dispute raised by the workman, but is only dealing with rejection of the application, filed by the DTC, under Section 33(2)(b) of the Act. That apart, in my view, the Division Bench of this Court, in para 19 of ***Sarjeevan Kumar (supra)***, has not, in fact, ruled as Mr. Sarfraz Khan would exhort this court to believe it has. I am unable to read, into para 19 of ***Sarjeevan Kumar (supra)***, any proposition to the effect that, where an application, under Section 33(2)(b) of the Act, is moved by the management, for approval of its decision to dismiss or remove a workman, and the said application is rejected by the industrial adjudicator, the workman would not, as a rule, be entitled to full back wages. Rather, the said para, if anything, seems to suggest otherwise. The Division Bench, in para 19 of ***Sarjeevan Kumar (supra)***, addressed three situations, i.e. (i) where approval, under Section 33(2)(b) of the Act, was sought and rejected, (ii) where the order of dismissal or removal was held unjustified, on merits, by the industrial adjudicator, adjudicating on a substantive industrial dispute raised by the workman in that regard and (iii) *where the dismissal becomes inoperative because of contravention of Section 33(2)(b) of the Act*. Situations (i) and (iii) our, in my view, different and distinct. While situation (i) contemplates rejection of an application moved by the management under Section 33(2)(b) of the Act, a situation (iii) covers an instance in which the order of dismissal or removal is passed *in contravention of Section 33(2)(b)* and is *inoperative for that reason*. Quite obviously, the Division Bench was, in the case of situation (iii), contemplating an instance in which the order of dismissal or removal was passed without applying for approval, under Section 33(2)(b) of

the Act. Para 19 of the judgement in ***Sarjeevan Kumar (supra)*** is categorical in recognising that, in ***Jaipur Zila Sahakari Bhoomi Vikas Bank (supra)***, it had been settled that, in cases covered by situation (i), i.e. where the rare for approval, under Section 33(2)(b) of the Act, was rejected by the industrial adjudicator, the workman would, as a necessary sequitur, *be entitled to reinstatement with all benefits available to him, as if the order of dismissal or removal had never been passed.* Any other interpretation, including that suggested by Mr. Sarfraz Khan, would render para 19 of ***Sarjeevan Kumar (supra)*** directly in conflict with para 14 of ***Jaipur Zila Sahakari Bhoomi Vikas Bank (supra)*** and, consequently, *per incuriam*. At the cost of repetition, it may be reiterated that, in para 14 of its judgement in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)***, the Constitution Bench held thus**:**

> **"**If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or refusal has never been passed. *Consequence of it is that the employee had deemed to have continued in service, entitling him to all the benefits available***.** This being the position there is no need of a separate or specific order of his reinstatement"**.**
>
> (Emphasis supplied)

Denying, to the workman, in such a case, full back wages would, in my view, be an amount doing violence to the words "entitling him to all the benefits available", as employed by the Constitution Bench of the Supreme Court in para 14 of its judgment in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra).*** I am of the firm view that it would not be permissible for me, in view of the mandate of Article 141 of the Constitution of India, to embark on any such adventurism.

61. I may note, in this context, that, in ***Management of Karur Vysya Bank Limited vs S. Balakirshnan, (2016) 12 SCC 221,*** a contention was sought to be canvassed, before a two-judge Bench of the Supreme Court, to the effect that para 14 of the judgement in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra),*** deserved to be reconsidered. Reliance was placed, for the said proposal, on certain commentaries, which were apparently critical of the view expressed in the said paragraphs. The Supreme Court refused to enter into the controversy, observing as under:

> "**12.** Before parting, there are two other issues that need to be addressed. *The first is with regard to the views expressed by the Constitution Bench of this Court in para 14 of the decision in* ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma*** **.** The views expressed by the Constitution Bench in para 14 of the aforesaid decision came up for consideration before this Court coincidentally and the issues dealt with in the said paragraph, we clarify, have nothing to do with what arose for decision in the present case. However, *in this regard, our attention was drawn to certain published works in which a view seems to have been taken that the opinion of the Constitution Bench expressed in para 14 in the aforesaid decision needs reconsideration. Beyond recording what has been brought to our notice as stated above, we do not consider it necessary to deal with the matter any further.*"
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> (Emphasis supplied)

62. The mandate of para 14 of the judgement of the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra)*** therefore, continues to hold the field, even as on date, and binds me in the present proceedings, especially in view of the observations

contained in para 12 of the later decision in ***Management of Karur Vysya Bank Limited (supra).***

63. The impact of ***Jaipur Zila Sahari Bhoomi Vikas Bank Ltd (supra)*** on cases in which approval under Section 33(2)(b) is sought but refused, has engaged the attention of this court on earlier occasions as well. In ***D.T.C. vs Rajinder Singh, MANU/DE/2709/2015***, a learned Single Judge of this court held as under:

> "In the instant case, the petitioner-management was under a legal obligation to take the mandatory approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the Industrial Adjudicator. *If the order of removal of workman from the services is not approved by the Industrial Adjudicator, the position of the workman remains to be that of an unblemished workman entitling him to all the benefits to which a workman is entitled under the law.* It is evident from petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 itself that the approval application is moved on behalf of the management and not on behalf of respondent-workman. Therefore, the onus always lies on the petitioner-management to obtain approval of its action taken and *if the same fails, the status of the workman remains to be a workman, same as under section 2(s) of the Industrial Disputes Act, 1947.* It has been so held by the Hon'ble Supreme Court of India in the case titled as ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors., 2002 (2) SCC 244***, which is reproduced as under:
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> > "14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant

> approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement."

64. The legal position appears, in the circumstances, to be quite settled, and multiplication of references to judicial authorities would not, therefore, be either expedient, or essential.

65. As a result, I am constrained to hold that the sequitur, to my upholding the impugned order, dated 19th December, 2003, of the learned Tribunal would be that the workman Bijender would be entitled, in law, to reinstatement with full back wages.

66. I may note, here, that the DTC is not in a position to state that the workman has been in gainful employment, at any point of time after his removal from its services. In fact, an application was filed, by the workman, in 2010, seeking early hearing of the present petition, in which there is a specific averment that the workman has remained unemployed since the date of his removal from the services of the

DTC. No rebuttal, to the said averment, either by way of any counter-affidavit, or by way of any assertion made on behalf of the DTC before this Court, is forthcoming on the record. It has to be presumed, therefore, that the workman has remained unemployed, since the date of his removal from the services of the DTC.

67. Having said that, it is a matter of fact that, on the date of filing of W.P.(C) 20084/2004 by him, the workman was already 43 years of age (as per the affidavit accompanying the writ petition), on 15th December, 2004. Thus reckoned, the workman would, today, be nearing 57 years of age. That the DTC has no trust in the workman is obvious. As such, it does not appear, to me, that in the interests of justice, it would be advisable to direct reinstatement of the workman who would, by now, be nearing the age of superannuation.

68. In the circumstances, WP(C) 17931/2004, filed by the DTC is dismissed. WP(C) 20084/2004, filed by the workman Bijender Singh is partly allowed, to the extent, that while the DTC would not be required to reinstate him in service, he would be entitled to full back wages, as if the order of removal of service dated 16th April, 1990, was never passed. This, needless to say, would include all pay revisions and increments to which he would have been entitled, had he continued in service. Needless to say, the retiral benefits of Bijender Singh, as and when they become due, would also be computed on the same basis.

69. The DTC is directed to disburse all amounts which would become due as on date to the workman, as a result of the present judgment, within a period of four weeks from the date of receipt of a certified copy thereof. In doing so, any payments made to the workman, pursuant to orders passed by this Court in the present litigation, would be entitled to be set off.

70. Failure to comply with this judgement, by making requisite payment, to the workman, within the period stipulated hereinabove, would entail liability to interest @ 18% per annum.

71. There shall be no order as to costs.

C.HARI SHANKAR, J

MAY 07, 2018
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