

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

% *Judgment Reserved on : September 04, 2015*
Judgment Delivered on : September 08, 2015

+ **LPA 398/2010**

RAJBIR SINGH (SINCE DECEASED
THROUGH LRS)Appellant

Represented by: Mr.Sunil K.Jha, Advocate with
Ms.Sindhu Prabha Jha, Advocate

versus

DELHI TRANSPORT CORPORATIONRespondent

Represented by: Ms.Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. 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 ID Act, 1947 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."

2. In the decision reported as AIR 1959 SC 389 M/s.G.Mckenzie and Co. Ltd. Vs. Workmen & Ors. the Supreme Court laid down that Section 33 ID Act, 1947 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.

3. Dealing with the scope of Section 33(2)(b) of the ID Act, 1947 the Supreme Court in the decision reported as AIR 1978 SC 1004 Lalla Ram Vs. Management of D.C.M. Chemical works & 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.”

4. 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 the decision reported as JT 2010 (5) 553 Union of India Vs. R. Gandhi, President, Madras Bar Association after 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.

5. Guided by the law as above, we now proceed to note the relevant facts for deciding the appeal. Late Rajbir Singh was working as a Driver with the respondent and on June 01, 1992 was assigned duty to ply Bus No.8797 on Route No.260/261. At about 10:30 AM, Sohan Lal, a Traffic Inspector who was accompanied by one Sohan Lal detected that the bus was plying on a wrong route and without displaying on the board the route. There were no passengers in the bus. He prepared a report to said effect.

6. Vide memo dated June 26, 1992 a charge sheet was issued to Rajbir alleging that he caused financial loss to the Corporation by plying a bus on a wrong route without displaying on the board the route and further he falsely stated to the checking staff that he had detoured because a tyre of the bus had punctured.

7. In his defence, Rajbir did not dispute that he was to ply the bus on Route No.260/261 and that at 10:30 AM on June 01, 1992 the bus was not plying on the route and was detected at a place which was not on the route of the bus. He claimed that he had to do so because a tyre had got

punctured and it became his compulsion to take the bus to the nearest workshop where the punctured tyre could be either mended or replaced.

8. During the domestic inquiry Lalit Kumar the Depot Manager proved six documents as Ex.AW-1/1 to Ex.AW-1/6, of which we note that Ex.AW-1/1 is the report prepared by Sohan Lal the Traffic Supervisor. Another witness named Hanuman Prasad also appeared as a witness of the management and regarding his testimony the Inquiry Officer simply recorded that even Hanuman Prasad had deposed on lines similar to that of Sohan Lal. It is not clear from the record as to what Sohan Lal deposed.

9. Rajbir took the stand before the Inquiry Officer that due to a tyre of the bus having got punctured it became his compulsion to drive the bus to the nearest depot.

10. The Inquiry Officer gave a report that the charge was proved and the Disciplinary Authority took the decision that for the misconduct committed Rajbir Singh should be dismissed from service.

11. Approval of the Industrial Tribunal was sought by moving an application under Section 33(2)(b) of the Industrial Disputes Act, 1947.

12. Taking note of the fact that a Labour Welfare inspector was acting as the presenting Officer and that Rajbir was not informed that he could be represented by a Defence Assistant, holding that the inquiry proceedings was otherwise not defective, on account of not informing Rajbir that he could avail the facility of a Defence Assistant, vide order dated May 10, 2000 the learned Industrial Tribunal held that the inquiry was vitiated and since the management had requested to be granted permission to lead evidence the Industrial Tribunal proceeded to record evidence. Hanuman Prasad who had accompanied Sohan Lal when the bus was intercepted proved the challan Ex.AW-3/1 and report Ex.AW-

3/2. One Radhey Shyam was also examined by the management to prove the charge sheet issued to Rajbir and the record of the inquiry conducted, which evidence was useless because there was no dispute concerning the record of the inquiry proceedings. Rajbir led evidence and simply deposed that he had to drive the bus to the Yamuna Vihar Depot because a tyre had got punctured and he also proved a report lodged at his instance at the Yamuna Vihar Depot that due to a tyre having got punctured he drove the bus to the Yamuna Vihar Depot.

13. Vide award dated August 06, 2002 the learned Industrial Tribunal held that evidence established that Rabir had to take the bus to Yamuna Vihar Depot because a tyre of the bus had got punctured.

14. Challenged by DTC to the order dated May 10, 2000 and the award dated August 06, 2002 before the learned Single Judge has succeeded. The reason given by the learned Single Judge is that Rajbir never sought assistance of being represented by a defence assistance and that he had cross examined the witnesses of DTC. The learned Single Judge has held that concerning proceedings under Section 33(2)(b) of the ID Act, 1947, a summary jurisdiction had to be exercised by the Tribunal as indicated in the case law which we have noted hereinabove.

15. Finding fault with the order dated May 10, 2000, the said order and the award dated August 06, 2002 has been set aside.

16. In the instant case since Rajbir admitted that the bus which he was plying was detected at a place which was not on his route and justified the detour by taking a stand that because a tyre of the bus got punctured it became his compulsion to take the bus to the nearest depot, it has to be held that the management had to prove nothing and Rajbir had to establish the defence.

17. At the inquiry Rajbir did not prove that he had lodged a telephonic information with the Control Room that the bus which he was plying had a tyre puncture. Whilst it may be true that at the Yamuna Vihar Depot at the instance of Rajbir an entry was made in the log book that the bus had been brought to the depot because as per Rajbir a tyre had got punctured, but it would be relevant to simply note that said report is a self-serving document because it was lodged much after the bus was detected of the route by Sohan Lal, the Traffic Inspector.

18. We need not discuss the pros and cons of the merits of the evidence led by DTC and by Rajbir at the domestic inquiry because it is impermissible for a writ court to re-appreciate the evidence. It is trite that a finding of fact recorded by an Inquiry Officer can be challenged on three counts. Firstly that relevant evidence was ignored. Secondly that irrelevant evidence has been considered. Lastly that it is a case of no evidence. Instant case does not fall in any of the three categories.

19. We note that before us an argument was advanced that certain documents were not supplied to Rajbir, and in respect of the same we would simply note that Rajbir was given the documents which the management relied upon before evidence was recorded by the Inquiry Officer and that the documents which he desired to be supplied to him were not before the Inquiry Officer but at the stage when after the inquiry report was submitted and when it was supplied to him for his response. At that stage Rajbir had no right to ask for any further documents because the right of Rajbir to ask for documents was during inquiry. Further, what were the documents asked for by Rajbir and in what manner non-supply thereof after the inquiry was over had caused prejudice to Rajbir had not been even attempted to be established before us.

20. The appeal is accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 08, 2015
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