

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

Reserved on: 17.10.2016

Decided on : 17.11. 2016

+ LPA - 257/2016

DELHI TRANSPORT CORPORATION

.....Appellant

Through: Mr. Sarfaraz Khan, Advocate

Versus

PALE RAM

..... Respondent

Through: Mr. Sanjay Ghose and Mr.
Rhishabh Jatley, Advocates

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CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

:SUNITA GUPTA J.

1. The Delhi Transport Corporation in this Letters Patent Appeal impugns the judgment dated 5th February, 2016 whereby W.P.(C) No. 8185/2004 filed by the appellant challenging and assailing the Award dated 27th May, 2003 passed by the Industrial Tribunal, has been dismissed.

2. The respondent- Pale Ram was employed as a conductor with the appellant Corporation. On 30th August, 1991, he was chargesheeted for failure to issue tickets to three groups of passengers who had paid full fares on 14th July, 1991 on board Bus No. DL-1P-9032 from Patiala to Delhi route for refusal to sign on statements of passengers, refusal to give complaint book, and stopping the bus and taking dinner at Samana Bahu

Hotel which was prohibited thereby causing financial loss to the corporation.

3. By the order dated 23rd September, 2002, on the preliminary issue, the Industrial Tribunal held that except for recording the statement of Sh. Jagdish Chandra, Asstt. Traffic Inspector in question and answer form, only answers were recorded in respect of Sh. Nathu Ram, Sh. Attar Chand and Sh. Gulshan Kumar, Traffic Inspectors which leads to the inference that proceedings were not conducted in accordance with rules. Accordingly, the appellant corporation was granted liberty to lead evidence to prove and establish misconduct and remittance of one month's salary as required under Section 33(2)(b) of the Industrial Disputes Act on merits.

4. The Corporation then led evidence by way of affidavits filed by Sh. Jagdish Chandra Asstt. Traffic Inspector and Sh. D.S. Sharma, Disciplinary Authority.

5. Jagdish Chandra, AW1 in his affidavit deposed that he along with Rajeev Wadhera Traffic Superintendent, Attar Singh, Gulshan Kumar and Nathu Ram, Traffic Inspectors were on checking duty and at about 20:15 hours checked Bus No.9032 on Patiala-Delhi route on 14th July, 1991 and found the respondent not issuing tickets after collecting fare from a group of ten passengers who boarded from Ambala Cantt. for Karnal and had paid Rs.130/-, another group of three passengers who boarded from Patiala for Karnal had paid fare of Rs.67.50 p and two other passengers who boarded from Pipli to Karnal had paid Rs.6/- each but no tickets were issued to them. The passengers had given their statement on the back of the Challan and on plain paper but respondent refused to sign on the passengers' statement. The respondent also gave the unpunched tickets. In

cross-examination, he stated that shortage of cash in the bag means that the cash of Rs.560.65 was less than proportionate to the tickets issued by the conductor and that if the conductor get the fare and not issued tickets then there should be excess amount in the bag and not short. He further stated that challan was not attested by the Traffic Superintendent.

6. D.S. Sharma, AW2 was the disciplinary authority who proved the charge sheet, show cause notice, removal order, salary slip Ex. AW1/1 to AW1/6. He further deposed that after receipt of inquiry report, a show cause notice was issued to the respondent to which no reply was given so the punishment of removal was confirmed by him. Along with the removal order, one month's salary of Rs.2639/- was sent to the workman and same was received by him. He denied the suggestion that the alleged salary sent to him along with the removal order was not the salary u/s 33 (2)(b) of the Act and it was the arrears of the salary which was sent.

7. The respondent had tendered evidence by filing an affidavit and had appeared as a defence witness. He denied having refused to sign the statement of the passengers or give complaint book. He also denied that the bus had stopped at Samana Bahu Hotel. He further stated that if he had taken fare from the passengers who alleged to be without ticket then the amount should have been in excess instead of being short.

8. He examined Naresh Kumar Goyal, RW2 who was allegedly travelling in the bus which was checked by the checking party. According to him, 13-14 passengers were standing at Umri Police check post. The police officials had stopped the bus for security purpose, there these passengers had boarded the bus. The conductor had told the passengers that he would charge fare from Pipli because there was no stoppage at

Umri Check Post but the passengers were insisting that they would pay from Umri. Altercation was going on between them. Meanwhile, 3-4 checking staff got into the bus. Conductor of the bus was not appearing well. He had requested checking staff to help him in issuing the ticket to the passengers. On inquiry by the checking staff, passengers told the checking staff that they have not paid fare to the conductor, as such, he had not issued tickets to them. Some altercation took place between the conductor and checking staff. Checking staff wrote something on the paper of conductor and got down at Karnal.

9. The aforesaid evidence has been noted by us being relevant. We also find hand written statement of two passengers on the back of challan in English and statements of two passengers on separate piece of paper in Punjabi and Hindi. There is endorsement to the effect that respondent had refused to sign the statements.

10. The aforesaid evidence would reveal that the respondent had not disputed that the bus in question was checked and AW1 Jagdish Prasad, ATI was one of the members of the checking team.

11. The Industrial Tribunal while examining the said evidence referred to the fact that if the respondent had accepted the fare and had not issued tickets then there should have been excess amount in the bag and not short. The challan was not attested by the Traffic Superintendent, though he was present at the time of checking. No passengers were examined. As such, corporation failed to establish the allegations/charges against the respondent. As regards payment of Rs.2634/- being one month's salary to the respondent, same was admitted. Accordingly, the approval sought by

the Corporation was rejected and application u/s 33(2)(b) of the Act was dismissed.

12. In the impugned order dated 5th February, 2016, the learned Single Judge drew adverse inference against the Corporation for not putting different suggestions to the respondent during his cross-examination viz. Jagdish Chand, ATI, Rajeev Wadhera, Attar Singh, Gulshan Kumar, Nathu Ram, all TIs were the checking official; respondent did not issue tickets to 15 passengers after collecting fare from them, statement of passengers were recorded on the back of the challan and respondent refused to sign the same. The sole ocular testimony of Jagdish Chand, ATI-AW1 in these circumstances, was held not to inspire confidence.

13. We have gone through the reasoning given by the Industrial Tribunal affirmed by learned Single Judge and observe that the said reasoning per se and ex facie is unacceptable. A perusal of the impugned orders show that it has misconstrued the scope of Section 33(2)(b) of the Act. There is a distinction between deciding an application u/s 33(2)(b) and deciding a labour dispute. Failure to draw the distinction has led to error in the decision making process and accordingly erroneous verdict.

14. The jurisdiction and functions of a Tribunal under Section 33(2) (b) of the Act were explained by Supreme Court as back as in the year 1960 in ***Bangalore Woollen, Cotton and Silk Mills Co. Ltd. vs. Dasappa (B) (Binny Mills Labour Union)***, (1960) II LLJ 39 SC in the following words:-

"The settled position in law therefore is that permission should be refused if the tribunal is satisfied that the management's action is not bona fide or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify

any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the management has not acted bona fide. A finding that the management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion."

15. The point was again considered by the Supreme Court in the case of ***Lord Krishna Textile Mills v. its Workmen***, AIR 1961 SC 860 and it was held:-

"In view of the limited nature and extent of the enquiry permissible under s. 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 enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by s. 33(2) (b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal ? Has an enquiry been held as required by the standing order ? Have the wages for the month been paid as required by the proviso? "; and, has an application been made as prescribed by the proviso?" The Court then proceeded to consider whether the Tribunal in that case had acted rightly, and noted that one had merely to read the order to be satisfied that the Tribunal had exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits. The Tribunal did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. The Court then indicated that the Tribunal had proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and had come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges had been proved against the workmen in question. It was then held that, in making these comments against the findings of the enquiry, the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under s. 33(2) (b). The Court then indicated the principle applicable by saying:

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under s. 33(2) (b). It is conceivable that even in holding an enquiry under s. 33(2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

16. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under s. 33(2) (b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse, i.e. , the decision is unsupportable and not the sufficiency and adequacy of evidence and the conclusion. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in ***State of Andhra Pradesh vs. Sree Rama Rao***, AIR 1963 SC 1723, where the Supreme Court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant, The Court held:-

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

17. In *DTC vs. Rajbir Singh & Ors.*, 169 (2010) DLT 177 dealing with scope of Section 33 (2) (b), a Single Judge of this Court observed as under:-

"8. It is settled law that a finding on an application under Section 33(2) (b) is not res judicata if a labour dispute is also raised. Reference in this regard may be made to DTC v. Ram Kumar, 21(1982) DLT54(SN), DTC v. Delhi Administration and Bilori v. DTC, 153 (2008) DLT 499. Thus if the employer seeks approval under Section 33(2) (b) of the Act and the same is granted, the same will not come in the way of the workman raising an industrial dispute qua the termination and/or in the way of the Labour Court in deciding afresh whether the termination of employment is illegal or unjustified. If that be the position, an application under Section 33(2) (b) cannot be decided as a labour dispute and the scope of enquiry under Section 33(2) (b) is much narrower."

18. It is in the light of these principles that we have to see whether findings of Industrial Tribunal duly affirmed by learned Single Judge were justified.

19. As noted above, inquiry proceedings were held to be vitiated by the Industrial Tribunal primarily on the ground that except for recording the statement of Jagdish Chandra, Assistant Traffic Inspector in question and answer form, only answers of three other members of the checking team were recorded which was not in accordance with rules. Nothing has been placed on record to show that it was imperative on the part of the inquiry officer to record the statement of witnesses in question-answer form or there are any rules in this regard. Reliance was placed on the statement of Naresh Kumar Goel alleged to be one of the passenger of the bus, however, the case set up by this witness seems to be at variance with respondent as no such plea as deposed by this witness of boarding the bus by 13-14 passengers at Umri police check post or respondent demanding fare from them from Pipli or that respondent was unwell and requested the

checking party to help him in issuing tickets was taken by the respondent. As regards non-examination of passengers by the corporation, the same is not fatal. In *State of Haryana & Anr. vs. Rattan Singh*, AIR 1977 SC 1512 reiterated in *Managing Director, the North East Karnataka Road Transport Corporation, Gulbarg vs. Shivayananamath*, 2003(99) FLR 918 it was held that in a domestic inquiry, strict and sophisticated rules of evidence under the Indian Evidence Act do not apply. All materials which are logically probative for a prudent mind are permissible to be relied upon. Even hearsay evidence is admissible provided it has reasonable nexus and credibility. In both these cases, charge against the employee was non-issuance of tickets to passenger despite collection of fare from them. It was held that non-examination of passenger during domestic inquiry or before Labour Court cannot be taken as a firm ground for solely disproving the charge. All these aspects were required to be gone into before returning a finding that inquiry was vitiated.

20. Further as regards misconduct on the part of the respondent, finding has been given against the Corporation by the Industrial Tribunal on the ground that challan was not attested by Traffic Superintendent and the fact that if the fare was collected without issuing tickets, then there should be excess amount in the bag and not short. Learned Single Judge raised an adverse inference against the Corporation for not putting several questions to the respondent during his cross-examination. While doing so, it has been overlooked that while exercising jurisdiction under Section 33(2) (b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that

if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. The Supreme Court in ***Martin Burn Ltd. v. R.N. Banerjee***, (1958) 1 LLJ 247 SC has held:

*"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See ***Buckingham & Carnatic Co. Ltd. v. The Workers of the Company***, (1952) LAC 490(F)."*

21. It is not a case that there is no legal evidence or that principles of natural justice have been violated. As many as four members of the checking team were examined during inquiry proceedings. Except for noting that statements of three members of the checking team were not recorded in question-answer form, no infirmity is found in their statements. The checking by the Vigilance department is not questioned. Contemporaneous documents prepared at the time of occurrence or soon thereafter have fundamental sanctity attached to them unless there are reasons and grounds to suspect that they were prepared at some other time or fabricated. The statement of four passengers were recorded on the spot and without any delay, on the overleaf of the challan and on two separate

pieces of paper. There is no allegation that any of the member of the checking team had ulterior motive to falsely implicate the respondent. There are neither any allegation of victimisation nor any malafide is imputed on the members of the checking team so as to falsely rope respondent in this case.

22. In fact, while deciding the application u/s 33(2)(b) of the ID Act, it is not the sufficiency of evidence that is required rather some evidences i.e. if prima facie the case has been made out that is sufficient. The legal position regarding whether grant or refusal of permission by the Industrial Tribunal under Section 33 (2)(b) is well settled that it is not an adjudication and the industrial adjudication comes only when the matter is referred under Section 10 of the Labour Court. The order of discharge or dismissal which may be passed against the respondent-workman would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act.

23. Moreover in *Apparel Export Promotion Council vs. A.K. Chopra*, 1 (1999) SLT 212, the Supreme Court reiterated that in departmental proceedings the disciplinary authority is the sole judge of the facts and has power/jurisdiction to come to its own conclusion and once findings of fact, based on appreciation of evidence are recorded, the Court/Tribunal should not normally interfere with those findings unless it found that the recorded findings were based either on no evidence or that the findings are wholly perverse and/or legally untenable. The adequacy or inadequacy of evidence is not permitted to be canvassed.

24. Therefore, Industrial Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary

proceedings. Where there is relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Industrial Tribunal to review the same and reach different finding than that of the disciplinary authority. In the factual matrix of the present case, we find that there is error apparent in the decision making process by the Industrial Tribunal. This was not appreciated and considered in the impugned judgment.

25. In view of the aforesaid discussion, we would allow the present appeal and set aside the impugned order dated 5th September, 2014¹ passed by learned Single Judge dismissing W.P.(C) No. 8185/2004. Approval is accorded to the appellant under Section 33 (2) (b) of the Act. There will be no order as to costs.

**SUNITA GUPTA
JUDGE**

**SANJIV KHANNA
JUDGE**

NOVEMBER 17, 2016
pr/rs

¹ typographical error corrected as ' 5th February, 2016' in terms of the order dated 2nd December, 2016.