

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

+ **W.P.(C) 1565/2003**

% Judgment reserved on 16.04.2015
Judgement pronounced on: 19.05.2015

D.T.C. Petitioner
Through: Mr.Manish Garg and Mr.Akshay
Bhardwaj, Advocates
versus

SUKHBIR SINGH & ORS. Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner has challenged the order of the learned Industrial Tribunal dated 30.07.2002.
2. The brief facts of the case are that the respondent was employed with the petitioner as a conductor. While performing his duties on Bus No. 6132, Route No.409 on 14.10.1991, ATI Ram Gopal alongwith other members of the checking staff, checked the said bus at about 09.25 hours. According to petitioner, the respondent had collected resold tickets from the passengers while they were alighting from the bus and the cash of the conductor was found short of Rs. 7.50 paisa and that he had issued tickets of denomination of Rs.1.50 paisa to the three passengers, whereas he was to issue tickets of

only 50 paisa denomination to each of them. Thereafter, on the basis of the report of the checking staff, a charge-sheet dated 11.11.1991 was issued to the respondent for committing misconduct within the meaning of para 2,4 and 19 of the Standing Orders, governing the conduct of DTC employees. The enquiry was conducted and on conclusion of domestic enquiry, an application under Section 33(2)(b) for approval of award was filed.

3. Vide order dated 30.04.2001, the learned Industrial Tribunal reached to the conclusion that the report of the Enquiry Officer was perverse and held that the inquiry was vitiated. Thereafter, the Industrial Tribunal framed the following issues:-

“1. Whether the respondent committed misconduct as alleged in the petition filed under Section 33(2)(b) of I.D. Act?

2. Whether full one month's wage was remitted to the respondent at the time of his removal from service?

3. Relief.”

4. Parties led their evidences and the Industrial Tribunal, on the basis of evidence, concluded vide impugned order dated 30.07.2002 that the petitioner had failed to prove any misconduct being committed by the respondent and hence denied the approval and dismissed the application

under Section 33(2)(b) of the ID Act.

5. The order of the Industrial Tribunal dated 30.04.2001 has been challenged by the petitioner on the grounds that under Section 33(2)(b) of the ID Act, the Industrial Tribunal was not required to appreciate the evidences and examine the witnesses to decide the merit of the case. It is also submitted that by deciding the case on merits, the Industrial Tribunal has exceeded the jurisdiction under the Statute. The order dated 30.07.2002 has further been challenged on the ground that the Tribunal had not recorded the findings that wages for a month was simultaneously released by the petitioner on termination of services of the workman as required under Section 33(2)(b) of the ID Act. The order has further been challenged on the ground that the Industrial Tribunal did not record a finding that the workman did not possess the concerned ticket against which he had collected the money and it was immaterial that other passengers were not having old tickets and that the learned Industrial Tribunal has gone into the insignificant details and missed the central point. It is also stated that the learned Industrial Tribunal has ignored the basic principle that proving the case beyond doubt is not required in a civil proceeding and in appreciating

evidence the principle of preponderance of probability is to be followed. It is further contended that impugned order is contrary to law as well as facts of the case and is liable to be set aside.

6. The petition is contested by the respondent. It is submitted that petitioner has not come to the Court with clean hands and has concealed the order of the learned Industrial Tribunal dated 30.04.2001, whereby the learned Industrial Tribunal found the findings of the Enquiry Officer perverse and the petition is liable to be dismissed on this ground alone. It is further submitted that the Industrial Tribunal has not violated any provision of law. It has been denied that respondent was indulging in collecting used tickets from alighting passengers or was re-selling the same. The allegations levelled against him were false and baseless and even the report of the Enquiry Officer was based on no evidence and that is why the learned Industrial Tribunal had found the enquiry being perverse. The learned Industrial Tribunal had thereafter given the opportunity to the petitioner to prove the charges before it, but, the petitioner had failed there also. It is submitted that this Court under Article 226 of the Constitution of India does not sit as an Appellate Court and unless it is shown that there is an error on the face of the record, this Court cannot interfere with the order/award of the

Subordinate Court.

7. In this case, the arguments have been addressed only by the petitioner, who has also furnished the written synopsis. Nobody had attended the Court proceedings on behalf of the respondent. I have given the due consideration to the arguments addressed by the learned counsel for the petitioner and also gone through the case laws relied upon by him.

8. The scope of the Tribunal under Section 33(2)(b) has been discussed by the Supreme Court in several pronouncements in the case **Mysore Steel Works vs. Jitendea Chandra Kar and Others** 1971 1 LLJ SC 543. The Supreme Court has held as under:-

“14. The scope of the Tribunal's jurisdiction in an application under Section 33(2)(b) is limited and it does not sit as an appellate court on the findings of fact. If the domestic enquiry is not vitiated by principles of natural justice, it has to see whether there is a prima facie case made out by the employer for the dismissal of the employee and whether the employer has bona fide come to the conclusion that the employee was guilty of misconduct, in other words, that there was no unfair labour practice or victimization. It would then grant approval. If the enquiry is defective for

any reason, the Tribunal would have to consider for itself the evidence adduced before it for finding out as to whether the dismissal was justified. If on the evidence so adduced it finds that the dismissal was justified, it would grant approval. If the enquiry was defective employer must let in evidence for obtaining approval in the manner in which evidence would be normally let in before the Tribunal, i.e. by examining witnesses and not by tendering the evidence laid before the domestic enquiry, unless such a procedure is resorted to by consent of parties and the assent of the Tribunal. When the domestic enquiry is not defective by reason of violation of principles of natural justice or when the findings are not perverse or there is no unfair labour practice, the Tribunal has only to be satisfied that there is a prima facie case for dismissal.”

9. In **Lalla Ram vs Management Of D.C.M. Chemical**, AIR 1978 SC 1004, it has been held by the Apex Court as under:-

“9.The extent of jurisdiction exercisable by an appropriate authority under Section 33(2)(b) of the Industrial Disputes Act is very limited.....

12. In proceedings under Section 33(2)(b) the jurisdiction of the Industrial Tribunal is confined

to the inquiry as to (1) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (2) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (3) 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 decision of this Court 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; (4) whether the employer has paid or offered to pay wages for one month to the employee and (5) whether the employer has 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 related back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him”.

10. From the above said case laws, it is apparent that it is open to the Industrial Tribunal to assess the domestic inquiry to reach to the conclusion if the domestic enquiry is vitiated. If the domestic enquiry is found vitiated and perverse, it is then open to the industrial Tribunal to give the management an opportunity to lead evidence in order to prove the charges before the Court.

11. The Tribunal in this case has followed the said procedure. It is apparent that the Tribunal has examined the issue whether a legal and valid enquiry, according to the principles of natural justice had been conducted by the petitioner. Vide order dated 30.04.2001, the Tribunal reached to the conclusion that the findings of the Enquiry Officer were perverse and, therefore, could not have been acted upon and the enquiry was held to be vitiated.

12. In the written submissions, the challenge has been made to this finding of the learned Industrial Tribunal given on 30.04.2001 and in support the reliance has been placed on the findings in the cases **Delhi Transport Corporation vs. Sh. Rishi Prakash**, W.P.(C) No.9632/2003, decided on 05.04.2010, **Delhi Transport Corporation vs. Madan Gopal**, W.P.(C) No.13582/2004, decided on 03.01.2011 and **Delhi Transport Corporation vs. The P.O. Industrial Tribunal No.II and Anr.** W.P.(C) No.1187/1997, decided on 28.04.2014 and **Delhi Transport Corporation vs. Shyam Lal** in W.P.(C) No.3633/2004, decided on 01.07.2010.

13. The findings in the cases *supra* do not support the petitioner because the petitioner has not challenged the findings of the learned Industrial Tribunal dated 30.04.2001 before this Court. The plaint's para 1 beings as-

“The petitioner has only challenged the order of the Industrial Tribunal dated 30.07.2002”. Also, the prayer clause of writ petition reads as under:-

“a. Set aside the order dated 30.7.2002, passed by the learned Presiding Officer, Industrial Tribunal-II, Karkarduma Court, Delhi.

b. Pass such orders as may be deemed fit and proper.”

In the entire body of writ petition, there is no mention of order of Industrial Tribunal dated 30.04.2001. The findings dated 30.04.2001 of the learned Industrial Tribunal that the enquiry was vitiated, therefore, remains unchallenged and has been allowed to attain finality.

14. The petitioner has only challenged the findings of the learned Industrial Tribunal dated 30.07.2002. It is apparent that the Industrial Tribunal has acted as per the established procedure in the matter and had recorded the evidences of both the parties by giving them opportunity to produce its witnesses. Before the Tribunal, the petitioner had examined his witness Ram Gopal and the delinquent had also examined himself.

15. In the present case, the charges against the delinquent were that he was collecting sold tickets from the passengers who were alighting and that Rs.7.50 were found less on checking the cash and that he had issued three tickets of Rs.1.50 against the ticket of fifty paisa which showed that he had

re-sold the already sold ticket, after collecting it from the passengers. The Tribunal, while reaching to the conclusion that the petitioner had failed to prove these charges, had relied on the testimonies produced by the parties. The Tribunal has based its finding on the statement of the petitioner-witness Ram Gopal, who had filed his affidavit Ex.AW2/A dated 13.08.2001 before the Industrial Tribunal. The Tribunal has relied on his statement in his cross-examination, wherein he has admitted the following:-

- i. That at the time of checking, all the passengers were having tickets;
- ii. That he did not see the respondent selling already sold tickets to passengers;
- iii. That none of the passengers was having already sold ticket;
- iv. That the conductor was not having in his possession any already sold ticket;
- v. That none of the passengers have already sold ticket;
- vi. That when checking staff entered into the bus, the respondent immediately handed over the way bill and hand block tickets to the checking staff.
- vi. That the statements of passengers do not bear the signature of respondent.

16. On these testimonies of the petitioner-witness and also the fact that the checking staff did not examine two passengers to whom the respondent issued tickets of Rs.1.50 instead of fifty paisa and that the statement of passenger was not taken in his presence, the Tribunal reached to the conclusion that the petitioner had failed to prove the misconduct that the delinquent was re-selling the sold tickets and that he had sold tickets of denomination of Rs.1.50 against fifty paisa ticket and thus found that misconduct could not be proved.

Findings of Industrial Tribunal are based on the deposition before it. He has appreciated the evidences of witnesses before reaching to the conclusion. It, therefore, cannot be said that the findings of the learned Industrial Tribunal are based on no evidence.

17. The petitioner has relied on the findings in case of **DTC vs. Sardar Singh** AIR 2004 SC 4161. However, the findings in this case are not applicable on the facts of this case. In that case, the Court has dealt with the issue of absenteeism while holding that once absence is proved, the burden shall be upon the workman to prove that the absence was with permission or sanction. The present charges were different and burden to prove these charges rest on the petitioner which he failed to discharge.

18. The findings in the case of **Rishi Prakash** (*supra*) also do not help the petitioner because in that case, the issue was related to the misconduct relating to the unauthorized absenteeism. The Court in case *supra* had set aside the order of the Industrial Tribunal since the Tribunal had not given any reasoning as to why on the ground of absence without intimation for the other 72 days the dismissal of the petitioner (therein) under clause 4(ii) and 19(h) of the Standing Orders was not made out. While in the present case, it is apparent that the Tribunal, on the basis of evidence, reached to the conclusion that the petitioner has failed to prove the charges against the delinquent.

19. In the case of **Shyam Lal** (*supra*), the facts of the case clearly shows that in that case, the Tribunal had held that the enquiry was vitiated on the ground that the passenger witnesses have not been examined by the DTC before the Enquiry Officer and before the Industrial Tribunal. In the present case, however, the finding of the Tribunal that the petitioner has failed to prove the charges against the delinquent is not based on the reason that the petitioner has failed to examine the passengers. In that case, the Court found that the Tribunal had not acted validly and its findings are not based on the evidences before it and had interpreted the law incorrectly. While in the

present case, the Tribunal has reached to its conclusion on the basis of the evidences led before it, which, as discussed above, clearly shows that the petitioner had not been able to prove any charge even by preponderance.

20. In the case of **Madan Gopal** (*supra*), this Court has propounded the principle based on several other findings mentioned therein that the proceeding under Section 33(2)(b) are not a substitute of industrial dispute referred for adjudication under Section 10 and that the decision on the application under Section 33(2)(b) does not close the right of the respondent-workman to raise the dispute under Section 10 of the ID Act. There is nothing on record to show that the Tribunal herein had in any way violated the settled procedure to be followed, while dealing with the application under Section 33(2)(b). Moreover, in the present case, the findings of the Industrial Tribunal that the domestic enquiry held by the petitioner were vitiated and thus being set aside has attained finality since those findings dated 30.04.2001 have not been challenged before this Court.

21. The power of this Court of judicial review under Article 226 has been discussed by the Supreme Court in **Bhuvnesh Kumar Dwivedi Vs. Hindal Co. Industries Limited**, (2014) 11 SCC 85, wherein the Apex Court has relied on its earlier judgment of **Heinz India (P) Ltd. Vs. State of U.P.**,

(2012) 5 SCC 443 and has held as under:-

“ 19. *In Heinz India (P) Ltd. V. State of U.P.*, (2012) 5 SCC 443: (2012) 3 SCC (Civ) 184 : (2013) 3 SCC (Cri) 198, this Court, on the issue of the power of the High Court for judicial review under Article 226, held as under: (SCC pp.467-68, para 60)

“60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of ‘judicial review’ one is instantly reminded of the classic and oft-quoted passage from *Council of Civil Service Unions v. Minister for Civil Service*, 1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935(HL) where Lord Diplock summed up the permissible grounds of judicial review thus AC pp.410, F-H and 411 A-B)

“..... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is

subject to control by judicial review. The first ground I would call ‘illegality’, the second “irrationality” and the third “procedural impropriety”.

By “illegality” as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By “irrationality” I mean what can by now be succinctly refereed to as “*Wednesbury* unreasonableness”. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system....

I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

22. In *Syed Yakoob vs. K.S. Radhakrishnan*, AIR 1964 SC 477 the Supreme Court has observed as under:

“13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunal in excess of their jurisdiction causing grave miscarriage of justice.”

23. Also, in a recent case *Harjinder Singh Vs. Punjab State Warehousing Corporation* (2010) 3 Supreme Court Cases 192, wherein the Supreme Court has held that the writ of Certiorari under Article 226 can be

issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted without jurisdiction or in excess of its jurisdiction or in flagrant disregard of law or the rules of procedure or in violation of principles of natural justice. The Court can only correct the errors of facts of the law, where the error is manifest apparent on the face of the proceeding, i.e., where it is based on clear ignorance or utter disregard of provision of law or has resulted into grave injustice or gross failure of justice and the Court cannot convert itself into a Court of Appeal and indulge in re-appreciation or evolution of evidence or correct error in drawing inferences.

24. As discussed above, in the present case the findings of the Tribunal are based on the evidences before it. This Court cannot, on appreciation of evidences, substitute its findings on the facts. The findings of the fact of the Tribunal are final unless it is shown that the Tribunal has taken into consideration certain extraneous facts, which were not on record or has failed to take into consideration certain piece of material evidences on record or where the findings are based on no evidence at all. None of this exists in the present case. The issue regarding the remission of one month wages to workman on his dismissal has been decided by the Tribunal in favour of the petitioner and no reasons to challenge this finding exists.

25. For the said reasons, this writ petition has no merit and is hereby dismissed, with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

MAY 19, 2015
BG