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HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on: 17/08/2018Order delivered on: 08/10/2018**Writ Petition (227) No. 1842 OF 2008**

Chhattisgarh Infrastructure Development Corporation Limited, Shstriya Chowk
G.E. Road, Raipur (C.G.) Through Divisional Manager, C.I.D.C. (Parivahan
Prabhag) Bilaspur (C.G.)

..... Petitioner**Versus**

1. Vinod Kumar Tripathi S/o Onkar Nath Tripathi, Aged about 41 years
Occupation Ex. Conductor, M.P. Road Transport Corporation, Resident of Village
& Post Ganj, Tahsil and District Mahoba (U.P.).
2. The Competent Authority, M.P. Road Transport Corporation, Head Office :
Habibganj, Bhopal (M.P.).
3. The State of Chhattisgarh Through Collector, Sarguja (C.G.).
4. The State Industrial Court, Chhattisgarh, Raipur, Bench at Bilaspur,
through its Registrar.

..... Respondents

For Petitioner	:	Mr. Ratan Pusty, Advocate
For Respondent No. 1	:	Mr. Vinod Deshmukh, Advocate
For State/Respondent No. 3	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Parth Prateem Sahu**C A V ORDER**

1. By this petition, petitioner/employer has challenged the legality, validity and propriety of the impugned order passed by State Industrial Court, Chhattisgarh, Raipur in Civil Appeal No. 6/C.G.I.R. Act/A-II/2006 dated 29/08/2006 and order passed in Misc. Case No. 12/C.G.I.R. Act/III/2007 dated 27/10/2007 (in review

application) passed by State Industrial Court, Chhattisgarh Bench at Bilaspur, whereby in appellate order dated 29/08/2006, the State Industrial Court has set aside the order passed by Learned Labour Court, Ambikapur and in another order dated 27/10/2007, a review application filed by the petitioner/employer was dismissed.

2. Brief facts of the case, are that, respondent No. 1 was an employee of Madhya Pradesh State Road Transport Corporation and working as Conductor since 1985. On 25/04/2002, when respondent No. 1/employee was on his duty and going from Manendragarh to Ambikapur on Bus No. 995, at that relevant time, the Bus was intercepted by members of Flying Squad of Road Transport Department near village Kamalpur. On inspection of the Bus, Flying Squad Officers found out of 44 passengers travelling on the Bus, 10 were travelling without tickets. *Panchnama* was prepared and signature of some of the passengers were obtained for the proceedings initiated by Flying Squad Officers. Thereafter, departmental enquiry proceedings were initiated against respondent No. 1/employee. In departmental enquiry proceedings, respondent No. 1/employee was found guilty and order of termination was passed on 03/09/2002 vide Ex. P-1. Subsequently, official order was issued to respondent No. 1/employee on 05/09/2002 vide Ex. P-2.
3. Being aggrieved by the order of termination issued against respondent No. 1/employee, he filed an application under Order 31(3) of the Madhya Pradesh/Chhattisgarh Industrial Relations Act, 1960 (hereinafter referred to as 'the Act of 1960') before Learned Labour Court, Ambikapur. After receiving the application, Learned Labour Court had framed preliminary issue whether the domestic enquiry conducted by department against respondent No. 1/employee was illegal. After recording of evidence, Learned Labour Court vide its order

dated 04/02/2006 came to conclusion that departmental enquiry conducted by department was illegal and thereafter, Learned Labour Court fixed the case for proving of charges of misconduct before the Court itself. The procedure adopted by Learned Labour Court was strictly in accordance with law and law laid down by Hon'ble Supreme Court in the matter of ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh***¹, which reads as follows:-

“(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence

¹ (1972) 1 SCC 595

before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.”

4. Recently, in the matter of ***Kurukshetra University v. Prithvi Singh***², the Hon'ble Supreme Court held as under :-

“18. If the domestic enquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant employer to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent employee. The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written statement. (See also para 33 at pp.1665-66 of *Shankar case*).”

5. Before the Learned Labour Court, department has examined only one witness, namely, Shivji Tripathi, Depot Manager, Ambikapur, who stated in his deposition that during posting of respondent No. 1/employee as Conductor at Ambikapur Depot, he was caught by Flying Squad carrying 10 passengers on Bus without ticket. He further stated that proceedings of departmental enquiry has been initiated against respondent No.1/employee. He further stated that the

² (2018) 4 SCC 483

documents Ex. D-2 to Ex. D-21 was filed by him after receiving it from Bhopal Office and he has not conducted departmental enquiry proceeding. He further stated that he was not present on spot.

6. Respondent No. 1, on his behalf has examined himself as witness. Learned Labour Court after considering material and evidence came to conclusion that charges of misconduct to be proved on the basis of documents submitted before the Court and held respondent No. 1/employee to be guilty and dismissed his application for reinstatement with back wages.
7. The aforesaid order of Learned Labour Court was challenged by respondent No. 1/employee before Learned State Industrial Court. Learned Appellate Court vide its order dated 29/08/2006 set aside the order passed by Learned Labour Court and passed an order of reinstatement of respondent No. 1/employee without back wages.
8. Learned counsel appearing for petitioner/employer submits that Learned Appellate Court has not considered the documents placed on record before Learned Labour Court wherein in some of the documents, signature of respondent No. 1/employee was present. He further submits that department has examined Shivji Tripathi, from whose evidence, charges levelled against respondent No. 1/employee has been proved in accordance with law. He lastly submits that Learned Appellate Court committed an error in arriving at a conclusion that author of the documents and members of Flying Squad were not examined to prove the documents, therefore, the impugned order passed by Learned State Industrial Court is liable to be set aside.
9. Per contra, learned counsel appearing for respondent No. 1/employee submits that Learned Labour Court has correctly adopted the procedure in first looking to

the legality and validity of departmental enquiry proceedings and after holding the proceeding of departmental enquiry to be illegal, has rightly granted an opportunity to petitioner/employer to prove the charges of misconduct. But, before Learned Labour Court, petitioner/employer has not produced any witness, who were authors of document or present at the place where the Bus of respondent No. 1/employee was intercepted and *Panchanama* was prepared. Learned counsel for respondent No. 1/employee in view of aforementioned submission, supported the order passed by Learned State Industrial Court and submits that in fact, the case of the petitioner/employer is without any evidence.

10. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
11. From perusal of evidence of Shivji Tripathi, it is clear that he was neither a member of Flying Squad nor he was present on spot at the time of inspection of Bus near village Kamalpur. He categorically admitted that the document which he placed on record has been received from the Head Office at Bhopal. He further admitted that in pursuant to the order passed by Head Office, he had issued the order of removal of respondent No. 1/employee vide its order dated 05/09/2002 only one witness was examined by employer who was neither member of Flying Squad, nor prepared any document which was produced as evidence and relied on by learned Labour Court for dismissing the case of respondent No. 1/employee.
12. None of the persons who are members of Flying Squad or the members of *Panchanama* proceedings were examined before Learned Labour Court to prove the charges levelled against respondent No. 1/employee, which is the basis of initiation of enquiry against respondent No. 1/employee. Learned counsel for

respondent No. 1/employee places reliance on the judgment passed by this Court in the matter of ***Smt. Chandrika Khare v. Dy. General Manager (Mechanical Maint./Fabrication) Bharat Aluminium Company Ltd., Korba (CG) and others***³, wherein the similar issue arose for consideration before this Court whether the documents placed on record has been proved in accordance with law or not. This Hon'ble Court while considering the judgments passed in ***State of Haryana and another v. Rattan Singh***⁴ and ***J. D. Jain v. The Management of State Bank of India & Anr.***⁵ held that as author of document has not been produced as witness before the Court to prove the documents which is basis of holding the employee guilty, therefore, there must be some admissible evidence on record for considering serious allegations against employee.

13. From considering the facts of case in hand, it emerges that Learned Labour Court has considered the documents placed on record by the witness, Shivji Tripathi (NAW-1) which he received from Head Office though he was not an author, nor witness to the document. Learned Labour Court also considered earlier service record of employee and held the charges to be proved against respondent No. 1/employee. The earlier conduct of an employee could only be considered for quantum of punishment to be imposed, but only on the basis of some earlier conduct, the employee cannot be held guilty in subsequent event without proving the charges levelled against him in accordance with law.
14. It is true that the strict and sophisticated rules of evidence under the Evidence Act is not applicable, but the fact remains that in the case in hand, none of the documents produced or submitted before Learned Labour Court has been

³ ILR 2018 Chhattisgarh 947

⁴ AIR 1977 SC 1512

⁵ AIR 1982 SC 673

proved in accordance with law and no witnesses, who were part of the document either as an author or witness has been examined without assigning any reason before Learned Labour Court. The non-production of witness who prepared the document or signed the documents as witness which is taken basis for passing an order imposing major penalty of dismissal is violative to the principles of natural justice. By the aforementioned Act of the petitioner/employer, respondent No. 1/employee was deprived of his valuable right to cross-examine the witnesses, who have prepared the case against him.

15. In view of the above discussions and the law laid down in aforementioned judgments, I am of the considered view that the Learned State Industrial Court was justified in setting aside the order passed by Learned Labour Court. I do not find any good ground to interfere with the impugned order.
16. In the result, petition being devoid of substance and merit is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge