

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

Reserved on 21.01.2016

Decided on: 22.02.2016

+ LPA 194/2013 & C.M.No.8393/2013

OM PRAKASH

..... Appellant

Through: Mr.Vikas Singh, Sr. Adv. with
Mr.Aman Panwar and Mr.Mudit
Gupta, Advocates

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms.Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

%

1. This appeal has been filed by the appellant/workman against the order of the learned Single Judge dated 07.02.2013 whereby the learned Single Judge set aside the award of the Industrial Tribunal and held that the denial of approval to the respondent/DTC under Section 33 (2) (b) of the Industrial Disputes Act (hereinafter referred as “the ID Act”) was bad in law.

2. The brief facts of the case are that the petitioner was in the employment of the respondent and was working as a Conductor. While he was on duty on Bus No. 9096 on Route No. 467 on 14.10.1991, the checking staff consisting of ATI Om Prakash and Kishan Lal boarded the bus at 6:15 hours at Yamuna Bazar. They found that there were 16 passengers in the bus and although the fare was collected, tickets were not issued to any of them. They formed two groups of those 16 passengers of 5 and 11 and recorded the statement of one from each group. They also seized 16 unpunched tickets from the petitioner. On the basis of their report, an enquiry for the alleged misconduct was held against the petitioner. The charge-sheet was issued which was duly replied by the petitioner. During the enquiry, the petitioner was given the assistance of a coworker and on his request, the enquiry was conducted in the presence of Labour Welfare Officer. The statement of the witnesses was recorded and they were duly cross-examined by the petitioner/workman. The petitioner/workman also examined one witness in his defence. The enquiry officer held him guilty. After issuing show-cause notice and considering his reply, an order of dismissal from service dated 22.07.1992 was passed against the workman. Since an undated dispute raised by the Union was pending adjudication, the

management filed an application under Section 33(2)(b) before the Industrial Tribunal seeking approval.

3. The Tribunal framed a preliminary issue covering validity of the disciplinary enquiry. The record shows that the Tribunal had asked the respondent to lead evidence to prove the enquiry report, but it failed to examine the enquiry officer. After closing the management's evidence on the preliminary issue, the Tribunal set aside the enquiry by its order dated 04.07.1996 on the ground that there was no evidence to prove that the enquiry conducted was valid and legal.

4. Thereafter, the management was given an opportunity to prove the allegations of misconduct against the workman and an issue to this effect was framed. Both the parties led their evidences before the Tribunal. The Tribunal, however, dismissed the application of respondent seeking approval by its order dated 06.11.2000 on the ground that the evidence on record was insufficient to prove the misconduct. This order was impugned by the management before the learned Single Judge and learned Single Judge after discussing the scope of Section 33 (2) (b) of the ID Act and after considering the materials on record, concluded that there was sufficient evidence on record to prove the misconduct. The learned Single Judge relied

on the judgment of Supreme Court in *Lalla Ram vs. D.C.M. Chemical Works Ltd. and another*, 1978(3) SCC 1. He also noticed that the finding of the Industrial Tribunal was contrary to the settled proposition of law as held in *State of Haryana vs. Rattan Singh AIR 1977 SC 1512 and DTC vs. N.L.Kakkar, Presiding officer and Others* 2004(73) DRJ 568. Learned Single Judge has held as under:-

9. *In the case in hand, there is no finding of the Tribunal that there was victimization or an unfair labour practice meted out. The Tribunal re-appreciated the evidence and came to the conclusion that since the passengers were not summoned, there was no corroboration to the statement of the checking official AW1, the statements of the two passengers were not counter signed by the Conductor, if Respondent No. 1 could sign the challan under protest he could have also signed the statements of the passengers under protest and thus held that the mis-conduct was not proved. Thus the learned Tribunal travelled into the realm of appreciation of evidence which it could not have done. This was not a case of no evidence as according to the Tribunal AW1 stated about the case of the Petitioner however, there was no corroboration to the said evidence.*

5. Moreover the judgment of the learned Tribunal is also contrary to the decisions in *State of Haryana vs. Rattan Singh (supra)* and *Delhi Transport Corporation (supra)* which held that examining passenger witnesses would be impracticable. In *Rattan Singh (supra)* it was held:

“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 misdirected 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 commonsense 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 levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

6. It is argued that the appellant would be gravely prejudiced if the impugned judgment is not set aside. Learned senior counsel urged that the appellant would be compelled to seek remedies under Section 10 against the wrongful dismissal after 21 years of the event; he is now 66 years old. Mr. Vikas Singh, learned senior counsel next submits that the impugned judgment is in error inasmuch as it overlooked the fact that the Tribunal had appreciated the circumstances about a complete lack of evidence with respect to the allegations against the employee. The management was afforded an opportunity to adduce independent evidence but could not establish the charges. The management in fact relied only on the domestic enquiry and did not lead convincing evidence, though it could have. In these circumstances, the learned Single Judge should not have interfered with the order declining approval under Section 33(2)(b).

7. It is argued that the DTC's Circular dated 06.12.1972 prescribed the procedure to be followed by checking officials in the case of short collection

or non-collection of fare from the passengers. That procedure was not followed. Consequently, the findings of the domestic enquiry could not be sustained.

8. It was submitted on behalf of the DTC that evidence was led in the form of depositions that were considered by the Tribunal. These included the 16 unpunched tickets as well as the deposition of one witness. The documents included the challans issued by the checking staff to the workman, Ex.AW-1/9. The learned Single Judge, it was argued, was justified in concluding that the facts on record could not have led to the dismissal of the application seeking approval. Learned counsel highlighted that it is not essential to produce the primary witnesses or even their signed statements given that in departmental proceedings, the standard of proof is not one 'beyond reasonable doubt' but 'preponderance of probabilities'. As long as there is some material to establish the finding, the penalty order can be sustained. Reliance was placed upon *Ratan Singh (supra)* in this regard.

9. The settled proposition of law is that when an industrial dispute is pending, the management cannot punish any workman in its establishment whether by dismissal or otherwise the workman unless he has been paid one month's wages and approval of the action has been sought by the

management through an application before the authority, before whom the proceedings are pending. The DTC moved an application under Section 33(2)(b) seeking approval of the dismissal order dated 22.07.1992. From the order of the Industrial Tribunal, it is apparent that it declared the domestic enquiry invalid, and ultimately refused approval, solely on the ground that the applicant had failed to adduce any evidence to prove that a valid and legal enquiry was held. The scope of Section 33 (2) (b) of Industrial Disputes Act and the jurisdiction of the Tribunal therein has been elaborately discussed in *Lallu Ram (supra)*.

10. The Labour Court, to begin with, is required to enquire if a proper, valid enquiry was conducted: whether order of the dismissal based on legal evidence adduced before domestic tribunal and is not based on extraneous considerations and the order of dismissal is not an act of victimization or unfair labour practice. In order to reach to a conclusion as regards validity of the domestic enquiry, the Labour Court has to analyze the enquiry proceedings placed on record alongwith the application. The insistence on formal proof of enquiry proceedings runs contrary to the rules of evidence governing the proceedings before Labour Courts. The Industrial Disputes Act empowers the Labour Court to formulate its own procedure with the

object to do justice. The Labour Court can examine any document produce in his Court without its formal proof (where genuiness of document is not disputed).

11. This Court has also in the case of ***Vijay Kumar Tiwari vs. Lt. Governor & Ors, LPA 394/2002*** held as under:-

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](#).”*

12. The order of the Tribunal of holding the enquiry invalid solely on the ground that the DTC failed to examine the Enquiry Officer to prove the enquiry report, vitiates its order and the said order was liable to be set aside on this ground alone. The Tribunal ought to have examined the Enquiry

Report to see, whether there was any procedural violation and whether the principles of natural justice were followed or not during enquiry before reaching to the conclusion that the enquiry was vitiated.

13. On the issue, if the appellant had committed any misconduct, the Tribunal felt that the statement of Om Prakash, ATI, was insufficient to prove the charge of misconduct and that non examination of the passengers as a witness was fatal and concluded that the respondent had failed to prove the misconduct.

14. The facts of this case reveal that when the checking staff, boarded the bus on which the petitioner was the conductor, they found 16 persons without ticket who told the checking staff that they boarded the bus from Kalka mandir to ISBT and that the tickets were not issued by them by the conductor although they had paid the fare. The checking staff divided the passengers into two groups and the statement of one person from each group was recorded by the said staff at the spot itself on the time sheet in the presence of the Petitioner who was apprehended by ATI Kishan Lal. The Charge-sheet was not issued to the appellant solely on the statement of the checking staff but its report which was supported by the statements of the passengers recorded at the spot. The fact that the statement of these persons

was recorded at the spot is proved by AW1-ATI Om Prakash ,Token No. 22359 in his deposition, yet the Tribunal felt that his evidence was insufficient and the DTC ought to have examined the passengers.

15. The learned Single Judge has relied on the proposition of law, settled by Supreme Court in *Rattan Lal (supra)* which held that non-examination of passengers is not fatal if there is other material on record to prove the misconduct. The principle of '*Res ipsa loquitur*' was also made applicable to the proceedings before the Labour Court.

16. While applying the principle of '*Res Ipsa Loquitur*' the Supreme Court in *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, (2005) 3 SCC 241, has held under :

34. This decision also has no application to the facts of the present case. In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of

the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

17. The materials on record by way of award show that the Tribunal was unduly influenced only by the evidence of the workman who deposed on oath. Furthermore, the Tribunal doubted the statement on behalf of the DTC by its witness that the checking staff found only 16 passengers in the bus without ticket. These, in the opinion of the Tribunal, were insufficient evidence to establish guilt. The Tribunal also based its findings on the submission of the workman that if he could sign the challan under protest then he could have also put signatures on the statement of the passengers by mentioning that it was “under protest”. The absence of these and the fact that the DTC examined only one witness was held to be insufficient to bring home the charge.

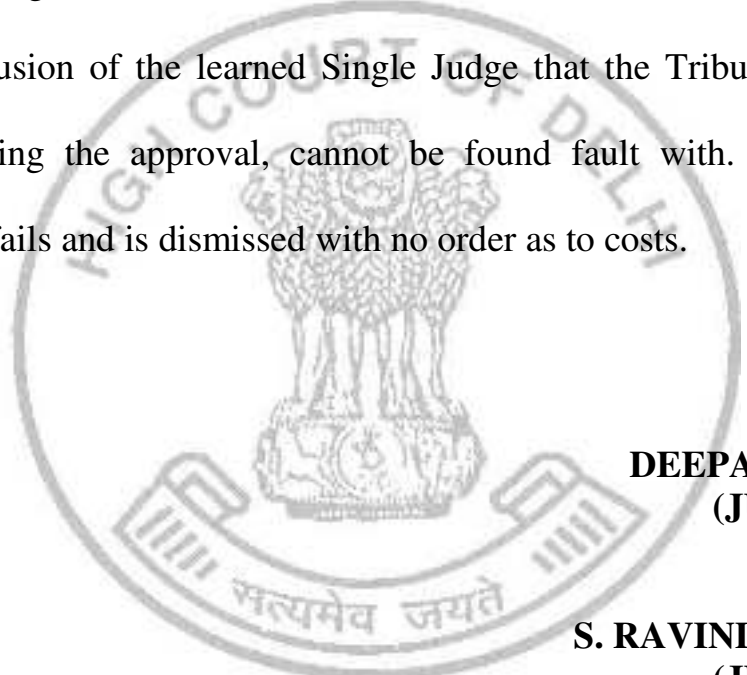
18. The management’s witness had deposed that the passengers were divided into two groups – as noted earlier. One passenger from each of these groups – 5 and 11 respectively, had stated in writing that money had been collected from the passengers but the appellant did not issue them tickets. Copies of those statements were produced as Ex.AW-1/R1 and AW-1/R2.

The challan too was exhibited as Ex.1/19. There were 16 other documents; besides, there were 16 unpunched tickets, Ex.AW-1/1 to exhibit AW-1/16. The checking staff's report dated 14.10.1991 is also on the record. The management witness clearly stated during the course of his deposition before the Tribunal that 16 passengers had boarded the bus from Kalkaji temple and that they had not been issued tickets despite having paid for them. There were two members of the checking staff, i.e. Kishan Lal Saluja, ATI and Om Prakash, ATI (not to be confused with the appellant, who was a conductor). Om Prakash, ATI deposed in the course of the proceedings under Section 33(2)(b).

19. Given the clear enunciation of law in *Rattan Singh (supra)* that the Court has to be alive to the realities in certain circumstances (and not insist upon the strict rules of evidence and procedure which govern other Court proceedings) the conclusion of the Tribunal that misconduct had not been proved, in our opinion, could not have been sustained. As held in *Vijay Kumar Tiwari (supra)*, under Section 33(2)(b), the Tribunal could not have insisted on strict proof of facts – much less insisted upon production of the original passengers. The checking staff had clearly deposed in the proceedings and another member of the checking staff had clearly deposed

in the domestic enquiry. The appellant did not attribute *mala fides* on the part of members of the checking staff. Furthermore, this Court notices that the appellant had previously been cautioned repeatedly and even censored. Apparently, on more than one occasion, disciplinary proceedings were initiated for similar charges.

20. Having regard to all these circumstances, this Court is of the opinion that the conclusion of the learned Single Judge that the Tribunal fell into error in refusing the approval, cannot be found fault with. The appeal consequently fails and is dismissed with no order as to costs.

The seal of the High Court of Delhi is a circular emblem. It features the Ashoka Lion Capital in the center, which is a four-headed lion standing on a base. Below the lion capital is a banner with the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate). The words 'HIGH COURT OF DELHI' are inscribed around the perimeter of the seal.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 22nd 2016

sapna