

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

% *Judgment Reserved on : January 21, 2015*
Judgment Pronounced on : January 27, 2015

+ **LPA 699/2012**

SUDESH KUMAR JULKAAppellant
Represented by: Mr.Atul T.N., Advocate

versus

HOTEL CORPORATION OF INDIA Respondent
Represented by: Ms.Tanu Priya Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. During the pendency of an industrial dispute between the management of the respondent and the workmen of Hotel Corporation of India, a charge sheet was issued against the appellant on January 13, 1986 alleging that a raid was conducted at counter No.4 on November 01, 1985 during which certain cuttings, over-writings and additions were noted on Ex.MW-1/5 maintained by the appellant and that there was an embezzlement in sum of ₹116/-. The appellant denied the charge. An Inquiry Officer was appointed who submitted a report indicting the appellant resulting in the respondent passing an order dismissing appellant from service on September 25, 1991. Since an industrial dispute was pending when order of dismissal was passed, before given effect to it, the respondent filed an application under Section 33(2)(b) of the ID Act, 1947

seeking permission of the Industrial Tribunal to give effect to the penalty of dismissal.

2. The Industrial Tribunal framed an issue : Whether fair and just inquiry was held according to the principles of natural justice, and looked into the record of the inquiry conducted against the appellant.

3. Vide order dated December 20, 2003, the issue was decided against the respondent. Pithily stated, with reference to the record of the Inquiry Officer and the charge sheet issued to the appellant, the learned Industrial Tribunal noted that the documents which formed the basis of the charge sheet and which were relied upon by the Inquiry Officer were not supplied to the appellant nor was he given an inspection thereof. It was therefore held that the principle of natural justice were violated i.e. by not affording full opportunity to the appellant to defend himself. The learned Industrial Tribunal noted the proceedings conducted by the Inquiry Officer and brought out that on June 11, 1988 the appellant was asked to admit or deny the charges, which he denied, and thereafter the representative of the management filed and exhibited some documents and sought time to file more documents; the appellant requested the Inquiry Officer to direct the respondent to produce certain documents and file the same. The Inquiry Officer directed the respondents representative to submit a list of documents and on the next date the respondent sought time to do the needful. Two witnesses, Vijay Dhingra and Vikas Gambhir were proposed to be examined. On January 21, 1989 the respondent examined Sh.S.C.Bhalla as a witness who proved his report Ex.MW-2/1 which was based on the cuttings and over-writings on Ex.MW-1/5 and claimed that Vikas Gambhir and Vijay Dhingra had confirmed to him that the cuttings and over-writings existed when they seized the document from the appellant. The learned Industrial Tribunal noted that Vikas Gambhir and

Vijay Dhingra had not been examined and opined that only those two have explained whether the cuttings preceded or succeeded the seizure of the document. The Industrial Tribunal noted that as per the workman, Ex.MW-1/5 was a bogus certificate and no cuttings were made in his presence.

4. Holding the inquiry to be vitiated on aforesaid reasoning, the learned Industrial Tribunal noted that the respondent had not taken a plea in its pleadings that in case the inquiry is vitiated it should be given a chance to lead evidence on merit to prove the charge i.e. this was not pleaded either in the application seeking approval of the Industrial Tribunal to dismiss the appellant nor in the rejoinder filed to the reply filed by the appellant to the application filed by the respondent seeking permission of the Industrial Tribunal to give effect to its decision to dismiss the appellant from service. The Tribunal adjourned the matter to February 04, 2004 framing an issue : Whether the management is entitled to approval sought for or not?

5. An application was filed by the respondent seeking permission to lead evidence to prove the charge against the appellant on merits, which was dismissed vide order dated February 04, 2004, holding that since this request was neither made in the application seeking approval of the Industrial Tribunal to dismiss the appellant from service nor was it made in the rejoinder filed to the reply of the appellant, permission as sought for could not be granted.

6. Thereafter, vide order dated March 20, 2004, the learned Labour Court held that since the domestic inquiry held was found to be vitiated by it being not in accordance with the principle of natural justice, the permission sought could not be granted.

7. The respondent challenged the orders dated December 20, 2003, February 04, 2004 and March 20, 2004 by filing a writ petition under Article 226 of the Constitution of India in this Court which was registered

as W.P.(C) No.20000/2004 and has been allowed by the learned Single Judge vide impugned order dated August 07, 2012.

8. The view taken by the learned Single Judge is that : *‘the case was to be decided on priam-facie grounds by the Tribunal under Section 33(2) (b) of the Act and not on meticulous appreciation of evidnece which is done only by an Appellate Authority and the Tribunal while examining the Inquiry Officer’s findings in domestic inquiry does not act as an appellate authority as has been done by the Tribunal in the present case’*. The learned Single Judge has relied upon an unreported decision of a learned Single Judge of this Court in W.P.(C) No.3633/2004 DTC Vs. Shyam Lal decided on July 01, 2010, and has opined that as per said decision the scope of an inquiry under Section 33(2)((b) of the ID Act, 1947 was limited to see whether it was a case of victimization against the workmen owing to the pendency of an earlier dispute. The learned Single Judge has thereafter, in the penultimate paragraph of the impugned order dated August 07, 2012, held that the appellant has not pleaded in reply to the application seeking approval from the Industrial Tribunal to dismiss him from service that he was being victimized by the management; and that the case of the appellant before the Tribunal was that he was not granted a fair opportunity to defend himself. Accordingly, the learned Single Judge allowed the writ petition and as a consequence the application filed by the respondent before the Industrial Tribunal seeking permission of the Tribunal to dismiss the appellant from service. The learned Single Judge held that the workman i.e. the respondent would be at liberty to approach the Industrial Tribunal directly under Section 10(A) of the ID Act, 1947 challenging he being dismissed from service.

9. A two-fold issue arises for consideration in the appeal before us. Firstly, what is the scope of the inquiry to be conducted by the Industrial

Tribunal when a reference is made to it by the management under Section 33(2)(b) of the ID Act, 1947. Secondly, at what stage can the management seek to lead evidence with respect to the charge sheet issued against the workman if the Industrial Tribunal finds that a domestic inquiry is vitiated.

10. We note that in light of the view taken by the learned Single Judge, the second question has not been adverted to by the learned Single Judge.

11. In the decision reported as AIR 1976 SC 98 Bharat Iron Works Vs. Bhagubhai Balubhai Patel & Ors., the scope and ambit of Section 33(2)(b) of the ID Act, 1947 had been gone into by the Supreme Court. The relevant facts of the case were that eight workmen who were the respondents along with several outsiders had allegedly assaulted three temporary workers of the appellant company outside the premises of the company. The respondents were charged by the management for aforesaid wrong and after conducting a domestic inquiry an order was passed dismissing them from service. Since an industrial dispute was pending between the management and its workmen, the management filed an application under Section 33(2)(b) of the ID Act, 1947 seeking approval from the Tribunal to dismiss the respondents. The scope and ambit of Section 33(2)(b) was explained as under:-

“When an application under Section 33 whether for approval or for permission is made to a Tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic inquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the latter event the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with

regard to the proof of the misconduct charged, and the Tribunal then will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's findings in the domestic inquiry will lapse and these will be substituted by the, independent conclusions of the Tribunal on merits.”

12. Further, the Court ruled that in cases where there is no defect in the procedure followed at a domestic inquiry, looking into the charges of misconduct against an employee, the Tribunal can interfere with an order of dismissal in following two circumstances:

- 1) If there is no legal evidence recorded against the concerned employee in a domestic inquiry with reference to the charge or if no reasonable person can arrive at a conclusion of guilt against the employee based on the recorded evidence.
- 2) If the Tribunal finds that the dismissal of the employee is by way of victimization or unfair labour practice.

13. The court made a concluding observation : *‘the Tribunal does not sit as a Court of appeal, weighing or re-appreciating the evidence for it-self but only examines the finding of the Inquiry Officer on the evidence in the domestic inquiry as it is in order to find out either whether there is a prima facie case or if the findings are perverse’.*

14. In the decision reported as AIR 1978 SC 1004 Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. & Anr., the employee of the company had allegedly adopted an aggressive attitude and had manhandled the assistant security guard of the company. The Inquiry Officer held the employee guilty of misconduct and based thereon the management took a decision that the workman should be dismissed from service. Since an industrial dispute was pending, the management filed an application under Section 33(2)(b) of the ID Act, 1947 seeking approval from the Tribunal to

dismiss the workman. With reference to the law declared in the decision reported as 1961 (1) LLJ 211 SC Lord Krishna Textile Mill Vs. Its Workmen, the Supreme Court observed:-

“In view of the limited nature and extent of the inquiry permissible Under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic inquiry and has proceeded to pass the impugned order as a result of the said inquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal? Has an inquiry been held as provided by the Standing Orders? Have the wages for the month been paid as required by the proviso? and, has an application been made as prescribed by the proviso ?”

15. The court after scrutinizing a catena of its earlier opinions held that five things required a consideration with respect to an application which emanate under section 33(2)(b) of the ID Act, 1947. The five being as under:-

(i) *whether a proper domestic inquiry 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 Probesh Singh : (1963) 1 LLJ 291 SC , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar (1961) 1 L.L.J. 511, Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management and Ors. : (1973) 3 SCR 587., and*

Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.) 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 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.”

16. The view taken by the learned Single Judge with reference to the view taken by another learned Single Judge in the decision which has been noted by the learned Single Judge in the impugned order is thus contrary to law on the subject authoritatively pronounced by the Supreme Court and thus the impugned decision has to be set aside warranting restoration of the writ petition for fresh adjudication by the learned Single Judge keeping in view the law on the subject declared by the Supreme Court, and as noted above.

17. The learned Single Judge would also be required to look into the law declared by the Supreme Court in the decisions reported as 1972 (1) LLJ 180 SC Delhi Cloth and General Mill Co. Ltd. Vs. Ludh Budh Singh, 1975 (2) LLJ 379 SC Cooper Engineering Ltd. Vs. P.P.Mundhe 1983 (4) SCC 491 Shambu Nath Goyal Vs. Bank of Baroda & Anr. and AIR 2001 SC 2090 Karnataka State Road Transport Corporation Vs. Smt.Lakshmiddevamma & Anr. on the subject : at what stage is the management to request an Industrial Tribunal to permit it to lead

evidence before the Tribunal to prove the charge against the workman if the domestic inquiry held by the management is set aside by the Tribunal. The learned Single Judge has to decide the legality of the view taken by the Tribunal that since the management of the respondent did not reserve the right to lead evidence to prove the charge should the domestic inquiry held by it be quashed either in the application seeking approval or in the rejoinder filed to the reply filed by the workman, the management could not be permitted to lead evidence to sustain the charge.

18. Allowing the appeal and setting aside the impugned order dated August 07, 2012, W.P.(C) No.20000/2004 is restored for adjudication afresh and for which the learned Single Judge will re-decide the writ petition keeping in view the law on the subject as above crystallized by us.

19. The Registry shall list the writ petition for directions before the Roster Bench on February 09, 2015.

20. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 27, 2015
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