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

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Reserved on: 21.03.2023
Pronounced on: 06.07.2023

+ **W.P.(C) 3689/2001, CM APPL. 10341/2002 & 20714/2017**

D.T.C.

..... Petitioner

Through: Mr. Uday N. Tiwary and Mr.
Akshat Tiwary, Advocates.

versus

NARENDRA KUMAR & ORS.

.... Respondents

Through: Mr. Arun Panwar, Advocate with
respondent.

+ **W.P.(C) 7865/2005**

NARENDER KUMAR

..... Petitioner

Through: Mr. Arun Panwar, Advocate with
respondent.

versus

D.T.C. & ANR.

.... Respondents

Through: Mr. Uday N. Tiwary and Mr.
Akshat Tiwary, Advocates.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. This Court proposes to dispose of the abovementioned two Writ Petitions vide the present common judgment.

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- (i) In **W.P.(C) 3689/2001**, titled as '**Delhi Transport Corporation Vs Narender Kumar & Anr.**', the Delhi Transport Corporation ('Petitioner Management') is challenging the order dated 27.09.2000 ('**Impugned Award-I**') passed by Sh. B.B. Chaudhary, Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in O.P. No. 91/1989 titled as '**Delhi Transport Corporation Vs Sh. Narender Kumar**'. Vide the Impugned Award-I, the learned Labour Court was pleased to dismiss the approval application filed by the Petitioner Management under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act') seeking approval of the learned Labour Court of its decision of removing the Respondent Workman from service.
- (ii) In **W.P.(C) 7865/2005**, titled as '**Narender Kumar Vs Delhi Transport Corporation & Anr.**', Narender Kumar ('Respondent Workman') is assailing the ex-parte Award dated 21.11.2003 ('**Impugned Award-II**') passed by Sh. P.S. Teji, Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in I.D. No. 7/2002, titled as '**The Management of M/s Delhi Transport Corporation Vs Shri Narinder Kumar**'. The factum of rejection of the approval application filed by the Petitioner Management vide Impugned Award-I was not brought to the notice of the learned Labour Court by both the parties. The Respondent Workman remained absent in these proceedings. Hence, the learned Labour Court vide



the Impugned Award-II, answered the reference in affirmative holding that the Petitioner Management conducted a valid enquiry and thereby upholding the punishment imposed on the Respondent Workman by the Petitioner Management.

FACTS GERMANE FOR ADJUDICATION OF BOTH WRIT PETITIONS

W.P.(C) 3689/2001, titled as 'Delhi Transport Corporation Vs Narender Kumar & Anr.'

2. The Respondent Workman was working as a conductor with the Petitioner Management. It is the case of the Petitioner Management that on 10.03.1989, the Respondent Workman was positioned as a conductor in bus No. 9047 on route Delhi - Faridabad, when the officials of the Vigilance Department boarded that bus for checking. It is the claim of the Petitioner Management that on checking, the officials of Vigilance Department found out that the Respondent Workman had charged Rs. 4.50/- for luggage of a passenger who was travelling from Delhi to Dussehra Maidan, Faridabad, but had taken Rs. 5.50/- from the passenger and had not issued a ticket for the same. Further, it is the claim of the Petitioner Management that upon confrontation with the passenger, the Respondent Workman admitted his fault and issued an unpunched ticket bearing No. 340-37344 of Rs. 4.50/- to the checking officials whereupon, checking officials also asked the Respondent Workman to return Re. 1/- to the passenger.



3. It is the case of the Petitioner Management that the officials of the Vigilance Department issued a Challan against the Respondent Workman. A complaint was written on behalf of the passenger and it was signed by the passenger, the Respondent Workman and the Traffic supervisor. Pursuant to the issuance of Challan to the Respondent Workman, he sent a Letter dated 13.03.1989 to the Depot Manager of Petitioner Corporation complaining against the Vigilance officials and against the Challan issued against him.
4. On the basis of report of Traffic Supervisor, a charge sheet dated 23.03.1989 was issued against the Respondent Workman by the Disciplinary Authority of Petitioner Management for the alleged act of the Respondent Workman which amounted to misconduct within the meaning of para 2 and 19(b, f, h, & m) of the Standing Order governing the conduct of the DTC employees. It is the claim of the Petitioner Management that an oral enquiry was conducted by the Enquiry Officer following the Rules, Regulations and principles of natural justice. The Respondent Workman was also given the opportunity to defend himself and lead evidence proving his innocence. After the completion of enquiry, the Enquiry Officer found the Respondent Workman guilty of misconduct and hence, the enquiry report was forwarded to the Depot Manager, the Disciplinary Authority for appropriate action upon the enquiry report.
5. The Disciplinary Authority issued show cause notice dated 01.08.1989 to the Respondent Workman seeking as to show why he should not be removed from service. The Respondent Workman replied to the show cause notice vide his letter dated 14.08.1989. It is



the claim of the Petitioner Management that after considering the reply of the Respondent Workman, the Disciplinary Authority removed the Respondent Workman from service vide its Order dated 14.09.1989. The Respondent Workman was also provided with one month wages on the same day vide money order.

6. At that time, a dispute between the Petitioner Management and its Workmen relating to the implementation of the IVth Pay Commission report was pending before the learned Labour Court, so the Petitioner Management filed an Approval Application under Section 33 (2) (b) of the I.D. Act bearing O.P. No. 91/1989 seeking approval of removal of Respondent Workman from service.
7. Learned Labour Court framed a preliminary issue with respect to the legality and validity of enquiry conducted against the Respondent Workman. Both the parties led their respective evidence in order to prove their stand on the preliminary issue. Learned Labour Court after perusing the evidence found that the procedure for enquiry followed by Enquiry Officer was not faulty but the findings of the Enquiry Officer in enquiry report were perverse and hence, decided the preliminary issue against the Petitioner Management vide its Order dated 13.09.1999.
8. Thereafter, the learned Labour Court framed the following issues for its consideration:

- “1. Whether the respondent has committed misconduct as alleged in the chargesheet?*
- 2. Whether the petitioner remitted one month's wages to the respondent as per provision of Section 33(2)(b) of I.D. Act?*
- 3. Relief.”*



9. Again, both the Parties were given the opportunity to lead evidence on these issues. Pursuant to examining the evidence produced before it and hearing to the parties, the learned Labour Court dismissed the approval application vide the Impugned Award-I dated 27.09.2000, wherein it held that the Petitioner Management had not been able to prove the misconduct of the Respondent Workman as alleged against him, thus, approval cannot be given to the order of his removal from service. Being aggrieved by the Impugned Order, the Petitioner Management has filed W.P.(C) 3689/2001, praying, *inter alia*, for quashing and setting aside of the Impugned Award-I dated 27.09.2000.

W.P.(C) 7865/2005, titled as ‘Narender Kumar Vs Delhi Transport Corporation & Anr.’

10. It is the claim of the Respondent Workman that even after passing of the Impugned Award-I, the Petitioner Corporation was not reinstating him in the service, so he raised an industrial dispute with respect to his removal from service. Pursuant to which, Secretary (Labour) of the NCT of Delhi referred the following reference before the learned Labour Court vide its Notification dated 21.11.2001:-

“Whether the punishment imposed upon Sh. Narinder Kumar S/o Sh. Ved Prakash by the management vide their orders Dt. 14.9.1989 is illegal and/or unjustified and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/ Govt Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

11. On the basis of pleadings of both the parties, learned Labour Court framed the following issues for its adjudication:



- “1. Whether the punishment imposed by the management is without holding proper enquiry? OPW*
2. If Issue No. 1 is decided in favour of workman whether the workman has committed the misconduct as alleged? OPM
3. Whether the order passed by the management dt. 14.9.1989 is illegal and/or unjustified?
4. Terms of reference.”

12. After framing of issues, both the parties were given opportunity to lead evidence, but since, despite several opportunities the Respondent Workman failed to appear before the learned Labour Court, his opportunity to lead evidence was closed and he was proceeded *ex-parte* and only Petitioner Management led evidence before the learned Labour Court.
13. Both the parties failed to bring to the notice of the learned Labour Court the factum of dismissal of the approval Application filed by the Petitioner Management vide Impugned Award-I.
14. On the basis of the evidence produced before it, learned Labour Court passed the Impugned Award-II, holding that the Respondent Workman failed to show that he was wrongly terminated from the service and he was not guilty of the misconduct as alleged against him. Consequently, the learned Labour Court decided all the issues against the Respondent Workman. Being aggrieved by the Impugned Award-II, the Respondent Workman has filed the Writ Petition bearing No. W.P.(C) 7865/2005, praying, *inter alia*, for setting aside of the Impugned Award-II and seeking a direction to Petitioner Management to reinstate him into service with full back wages.



ARGUMENTS RAISED ON BEHALF OF PETITIONER MANAGEMENT

15. Mr. Uday N. Tiwary, learned counsel appearing for the Petitioner Management argued that the Impugned Award-I was erroneously passed by the learned Labour Court as it could not have rejected the Application under Section 33(2)(b) of I.D. Act, seeking approval of rejection of the Respondent Workman when no ground of victimization was raised by the Respondent Workman before the learned Labour Court. He further argued that once it was held that the enquiry was done following the principles of natural justice then the learned Labour Court should not have tested the legality of domestic enquiry and should not have re-appreciated the evidence. In support of his arguments, learned counsel for Petitioner relied upon the decisions of this Court in *Birmati Vs Presiding Officer Industrial Tribunal-II & Ors.*, reported as *2022 SCC OnLine Del 2891*, *Bikram Singh Vs DTC*, having Neutral Citation No. as *2022/DHC/004480*; and *DTC Vs Nihal Singh*, reported as *2010 SCC Online Del 1797*.
16. Mr. Tiwary, learned counsel for the Petitioner Management further argued that the learned Labour Court also erred when it observed that the Petitioner Management failed to prove the misconduct of the Respondent Workman. It was his argument that the Regional Manager of Petitioner Management had sufficiently proved the documentary evidence vis-a-vis misconduct of the Respondent Workman. Thus, the learned Labour Court erred when it observed that the Petitioner Management failed to prove the misconduct of the



Respondent Workman. Mr. Tiwary further stated that even the past conduct of the Respondent Workman reflected that he had cheated earlier also and for which he was punished by stopping of his increment.

17. Learned counsel for Petitioner Management averred that the pleas raised by the Respondent Workman in his defence were afterthoughts. Learned counsel further averred that the Respondent Workman had written a Letter dated 13.03.1989 to the Depot Manager after 3 days of the incident. If the defence taken by the Respondent Workman would have been true then he would have narrated the same in that Letter dated 13.03.1989 but since no such averments were made in that Letter, it can safely be deduced that the defence taken by the Respondent Workman is an afterthought.
18. In response to the plea of Respondent Workman that allegations against him could have only been proved by the testimony of the passenger before the enquiry officer but since the passenger was not called before the enquiry officer for his statement, so the allegations against the Respondent Workman were not proved, learned counsel for Petitioner Management submitted that it is settled law that the strict rules of evidence do not apply to departmental enquiry and hence, the statement of checking team was sufficient to prove the misconduct of cheating by Respondent Workman. Mr. Tiwary placed reliance upon the decision of Hon'ble Supreme Court in *State of Haryana Vs Rattan Singh*, reported as (1977) 2 SCC 491.
19. Lastly, learned counsel for the Petitioner Management submitted that in the W.P.(C) 7865/2005, the Respondent Workman failed to raise



any ground on the finding of the learned Tribunal. The only contention of Respondent Workman in challenging the Impugned Award has been that he had directed his authorized representative to withdraw the reference under Section 10 of I.D. Act but the authorized representative failed to do so despite his repeated instructions. It is the argument of Mr. Tiwary, learned counsel for Petitioner Management that the Respondent Workman has failed to file any documentary evidence in support of his contention that he had directed his authorized representative to withdraw the reference and only has made bald averment in his Writ Petition. Therefore, it is his submission that the Impugned Award-II should not be interfered with and the Writ Petition bearing No. W.P.(C) 7865/2005 shall be dismissed by this Court.

ARGUMENTS RAISED ON BEHALF OF RESPONDENT WORKMAN

20. Mr. Arun Panwar, learned counsel appearing for Respondent Workman argued that the learned Labour Court, vide Impugned Award-I, rightly observed that the enquiry report made by the Enquiry Officer was perverse as it was not based on any legal and independent evidence. He argued that the statement of passenger was not recorded during the enquiry proceedings and there was no evidence before the Enquiry Officer to prove the weight of the luggage for which a ticket should have been issued by the Petitioner. Further, no evidence was produced before the Enquiry Officer proving that the passenger had demanded a ticket for the luggage from the Respondent Workman and the Respondent Workman had taken the money from the passenger but had not issued any ticket. It
- W.P.(C) 3689/2001 & 7865/2005* *Page 10 of 22*



was further argued that the statement of any co-passenger was also not recorded before the Enquiry Officer. Thus, the learned Labour Court, vide Impugned Award-I, has rightly set aside the enquiry conducted by the Enquiry Officer.

21. Mr. Arun Panwar, learned counsel for Respondent Workman further argued that an opportunity was also granted to the Petitioner Management to prove the misconduct of the Respondent Workman but again the Petitioner Management failed to produce the evidences which were lacking in the enquiry before the Enquiry Officer. Thus, the learned Labour Court rightly held that the Petitioner Management failed to prove the misconduct of the Respondent Workman. Under these circumstances, Mr. Arun Panwar submitted that since the Petitioner has not been able to throw light upon any error patent on the face of record, this Court should not interfere with the Impugned Award-I while exercising its jurisdiction under Article 226 of the Constitution of India.
22. It was argued by Mr. Arun Panwar that the learned Labour Court while passing the Impugned Award-II erred in proceeding ex-parte against the Respondent without issuing summons to the respondent Workman for his appearance even once. It is argued that the learned Labour Court could have dismissed the industrial dispute raised by the Workman for non-prosecution but it should not have proceeded ex-parte against the Respondent Workman. Moreover, the Petitioner Management also benefitted from the fact that the Respondent Workman was proceeded ex-parte and it deliberately did not inform the learned Labour Court about the dismissal of the Application



under Section 33(2)(b) of I.D. Act seeking approval of removal of Respondent Workman.

23. Learned counsel for the Respondent Workman further argued that the learned Labour Court wrongly observed in the Impugned Award-II that a proper and fair enquiry was conducted by the Petitioner Management, whereas, in the Impugned Award-I it was rightly held that the enquiry conducted by the Petitioner Management was vitiated and the findings made in the enquiry report, which was prepared on the basis of enquiry, were perverse.
24. Mr. Panwar, learned counsel submitted that the learned Labour Court had passed the Impugned Award-I on merits after examining the evidences led by both the parties, whereas, on the other hand, the Impugned Award-II was passed after only examining the evidence produced by the Petitioner Management. Thus, the findings as recorded in the Impugned Award-I should prevail over the findings of Impugned Award-II and hence, the Impugned Award-II should be set aside and the Impugned Award-I should withstand.
25. Another contention of Mr. Panwar, learned counsel for the Respondent Workman is that once the application seeking approval of removal of Respondent Workman was dismissed by learned Labour Court vide Impugned Award-I, the order of removal dated 14.09.1989 passed by the Petitioner Management became void ab initio. Since, the term of reference under Section 10 proceedings was legality or illegality of order of removal of Respondent Workman, so if such order had become void ab initio, then the learned Labour Court could not have decided such term of reference which had



become void ab initio. Thus, the Impugned Award-II passed by learned Labour Court in these proceedings is liable to be set aside and quashed.

LEGAL ANALYSIS

26. This Court has heard the arguments advanced by both the learned counsel for the parties and also examined the Labour Court record and the judgments relied upon by the parties.
27. W.P(C) No. 3689/2001 emanates from the approval application filed by the Petitioner Management under section 33 (2)(b) of the I.D. Act. The Hon'ble Supreme Court in the case of John D'Souza Vs Karnataka State Transport Corporation, reported as 2019 (18) SCC 47, reiterated the scope of enquiry permissible under Section 33(2)(b) of the I.D. Act. The relevant portion of the said Judgment, reads, *inter alia*, as follows:

“24. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the Forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct.

25. The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the



necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.

30. *This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified."*

28. Hence, it is evident that the enquiry envisaged under Section 33 (2) (b) of the I.D. Act is a limited enquiry and is in the nature of summary proceedings. While examining the application under Section 33(2)(b) of the I.D Act, the Industrial Tribunal is to conduct the enquiry in two stages. In the first stage, the Labour Court/Tribunal will consider as to whether the domestic enquiry is



conducted in accordance with the (a) principles of natural justice (b) the conclusion arrived at by the employer is bonafide (c) there was any unfair labour practice or victimization of the workman (d) a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry. In the event, no defect is detected in the enquiry, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In case there is any defect in the enquiry, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence before it. On appraisal of the evidence adduced by the parties, the Labour Court/Tribunal shall conclude whether the discharge or any other punishment including dismissal is justified. Hence, the enquiry under Section 33(2) (b) of the ID Act is to be conducted in two stages as explained herein above.

29. In view of the legal ratio explained hereinabove, this Court shall now examine the facts of the present case. Learned Labour Court in O.P. No.91/89, examined the issue of validity of the enquiry proceedings conducted by the Petitioner Management. Vide Order dated 13.09.1999, the learned Labour Court held that the procedure followed by the Enquiry Officer in conducting the enquiry proceedings was not faulty but the report of the Enquiry Officer was perverse. On perusal of the said order dated 13.09.1999, it reveals that the learned Labour Court had examined the domestic enquiry conducted by the Petitioner Management with minute precision and noted the following factual points:



- (i) Sh. Ved Prakash, who was part of the checking staff, had appeared before the Enquiry Officer as AW-1. It is the specific allegation of the Respondent Workman that the checking staff forcefully took the signature of the passenger witness and had added the writing portion later. Despite the said specific allegation, AW-1 failed to depose anything regarding the recording of the statement of the passenger witness by the checking staff.
- (ii) The passenger witness never appeared before the Enquiry Officer and the address of the said passenger witness was also found to be incomplete.
- (iii) It was the specific case of the Respondent Workman that the weight of the luggage was less than 10 Kg as it was empty cardboard boxes which requires no tickets.
- (iv) AW-1 in his statement admitted that if the weight of the luggage is less than 10 Kg, no ticket is required. He had also admitted that none of the checking staff weighed the luggage to find out the actual weight of the luggage. Weight of the luggage was not even mentioned in the Challan.
- (v) The Enquiry Officer held the Respondent Workman guilty of misconduct solely on the ground that the Respondent Workman in his first complaint dated 13.03.1989, filed immediately after the checking conducted by the checking staff, never mentioned that the weight of the luggage was less than 10 Kg. Learned Labour Court after examining the said letter dated 13.03.1989, came to the conclusion that the



Respondent Workman categorically stated in the said letter that the checking staff wrongly recorded his statement during the checking process. Thereafter, in his reply to the charge sheet dated 27.03.1989, he categorically stated that the weight of the luggage was less than 10 Kg and hence no ticket was required.

- (vi) Learned Labour Court also noted that it was Petitioner Management who for the first time on 16.05.1989 stated that the luggage was above 80 Kg. Hence the case of the Petitioner Management was an afterthought.
- (vii) Since the passenger witness was not examined, there was nothing on record to prove the fact that the Respondent Workman, later after the intervention of the checking staff, issued ticket and was asked to refund balance amount to the passenger witness.
- (viii) Learned Labour Court further observed that the reasoning given by the Enquiry Officer for his findings were self-contradictory.
- (ix) Learned Labour Court specifically noted that there was no evidence before the Enquiry Officer to proceed against the Respondent Workman.

30. Hence, after examining the enquiry report in great detail, the learned Labour Court held that the finding of the Enquiry Officer was perverse and afforded an opportunity to the Petitioner Management to prove the misconduct before it. During the said proceedings, the Petitioner Management examined AW-2, Sh. Vikas Batra, the



Regional Manager (South), DTC. However, the said witness was not a part of the checking team and hence, he did not have any personal knowledge of the checking conducted by the checking staff. In view of the same, the learned Labour Court held that the Petitioner Management failed to discharge its burden and hence failed to prove the alleged misconduct committed by the Respondent Workman.

31. This Court had the benefit of examining the Labour Court record. After examining the same, this Court is in agreement with the findings arrived at by the learned Labour Court. The basic allegation against the Respondent Workman was that he had charged Rs. 4.50 paisa from the passenger for his luggage and taken Rs. 5.50 Paisa, however, no ticket was issued to the passenger. It is the case of the Respondent Workman that the luggage was less than 10 Kg and hence, no ticket was required to be issued. The checking staff forcefully took the signature of the passenger witness and the Respondent Workman on the Challan, no statement of the passenger was actually recorded, the alleged statement of the passenger was incorporated later by the checking staff in their own handwriting. The passenger witness or no other independent witness was produced. It is an admitted position that the weight of the luggage was not taken and no such weight was mentioned in the Challan. The checking staff also failed to check the cash available with the Respondent Workman. Hence, it is clear that the Petitioner Management had no prima facie material available with them to even proceed against the Respondent Workman both before the Enquiry Officer and the learned Tribunal.



32. In view of the detailed discussion herein above, this Court is of the considered view that the learned Labour Court rightly examined the evidences adduced by the parties and arrived at the conclusion that there was no evidence before the Petitioner Management to proceed against the Respondent Workman and hence, rightly rejected the approval application filed by the Petitioner Management under Section 33(2)(b) of the ID Act.
33. The Constitution Bench of the Hon'ble Supreme Court in Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd Vs Sh. Ram Gopal Sharma & Ors reported as **2002 (1) SCALE 190**, examined the effect of rejection of approval application under Section 33(2)(b) of the I.D Act, and held, *inter alia*, as follows:

“Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.



34. Hence, it is evident that once the approval application under Section 33(2)(b) under I.D Act is rejected, it will be deemed that the order of discharge or dismissal had never been passed. In that case, the employee is deemed to have continued in service entitling him to all the benefits available. Therefore, there was no requirement for a separate order of reinstatement.
35. However, in the present case, despite the repeated requests of the Respondent Workman, the Petitioner failed to reinstate him in service. In view of the same, the Respondent workman initiated another industrial dispute which was referred to the learned Labour Court by the appropriate authority. It is the case of the Respondent Workman that when he came to know about the pendency of the industrial dispute bearing I.D. No.7/2002, he instructed his authorized representative to withdraw the proceedings before the learned Labour Court, however, inadvertently the authorized representative of the Respondent did not withdraw the same. It is the claim of Respondent Workman that due to this reason, he never participated in the proceedings before the Learned Labour Court in I.D. No. 7/2002. The Petitioner Management participated in the proceedings in I.D. No. 7/2002, but it failed to disclose the factum of rejection of the approval application by the learned Labour Court vide the Impugned Award-I. In view of the same, the learned Labour Court vide Impugned Award-II answered the reference in affirmative and held that the Respondent Workman is guilty of misconduct.
36. This Court deprecates the conduct of the Petitioner Management. The Petitioner Management was aware of the fact that the approval



application filed by them was rejected by the learned Labour Court vide Impugned Award-I. However, with malafide intention, the Petitioner Management concealed this material fact from the learned Labour Court which led to the passing of the Impugned Award-II. The Petitioner Management wasted the precious judicial time of the learned Labour Court as well as of this Court by concealing the material fact and forced the learned Labour Court to pass the Impugned Award-II.

37. Impugned Award-II is hereby set aside as the approval application under Section 33(2)(b) of the I.D. Act was already rejected vide Impugned Award-I and hence, in view of the law laid down by the Hon'ble Supreme Court in ***Jaipar Zila Sahkari Bhoomi Vikas Bank (Supra)***, there was no order of discharge or dismissal in existence as on the date of reference.
38. In view of the detailed discussion herein above, this Court is dismissing W.P(C) No. 3689/2001 filed by the Petitioner Management and allowing W.P(C) No. 7865/2005 filed by the Respondent Workman. As clarified herein above, once the approval application under Section 33(2)(b) of I.D Act is rejected, it will be deemed that the order of discharge or dismissal had never been passed and the employee is deemed to have continued in service entitling him to all the benefits available. In view of the same, the Respondent Workman is entitled to reinstatement with all the back wages and continuity in service as if no order of dismissal has ever been passed against him.



39. This Court further deems it appropriate to impose a cost of Rs.10,000/- on the Petitioner Management for misleading the learned Labour Court by concealing the material facts. The cost is to be paid to the Delhi State Legal Services Authority within a period of four weeks from the passing of this judgment. The proof of the cost is to be deposited with this court thereafter.
40. With these observations, both these Writ Petitions are disposed of. All the pending applications stand disposed of as well.

JULY 06, 2023
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GAURANG KANTH, J.



नित्यमेव जयते