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

Date of Decision: 31.07.2015

+	W.P.(C) 507/2003 D.T.C.	Through versus P.O., IND. TRIBUNAL II, KKD COURT Through	Mr.U.N.Tiwary, Advocate. Mr.J.K.Dhingra, Advocate with Mr.Man Mohan Kumar, Respondent No.2-in-person.	 Petitioner Respondent
+	W.P.(C) 13574/2004 MAN MOHAN KUMAR	Through versus D.T.C.	Mr.J.K.Dhingra, Advocate with Mr.Man Mohan Kumar, Petitioner- in-person. Mr.U.N.Tiwary, Advocate.	 Petitioner Respondent

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. W.P.(C) 507/2003 is filed by Delhi Transport Corporation seeking to impugn the orders dated 04.05.2001 and 19.3.2002 respectively passed by the Industrial Tribunal. By the order dated 4.5.2001 the Industrial Tribunal held, while deciding the preliminary issue in a petition filed under section 33(2) (b) of The Industrial Disputes Act, 1947 (hereinafter called 'The Act'), that the enquiry against the respondent/workman was not held according to principles of natural justice. The enquiry proceedings were held to be vitiated and an opportunity was given to the

Management to establish the misconduct on the part of the workman before the Tribunal. After evidence was led, vide order dated 19.3.2002 the Tribunal held that the management has not been able to establish that the workman committed misconduct for which he was awarded punishment of removal from service. The petition filed by the management under section 33(2) (b) of 'The Act' was rejected.

2. By WP(C) 13574/2004 the workman seeks relief of reinstatement and payment of arrears of salary and other benefits. Admittedly, had the workman continued in service he would have retired in October 2009.

3. The brief facts are that the workman Shri Man Mohan Kumar was a Conductor with the management. On 19.12.1986 he was assigned Route No.858. A checking team consisting of Shri Ram Prakash, TI and Dharam Pal Singh, ATI intercepted the bus on which the workman was deployed at Rajouri Garden and detected 30 bogus tickets in the possession of the workman. They had received information that the workman had sold one of the aforesaid 30 tickets to one passenger Shri K.K.Bhola. On checking his cash a shortage of Rs.25.60 in the sale proceeds of tickets was also found. The checking officials made a challan mentioning the above irregularities and the same was handed over to the conductor/workman but he refused to accept the challan. The checking officials submitted their report dated 19.12.1986 including the copies of the challan to the relevant office. They also reported the matter to the police station Rajouri Garden. Police checked the locker of the workman at the premises of DTC at Hari Nagar Depot-I, Jail Road, New Delhi. It is stated that under the procedure conductors are issued with a locker which remains under his lock and key and the conductor is required to keep his

extra ticket stock issued to him for sale in the locker. On checking the locker the police is stated to have recovered more bogus and used tickets from the locker which were taken by the police in custody. FIR No.603/1986 dated 19.12.1986 was lodged and the workman was arrested for offences under section 420/468/471 IPC. The workman was placed under suspension. He was served with a chargesheet on 17.3.1987. It is stated that he was supplied with documents and was also offered an opportunity of inspecting the case file.

4. Vide letter dated 6.8.1997 the workman asked for a copy of the FIR and requested that till such time he was provided with a copy of the FIR no proceedings be held. The workman also requested that the enquiry proceedings be kept in abeyance till the criminal case instituted in the criminal court by the police is over. The said request of the workman was refused. As the workman did not participate in the proceedings, ex parte proceedings were held against him. The enquiry officer found the workman guilty of charges levelled against him in the chargesheet. A show cause notice was issued to him as to why punishment of dismissal from service be not awarded. Subsequently, vide order dated 20.3.1990 he was dismissed from service. One month's salary of Rs.1507.90/- was remitted to him through money order.

5. The management moved an application under section 33(2)(b) of the Industrial Disputes Act seeking approval of the Tribunal of the decision taken for removal of the workman from service.

6. The Tribunal framed a preliminary issue as follows:-

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

7. Vide impugned order dated 4.5.2001 the Tribunal decided the above issue. I will deal with the said order first.

8. The Tribunal concluded that the enquiry conducted by the management was at the back of the delinquent employee. Hence, the principles of natural justice were violated and the enquiry proceedings and the report stand vitiated.

9. The Tribunal took the above view primarily based on two aspects. Firstly, it was the case of the workman that he had asked for a copy of the FIR which was not supplied to him. The Tribunal concluded that the facts as stated in the show cause notice for the disciplinary proceedings and the facts which are subject matter of the FIR were common. Hence, the management was not justified in not supplying the copy of the FIR.

10. The other reason for the conclusion of the Tribunal that the enquiry is vitiated was that the proceedings were held ex parte. The workman had made a request for stay of the enquiry proceedings pending the decision of the criminal court as charges levelled against him in the chargesheet dated 17.03.1987 and the facts mentioned by the police in the FIR under Sections 420/468/471 IPC were similar. Hence, he requested that the enquiry proceedings be stayed pending the decision of the criminal court as otherwise prejudice will be caused to him. The management did not accept the plea of the workman. Hence the departmental enquiry was completed ex parte. The Tribunal held that the workman was justified in not participating in the enquiry. The allegations contained in the chargesheet and the facts mentioned in the challan of the criminal case were identical. If, the respondent would had participated in the enquiry proceedings, he would have had to disclose his defence which would

have caused prejudice to him in the criminal case. Hence the enquiry was wrongly conducted behind the back of the workman and the enquiry proceedings and the report stand vitiated.

11. Learned counsel appearing for the management has impugned the said order pointing out that the conclusion of the Tribunal that the chargesheet and the Award in the criminal case were based on the identical facts is misplaced. The basis of the charges were different. Even otherwise, if there were identical facts that per se could not be a ground to stay the departmental proceedings. Reliance is placed on the judgment of the Supreme Court in the case of ***Indian Overseas Bank, Anna salai and Anr. Vs. P.Ganesan and Ors., (2008) 1 SCC 650.***

12. We may look at the legal position as enunciated by the Supreme Court in ***Indian Overseas Bank, Anna salai and Anr. Vs. P.Ganesan and Ors. (supra)***. The Supreme Court in para 23 held as follows:-

“23. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges leveled against the delinquent officers, both in the criminal case and the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.”

13. Reference may also be had to the judgment of the Supreme Court in the case of *Stanzen Toyotetsu India Pvt. Ltd. vs. Girish V. And Ors.*, **AIR 2014 SC 989 (MANU/SC/0050/2014)** wherein para 9 the Supreme Court held as follows:-

“9. We have heard learned Counsel for the parties at some length. The only question that falls for determination in the above backdrop is whether the Courts below were justified in staying the on-going disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the Respondents. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which is also the subject matter of criminal case against such employees. It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings. The law on the subject is fairly well-settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any strait-jacket formula for application to all cases the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the Courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short cut solution to the problem. What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously. In *Depot Manager, Andhra Pradesh State*

Road Transport Corporation v. Mohd. Yousuf Miyan, (1997) 2 SCC 699, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes. The relatively recent decision of this Court in ***Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao*** (2012) 1 SCC 442, is a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

- (i) There is no legal bar for both proceedings to go on simultaneously.
- (ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the

same set of facts and the evidence in both the proceedings is common.”

14. Hence, mere identity of facts and evidence in the two proceedings is not enough to warrant stay of the disciplinary proceedings. Court has also to take into account the question as to whether the continuance of the disciplinary proceedings will not only prejudice the delinquent employee but complicated questions of law also involved in the matter.

15. In the present case there are three charges framed against the workman. The charges read as follows:-

“1. That on 19.12.86 while you were performing your duty on Route No.858 with bus No.5626 (P.O.), your bus was intercepted by the checking officials at Rajouri Garden and detected 30 bogus tickets of various denominations in your possession. On further checking, a good number of used tickets of various denominations were recovered from your locker by the checking staff in the presence of Duty Officers and Shri O.P. Bhutani, A.T.S. which clearly reflects your malafide intention.

2. That you were arrested by police U/s 420/468/471 IPC but you failed to intimate the office.

3. That you refused to accept the challan from the checking staff and also disorderly behaved with them. The above action tantamounts to misconduct on your part within the meaning of para 19 (a), (b), (k) & (m) of the standing orders governing the conduct of DTC employees and contravened the clause – 6, 7 & 12 of the executing instructions – Duties of a conductor. Ram Prakash, T.I & others which the charge-sheet is based is enclosed.”

16. The FIR is filed under Section 420/468/471 IPC. The charges no. 2 & 3 have absolutely no concern with the criminal case. The facts which are subject matter of charge No.1 have some commonality with the facts

on the basis of which the FIR would have been filed. However, there are no complicated questions of fact or law involved and none have been pointed out in the order dated 04.05.2001. The management's refusal for stay of the disciplinary proceedings was in order in the facts of this case. In my opinion the impugned order dated 04.05.2001 was erroneously passed quashing the enquiry proceedings against the respondent.

17. Be that as it may, subsequent to the order dated 04.05.2001 passed by the Industrial Tribunal the management has led evidence. After evidence the order dated 19.03.2002 was passed.

18. I will deal with the merits of the said order dated 19.03.2002.

19. The following issues were framed by the Tribunal:-

“1. Whether the respondent committed the misconduct as alleged against him in the petition filed u/S 33(2) (b) of I.D.Act? OPM

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

3. Relief.”

20. The management and workman thereafter led their evidence before the Tribunal.

21. The Tribunal in its order dated 19.03.2002 noted that the only relevant witness produced before the Tribunal by the management was AW-3 Shri Ram Prakash, member of the checking team. The Tribunal noted that the statement of Shri Bhola to whom a bogus ticket was sold or any other passenger or independent witness was not recorded. The Tribunal held that the solitary statement of Shri Ram Prakash AW3 is not enough to prove the case of the management. It was further held that the management has not placed on file the tickets recovered from the locker

or the seizure memo of the recovered tickets prepared by the police when the locker of the workman was seized. Based on these observations, the Tribunal held that the management had failed to establish that the workman had committed the misconduct for which chargesheet was issued to him. The application of the management was dismissed.

22. Learned counsel appearing for the management submits that the entire approach of the Tribunal was erroneous. He relies upon ***State of Haryana and Anr. vs. Rattan Singh, (1977) 2 SCC 491*** to contend that in a domestic enquiry strict and sophisticated rules of evidence are not to apply. Reliance is also placed on ***Delhi Cloth and General Mills Company vs. Ludh Budh Singh, (1972) 1 SCC 595*** to contend that in an enquiry under section 33(1) (b) of the I.D.Act the Tribunal was only to satisfy itself whether a prima facie case has been made out by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. The Tribunal cannot substitute its own judgment for the judgment of the enquiry officer.

23. Learned counsel appearing for the workman has submitted that there are no grounds or basis to interfere with the impugned order of the Industrial Tribunal. He submitted that the workman in the criminal case that was filed against him was discharged by the appropriate court vide judgment dated 16.05.2007. According to the learned counsel, in view of this judgment, it is clear that the findings of the Tribunal that the management has failed to prove its allegations stand confirmed.

24. In my opinion, the Tribunal has laid wrong emphasis on the fact

that Shri K.K.Bhola the passenger to whom the forged ticket was sold or any other passenger or independent witness had not been produced before the Tribunal and that AW-3 one of the members of the inspection party was the solitary relevant witness produced. Reference in this context may be had to the judgment of the Supreme Court in the case of *State of Haryana and Anr. vs. Rattan Singh, (supra)*. That was also a case of a conductor of the Haryana roadways who was charged with having collected fare from the passengers without issuing tickets. The Court in paragraphs 3 and 4 held as under:-

“3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as borne out by the record, is that the inspector of the flying squad had said that they had paid the fares but they declined to give such written statements. The third ground which weighed with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been

taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

25. The above principles were reiterated by this court in a case involving the management itself in ***Delhi Transport Corporation vs. N.L. Kakkar & Anr., 110 (2004) DLT 493***. This court relied on the above judgment in the facts and circumstance of that case. That was a case in which inspecting team found that three ladies alighted from the bus

without ticket. The ladies however stated that they had paid the ticket amount to the conductor but he did not issue a ticket. A chargesheet was issued against the conductor. The Tribunal in that case also held that the management could not prove that the conductor did not issue the tickets. The Tribunal held that the ladies were the best witness to state whether the conductor had issued a ticket or not. Since they were not produced, no case can be made out against the conductor and accordingly, the application under Section 33(2) (b) of the I.D. Act was dismissed. In those facts, the court held as follows:-

29. It is quite clear that the consistent view of this Court over the last few decades has been that the non-production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic enquiry should not be interfered with so long they are based on some evidence. The value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal.

...

39. A perusal of the above judgments of various High Courts clearly shows that the production of passengers either in a domestic enquiry or before the Labour Court in an industrial dispute is not at all necessary. Indeed, I am of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the enquiry officer or the Labour Court causing them unnecessary inconvenience. One has to take a pragmatic view of the situation as well as consider the amount of effort and energy that may have to be expended in producing the passengers as witnesses. DTC carries passengers who are residents of not only Delhi but also of other States. Is it practicable to expect a passenger, who goes back to his State after a trip to Delhi, to appear before an Inquiry Officer for confirming a statement already given by him to the checking staff? As our Division

Bench has cautioned us, one has to take a commonsense approach to the whole problem and not allow legal technicalities to come in the way.

26. This court allowed the writ petition.

27. Hence the conclusion of the tribunal that the solitary evidence of Shri Ram Prakash is not enough to prove the allegations against the workman is an incorrect conclusion. Shri Ram Prakash was a member of the checking team who detected the bogus tickets on the person of the workman. His evidence was the best evidence. The tribunal wrongly discarded his evidence.

28. It cannot be ignored that the inspecting party which conducted the surprise inspection, namely, Shri Ram Prakash TI and Shri Dharam Pal ATI contemporaneously after the inspection have immediately filed a report before the management on the same date about the incident. They have also immediately reported the matter to the police station Rajouri Garden. The police has acting on the complaint conducted a search of the locker of the workman. On checking the locker more bogus tickets have been discovered. On the strength of these facts an FIR was registered by the police. This contemporaneous action taken by the checking staff itself fortifies the stand of the management about the incident and about the forged tickets. The sequence of events and the prompt follow up steps taken by the inspection team as elaborated by Shri Ram Prakash in his evidence inspire confidence and prove the case of the management.

29. On the issue of adequacy of the evidence led by the management, reference may be had to the judgment of the Supreme Court in the case of *Delhi Cloth and General Mills Company vs. Ludh Budh Singh*, (supra)

where in para 25 it was held as follows:-

“25. We may also refer to the decision in Central Bank of India Ltd., New Delhi vs Shri Prakash Chand Jain MANU/SC/0416/1968 where after a reference to the principles laid down in The Lord Krishna Textile Mills vs. Its Workmen MANU/SC/0216/1960 it has been pointed out that the test of perversity of a finding recorded by a Tribunal or an Enquiry Officer will be that the said finding is not supported by any legal evidence at all. It has been further pointed out that a finding recorded by a domestic Tribunal like an Enquiry Officer will also be held to be perverse in those cases where the finding arrived at by the domestic Tribunal is one, which no reasonable person could have arrived at on the material before it. The position was summed up by this Court in the said decision as follows:

“Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse.”

30. Reference may also be had to the judgment of the Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors.***, AIR 2002 SC 643 (MANU/SC/0030/2002) relevant portion of which reads as follows:-

“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.....”

31. In the facts of the present case it cannot be said that there is no evidence placed on record by the management to prove the charges against the workman. There is contemporaneous evidence to show that the inspecting team acted bona fide.

32. Coming to the submission of learned counsel for the workman regarding the discharge of the workman in the criminal case, a perusal of the judgment of the Metropolitan Magistrate dated 16.5.2007 shows that the prosecution has failed to prove its case. The concerned passenger Shri K.K.Bhola, on whose absence the Tribunal had drawn an inference, has appeared as a witness before the Criminal court. In the Criminal court he does not deny having made the complaint but has stated that he is unable to identify the accused and he does not remember anything about the incident due to lapse of time. It was in this background that the MM has exonerated the workman.

33. Merely because the appellant has been acquitted in the criminal trial would not be a ground for this court to take a different view. Reference may be had to the judgment of the Supreme Court in the case of *NKV Bros Pvt. Ltd v. M. Karumai Ammal*, 1980 ACJ 435 relevant portion of para 2 reads as follows:-

“The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness Under Section 304A I.P.C. is more drastic than negligence sufficient under the law of tort to create liability.”

34. Reference may be had to the judgment of the Supreme Court in the case of *Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr.*, (2005) 4 SCC370 para 32 reads as follows:-

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.....”

35. In the light of the above, it is clear that the Tribunal has wrongly disallowed the application of the management. There was enough evidence to show that the workman conducted the misconduct stated in the petition. AW-2 has proved that one month's wages were remitted by money order to the workman. Writ Petition in terms of prayer (a) and (c) is allowed. Impugned order dated 19.3.2002 is set aside. No order as to costs.

36. W.P.(C) 13574/2004 is dismissed.

(JAYANT NATH)
JUDGE

July 31, 2015
n/rb