

(2012) 05 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) 1840 of 2004

Delhi Transport Corporation

APPELLANT

Vs

Madan Lal and Another

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (2012) 05 DEL CK 0132

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Sarfaraz Khan, for the Appellant; Farrukh, for R-1, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—The petitioner-workman is aggrieved by the order dated 17th February, 2003 passed by the Industrial Tribunal whereby its application u/s 33(2) (b) of the Industrial Disputes Act, 1947 ("the Act of 1947" in short) seeking approval of its action taken to remove the respondent no. 1, who was employed with as a conductor, from its service because of his having committed a serious act of misconduct was rejected. The respondent-workman was charge-sheeted on the allegations that while performing his duty as a conductor on 09-07-1991 on bus no. DLP-9038 he had not issued tickets to six passengers after collecting money from them and that was detected when the checking team of DTC entered his bus for checking and those six passengers had informed them that they had paid the money to the conductor (respondent herein) but he had not issued them the tickets. When the checking officials wanted to record the statements of those passengers the respondent created a scene and did not allow the passengers to give their statements. Another allegation was that his voucher at that time was found to be incomplete and also that he had refused to receive the copy of the challan which the checking officials had prepared at the spot narrating therein whatever had transpired there. After issuing the charge-sheet to the respondent

the petitioner ordered an enquiry also against him to look into these charges. As per the case of the petitioner a proper enquiry was held in which the enquiry officer found all the allegations to have been established and accepting the report of the enquiry officer the Disciplinary Authority imposed the penalty of removal from service upon the respondent after giving him a show cause notice to which he had responded also vide his reply dated 07.10.1992. Since at that time some industrial dispute was pending before the Industrial Tribunal between the management of DTC and its workmen the petitioner had to seek approval of that Tribunal of its action taken for the removal of the respondent from its services vide removal order dated 30.10.1992 and accordingly it had filed an application u/s 33(2)(b) of the Act of 1947.

2. Respondent-workman contested that approval application of the petitioner-management on the ground that he was charge-sheeted arbitrarily and in the enquiry held against him principles of natural justice violated. And in any case his guilt was not established from the evidence adduced during the enquiry by the petitioner management and the enquiry officer had held him guilty on conjectures and surmises and his findings were perverse.

3. The Industrial Tribunal framed a preliminary issue regarding the respondent's challenge to the validity of the enquiry held against him and vide order dated 03.09.2002 decided that issue against the petitioner-management. Thereafter the management was given an opportunity to adduce evidence in support of its charges before the Tribunal itself. The petitioner did avail of that opportunity by examining the checking officials who maintained whatever they had reported to the management after the checking of the respondent's bus in respect of the checking of the respondent's bus by them.

4. Learned Presiding Officer of the Industrial Tribunal came to the conclusion after examining the evidence adduced before it that the alleged misconduct did not stand established for the reason that statements of the concerned passengers who were found to be travelling without tickets were not recorded at the time of checking and the statements of the checking officials were not acceptable. As a result of these findings the Industrial Tribunal rejected the approval application.

5. Feeling aggrieved the present writ petition was filed.

6. Learned counsel for the petitioner-management has cited one judgment of the Single Judge Bench of this Court in the case of "Delhi Transport Corporation vs Rajbir Singh", 2010 IV Apex Decisions(Delhi) 336 in support of the submission that the Industrial Tribunal had gone far beyond its jurisdiction while considering the approval application of the management by going too deep into the matter when only a prima facie view was to be formed that the action of the management was not a motivated move to get rid of him. The respondent-workman himself had not even pleaded before the Tribunal that he was being victimized and, therefore, the rejection of approval application cannot be

sustained at all.

7. On the other hand, learned counsel for the respondent-workman relying upon one judgment a Division Bench of this Court in the case of " D.T.C. Vs. Anup Singh, had submitted that the alleged misconduct of the respondent could not be said to have been established only on the evidence of the checking staff of DTC and the Tribunal was justified in rejecting the approval application of the petitioner-management.

8. After having heard learned counsel for the parties and going through the record I am of the view that the impugned order of the Industrial Tribunal cannot be sustained and this writ petition deserves to be allowed. Learned counsel for the petitioner had rightly submitted that the Industrial Tribunal has gone much far beyond the jurisdiction vested in it while dealing with approval applications u/s 33(2)(b) of the Act of 1947. As held by the Single Judge Bench of this Court in Rajbir Singh's judgment (supra), relied upon by the counsel for the petitioner-management, all that was required to be seen by the Tribunal was whether it was a case of victimization of the respondent-workman or not and that too was required to be examined only if a plea of victimization had been taken by the workman. It was also held that if no such plea is taken by the workman then industrial adjudicator is not expected to go further in the matter to examine in detail as to whether a fair and proper inquiry was held and whether in the inquiry charges were proved or not. Since the respondent- workman had not pleaded that he was being victimized by the management the decision of the Industrial Tribunal rejecting the management's approval application on the ground that the charges leveled against the respondent-workman were not established has to be set aside leaving it to the Court, where the industrial dispute between the parties regarding the legality of the punishment given to the respondent-workman is stated to be pending adjudication, to go deep into all aspects and to take any decision in accordance with law.

9. Even otherwise I am of the view that respondent's contention that there was no evidence before the Industrial Court from which the alleged misconduct could be said to have established cannot be accepted. As noticed already, the main charge against the respondent was that at the time of checking of respondent's bus the checking officials had found six passengers travelling in that bus without tickets. Respondent-workman had not claimed at any stage that the checking staff had not found six passengers travelling without tickets in his bus. It was for him to show as to how some passengers were travelling in his bus without tickets and in the absence of any such explanation from his side there was no reason to disbelieve the evidence of the checking staff who had deposed before the Tribunal also. The respondent had claimed that he was falsely involved as he had refused to bribe the checking staff. That defence taken before the Tribunal only was clearly an afterthought. If that had been true he would have lodged a complaint on 9th July, 1991 itself. That was not done. The checking officials had deposed that they had been informed by the passengers that they had given the

money to the conductor but he had not given them the tickets. If that be so, it could not be said that there was no evidence/material from the side of the petitioner to substantiate this allegation.

10. As far as the judgment of the Division Bench of this Court relied upon by the counsel for the respondent is concerned the same is not applicable to the facts of the present case inasmuch as the scope of consideration of a case for grant or rejection of approval of employer's action was not being considered in that case as was considered in detail in the Single Judge Bench judgment relied upon by the petitioner-management and if on the facts of the case relied upon by the respondent approval was accorded it cannot mean that in the present case also it had to be granted just because in that case also passengers were not examined and in this case also same is the position. This writ petition is accordingly allowed and the impugned order of the Industrial Tribunal dismissing the approval application of the petitioner-management is set aside. The approval sought for by the management in its application u/s 33(2)(b) is granted. It is, however, made clear that grant of approval to the petitioner-management will not come in the way of the Industrial Court which is seized of the same controversy referred for its adjudication u/s 10 of the Act of 1947 to arrive at its own independent conclusions after full-fledged trial and uninfluenced by anything said in the present judgment.