

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

Judgment Reserved on: September 02, 2015

% *Judgment Delivered on: September 07, 2015*

+ **LPA 394/2002**

VIJAY KUMAR TIWARI Appellant

Represented by: Ms.Rashmi B.Singh, Adv.

versus

LT. GOVERNOR & ORS. Respondent

Represented by: Mr.Sarfaraz Khan, Adv. for
DTC.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Charged with the allegation of beating Satnam Singh with an iron pipe, catching him with his hair, pulling him from the chair and then beating him with hands and feet besides abusing in filthy language, Vijay Kumar Tiwari the appellant herein faced an enquiry resulting into an order of removal from service as Assistant Fitter dated September 12, 1989 however subject to approval under Section 33(2)(b) of the I.D. Act. Vide the order dated February 06, 1996 the Labour Court held enquiry to be vitiated as no evidence was led on the issue of validity of the enquiry and dismissed the application on February 14, 1997 declining approval for the reason that the management did not adduce evidence to establish alleged misconduct.

2. Aggrieved by the orders dated February 06, 1996 and February 14, 1997 DTC preferred a writ petition being W.P.(C) No.2071/2000 which was allowed with the impugned order dated December 21, 2001 without

prejudice to any proceedings that he may initiate under Section 10 of the I.D.Act. The writ petition filed by Mr.Vijay Kumar Tiwari for consequential relief was also dismissed by the impugned order. Aggrieved by the order dated December 21, 2001 Vijay Kumar Tiwari preferred the present appeal being LPA 394/2000. This appeal got linked with another batch of appeals and was disposed of vide a common order dated September 25, 2002. On a Special Leave Petition being filed by the DTC the order dated September 25, 2002 in the present appeal was set aside and the matter remanded back to this Court for re-hearing as the present case did not relate to an employee being absent without leave.

3. Before advertng to the facts of the present case it would be appropriate to note the legal position in relation to the scope of adjudication of an application for approval under Section 33(2)(b) of the I.D.Act which provides as under:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

4. In the decision reported as AIR 1959 SC 389 M/s.G.Mckenzie and Co. Ltd. Vs. Workmen and Ors. the Supreme Court laid down that Section 33 I.D.Act does not confer any jurisdiction on the Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute; in deciding whether permission should or should not be granted the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen, the employer makes out a prima facie case. The nature and scope of proceedings under Section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of

an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. As the purpose of Section 33 of the Act is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under Section 33 would not operate as res-judicata and bar the raising of an industrial dispute.

5. Dealing with the scope of Section 33(2)(b) of the I.D. Act the Supreme Court in the decision reported as AIR 1978 SC 1004 Lalla Ram Vs. Management of D.C.M. Chemical works and Anr. held:

“12. The position that emerges from the abovequoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the

Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

6. It is trite law that strict rules of evidence are not applicable to the proceedings before the Industrial Tribunal/Labour Court and they are free to devise rules of procedure in accordance with principles of natural justice. Thus in an application under Section 33(2)(b) ID Act, it is not the requirement of law that the Tribunal will insist proof of the enquiry conducted in accordance with Indian Evidence Act by examining the Inquiry Officer and exhibiting the report. Suffice it is that the enquiry report and the proceedings conducted by the Inquiry Officer are produced before the Industrial Tribunal/Labour Court. The Constitution Bench in *JT 2010 (5) 553 Union of India Vs. R. Gandhi, President, Madras Bar Association*

noting the distinction between a Court and Tribunal held that while Courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and Evidence Act requiring an elaborate procedure in decision making, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of Evidence Act.

7. As noted above the order dated February 06, 1996 passed by the Tribunal basis its finding for the reason that no evidence was led by the management on the issue of validity of enquiry, thus the enquiry relied upon by the management stands vitiated. Thus reasoning of the Tribunal falls foul of the law laid down by the Supreme Court. Before the Tribunal the management had filed the enquiry report, however the same was not accepted as the enquiry officer did not appear to prove the same vide order dated February 06, 1996 and since no evidence was led by the management despite three adjournments to prove the charge against Vijay Kumar Tiwari the approval application under Section 33(2)(b) was dismissed on February 14, 1997.

8. The learned Single Judge vide the impugned order dated December 21, 2001 held that the approach of the Tribunal was not in consonance with law. It ought to have perused all the material placed before it in order to arrive at a conclusion whether approval should be granted or declined. Since the authenticity of the record of the domestic enquiry had not been disputed there was no necessity for the petitioner to have formally proved the same and at this stage there was no necessity for the management to lead evidence. The Tribunal ought to have considered whether the enquiry had been properly conducted, whether the principles of natural justice had been

duly followed, since the Tribunal at this stage is only expected to take a broad overview of the situation and to be satisfied of the existence of a prima-facie case. The learned Single Judge noted that the proper course for the Tribunal was to grant its approval leaving it to the regular proceedings under Section 10 to go into all the ramifications and intricate details and legal objections. Learned Single Judge observed that the Tribunal should also have granted its approval since prima-facie case for removal had undoubtedly been made and there was no evidence of victimization or unfair labour practice. Thus without prejudice to the right of Vijay Kumar Tiwari to initiate proceedings under Section 10 of the I.D.Act, the writ petition was allowed setting aside the two orders dated February 06, 1996 and February 14, 1996.

9. Tested on the anvil of the law laid down by the Supreme Court no interference is required by this Court on the findings of the learned Single Judge that the Industrial Tribunal exceeded its jurisdiction and erred in dismissing the approval application for non-examination of the enquiry officer before it, when the authenticity of the record of the domestic enquiry was not disputed. In the light of these facts this was a fit case where the matter was required to be remanded back to the Industrial Tribunal for consideration as per law laid down setting aside the order dated February 06, 1996 and February 14, 1997 and permitting the parties to proceed ahead, however, since the alleged incident dates back more than 26 years ago pursuant to which Vijay Kumar Tiwari was first suspended and thereafter dismissed from service we have examined the evidence before the enquiry officer ourselves.

10. The serious charge against Vijay Kumar Tiwari is of beating Satnam

Singh with an iron pipe. A perusal of the statement of witnesses would reveal that except the complainant Satnam Singh no other witness stated about beating given by Vijay Tiwari with an iron pipe. Statement of Satnam Singh evinces that on January 12, 1989 at around 9.30 hours when Satnam Singh was present in his room Vijay Tiwari peeped, went somewhere and came back later with a pipe in his hand with which he attacked Satnam Singh and also abused him in filthy language. It is the case of Satnam Singh that he caught the pipe on which Vijay Tiwari threw the pipe outside and thereafter caught him with the hair and gave him beating with the pipe. A perusal of the statement would show the absurdity as to how after having thrown the pipe out of the room, Vijay Tiwari could not have hit Satnam Singh with a pipe. Further on questioning by the enquiry officer Satnam Singh admitted that he had no injury mark and the injury was only internal and not visible. Though he stated about taking some medicines however no such certificate was placed that he suffered an assault. Further Satnam Singh in his cross-examination admitted "he had reported in his own handwriting out of his imagination". All the other witnesses produced by the management stated that both Vijay Tiwari and Satnam Singh were quarrelling with each other in the Workshop office (Forman's room). On a specific query put by the enquiry officer the witnesses stated that Vijay Tiwari was not carrying any iron rod in his hand. Thus from the evidence on record no charge of beating by iron rod is made out and only the fact that both were quarrelling was established. Even assuming Vijay Tiwari was the aggressor, the punishment of removal for a quarrel not resulting in any injury is shockingly unconscionable and is thus set aside.

11. Considering the facts and circumstances of the case no reinstatement

of Vijay Tiwari can be directed at this stage and the ends of justice would be met if he is awarded a compensation of ₹3 lakhs. Appeal is consequently disposed of setting aside the order dated September 12, 1989 of removal of Vijay Tiwari from the services and DTC is directed to pay a lump sum compensation of ₹3 lakhs to Vijay Tiwari in lieu of reinstatement with back wages within a period of 8 weeks failing which the same would entail an interest @ 6% per annum from the date of this order till realization.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 07, 2015
‘ga’