

(2014) 02 DEL CK 0290
In the Delhi High Court
Case No : W.P. (C) 17142/2004

Delhi Transport Corporation

APPELLANT

Vs

Dhan Raj Singh and Others

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2014) 02 DEL CK 0290

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Anand Nandan, Advocates for the Appellant; Anil Mittal and Anuj Kumar Ranjan, Advocates for the Respondent

Judgement

V. Kameswar Rao, J.—The challenge by Delhi Transport Corporation (DTC) in this writ petition is to the order dated April 23, 2001 in O.P. No. 242/93, whereby the application filed by the petitioner-DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947 ("Act", in short) seeking approval of the Industrial Tribunal ("Tribunal", in short) for removing the respondent i.e. Late Dhan Raj Singh (represented through legal heirs) from service, was rejected.

2. The brief facts are, Late Dhan Raj Singh was employed as Conductor in DTC. For certain alleged misconduct, he was issued a charge sheet on December 07, 1992 by the Depot Manager, Keshavpur Depot, inter alia alleging that while he was performing his duty on bus No. DEP 8628 of route No. 761 (Spl/6) when TI Shiv Narain and other members of the check-in-staff of the petitioner-DTC checked the bus on that date about 0825 hours at Dhauli Piao, found that the respondent had sold a less denomination ticket No. 904-43779 of Rs. 1/- to a passenger who boarded into the bus at Peera Garhi. The passenger told the check-in-staff that he had paid a sum of Rs. 2/- to the conductor but he was issued ticket of Rs. 1/- only and the balance amount was also not returned to him. Be that as it may, the domestic enquiry was conducted against Late Dhan Raj Singh, wherein, the Enquiry Officer found the charge framed against him, as

proved. The Depot Manager, Keshavpur issued a show-cause notice dated April 08, 1993 to Late Dhan Raj Singh as to why he should not be removed from service. Reply to the show-cause notice was submitted by Late Dhan Raj Singh. The Disciplinary Authority issued an order removing Late Dhan Raj Singh from services on April 23, 1993. It is also the case of the petitioner that one month's wage was remitted to Late Dhan Raj Singh by way of money-order.

3. The respondent i.e. Late Dhan Raj Singh filed a reply and contested the application filed by the petitioner-DTC. During the pendency of the application, a preliminary issue was framed on September 15, 1995 as to whether the DTC (petitioner) had held a legal and valid enquiry against Late Dhan Raj Singh in accordance with the principles of natural justice.

4. The parties led their respective evidence. Vide order dated May 24, 1999, the issue was decided against the petitioner-DTC, wherein it was held that the Enquiry Officer did not observe the principles of natural justice. While allowing the said application, three additional issues were framed, which are under:

1. Whether the respondent committed misconduct as alleged in the petition under Section 33(2)(b) of the Act?

2. Whether the respondent was remitted one month's wage as per provision of Section 33(2)(b) of the Act?

3. Relief.

5. On the above three issues, the Tribunal, inter alia, was of the view that the respondent cannot be held to have committed misconduct; the DTC has failed to establish that full one month's wage was remitted/paid to the respondent at the time of his removal from services; and in view of the finding of issue Nos. 1 and 2, the application for approval was rejected.

6. Mr. Anand Nandan, learned counsel appearing for the petitioner would submit that the Tribunal has exceeded its jurisdiction while deciding the application under Section 33(2)(b) of the Act inasmuch as the Tribunal could not have gone into the merit of the charge framed and proved against Late Dhan Raj Singh. According to him, the Enquiry Officer has conducted the enquiry in accordance with the principles of natural justice and there was enough evidence that the respondent Late Dhan Raj Singh had committed a misconduct. The charge being of serious nature involving loss of confidence, the punishment of removal was justified.

7. On the other hand, Mr. Anil Mittal, learned counsel appearing for the respondent, substituted by the legal representatives, would submit that the present petition is not maintainable inasmuch as the petitioner has not challenged the earlier order dated May 24, 1999, whereby the Tribunal, on a preliminary issue, held that the domestic enquiry has not been conducted in accordance with the principles of natural justice. Further, he would submit that the employee concerned i.e. Dhan Raj Singh has expired in the year 2008 and

the legal representatives are on record. He would submit that legal representatives are ready to forego the back wages which are liable to be paid by the petitioner-DTC in view of the approval not being granted by the Tribunal. The legal representatives would only claim that wife of the deceased employee be paid family pension with effect from 2008.

8. Having heard the learned counsel for the parties, at the outset, I may state that the law is well-settled insofar as the scope of the judicial review when an application under Section 33(2)(b) of the Act is filed. The Supreme Court in the case of *Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another*, and *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, has, inter alia, held that the scope of jurisdiction of the Industrial Adjudicator under Section 33(2)(b) of the Act is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and the prima-facie case for dismissal is made out; approval has to be granted.

9. In the present case, I find that there was no reason for the Tribunal to adjudicate the issue of misconduct on merit. Surely, the Tribunal has exceeded its jurisdiction, but, the same is of no consequence in the facts of this case inasmuch as the Tribunal, vide its earlier order dated May 24, 1999 has held that the domestic enquiry has not been held in accordance with the principles of natural justice. The said order has not been even challenged by the petitioner-DTC in these proceedings. The conclusion of the Tribunal to that extent has attained finality. Further, the Tribunal against issue No. 2 about the remittance of one month's wage to Late Dhan Raj Singh as per provision of Section 33(2)(b) of the Act, came to the following conclusion:

"Issue No. 2. 14.

The respondent has specifically pleaded that full one month's wage was not paid to him. Issue was framed in that respect. The petitioner was given opportunity to led evidence. However, the Petitioner examined only AW2 in support of its case. The statement of AW2 as made in his affidavit Ex.AW2/A is absolutely silent about the payment or remitting of full one month's wage to the respondent at the time of his removal from service. Though, the affidavit of the respondent is also silent in that respect yet the burden was upon the petitioner to establish all the ingredients of the provision of Section 33(2)(b) of I.D. Act. It has failed to establish that full one month's wage was remitted/paid to the respondent at the time of his removal from service. Hence, the issue is decided against the petitioner".

10. In view of the additional fact that one month's wage has not been remitted to Late Dhan Raj Singh, the conclusion arrived at by the Tribunal, rejecting the application filed by the petitioner-DTC, cannot be faulted. The consequence of approval application being rejected, is well settled in terms of the judgment of the Supreme Court in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*

Vs. Ram Gopal Sharma and Others, . The relevant para of the said judgment is reproduced as under:

"14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is ending 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".

11. Keeping in view the submission made on behalf of the legal representatives, I direct the petitioner that it shall grant family pension to the wife of the deceased-employee Late Dhan Ran Singh with effect from the date when he has expired. The legal representatives shall not be entitled to the back wages from the date of removal till the year 2008 when the employee Dhan Raj Singh had expired. The arrears shall be paid to the wife of Late Dhan Raj Singh within a period of two months from today.

12. The writ petition is disposed of in the above terms.