

(2010) 04 DEL CK 0088
In the Delhi High Court
Case No : WP (C) 4856 of 2003

Delhi Transport Corporation

APPELLANT

Vs

Rajbir Singh and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1), 33(2)

Citation : (2010) 4 ILR Delhi 335

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; Javed Ahmed and Vaseem Mian, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner DTC seeks writ of certiorari with respect to the orders dated 10th May, 2000 and 6th August, 2002 of the Industrial Tribunal on an application of the petitioner DTC u/s 33(2)(b) of the Industrial Disputes Act, 1947. The Industrial Tribunal vide order dated 10th May, 2000 held that the petitioner had not held a legal and valid enquiry before removing the respondent No. 1 workman from its employment and thereafter proceeded to examine itself whether any case for dismissal of the respondent No. 1 workman from employment was made out and vide order dated 6th August, 2002 finding no case for dismissal of the respondent No. 1 workman to have been made out, declined the approval sought by the petitioner for removal of the respondent No. 1 workman from its employment.

2. This Court vide ex parte order dated 4th August, 2003 stayed the operation of the orders impugned in the petition. When the matter came up for hearing first on 15th February, 2010, it was enquired from the counsel for the parties as to whether the respondent No. 1 workman had raised any industrial dispute qua termination of his employment by the petitioner DTC. The answer was in the negative. It was in the circumstances enquired from the counsels as to what

occasioned the filing of the application by the petitioner DTC u/s 33(2)(b) of the Act. The counsels were unable to reply and the proceedings were adjourned to enable them to take instructions. On the subsequent date, it was informed that at the contemporaneous time an industrial dispute between the DTC and its workers in general as to certain pensionary benefits was pending and pendency whereof had necessitated the filing of the application u/s 33(2)(b) of the Act, even though the industrial dispute qua pensionary benefits since stands resolved. Be that as it may, the termination by the petitioner of the services of the respondent No. 1 workman being during the pendency of an industrial dispute, this writ petition by the petitioner DTC challenging the dismissal of its application shall survive the resolution of the industrial dispute which had necessitated the filing of the application.

3. The respondent No. 1 workman was employed as a Driver with the petitioner DTC. He was charged with misconduct within the meaning of Para 19(b)(f) & (h) of the Standing Orders governing the conduct of DTC employees and an enquiry was ordered and held. It was the case of the petitioner DTC that on 1st June, 1992, the respondent No. 1 workman while discharging his duty on Bus No. 8797 on Route No. 260/261 was found by Sh. Sohan Lal, Traffic Supervisor of the DTC and his staff at about 10:30 at Nehru Vihar, it was found that respondent No. 1 workman had not displayed the route board on the bus and was found with the bus at Nehru Vihar which was not on his route. The respondent No. 1 told the Traffic Supervisor that it was a case of breakdown of the bus. However, the respondent No. 1 workman was alleged to have not reported breakdown to any of the control rooms of the petitioner DTC. The enquiry officer found the respondent No. 1 workman guilty of the charge and the Disciplinary Authority of the petitioner DTC imposed the punishment of dismissal from service on the respondent No. 1 workman and approval of such dismissal was sought from the Industrial Tribunal by moving an application u/s 33(2)(b) (supra).

4. The Industrial Tribunal framed a preliminary issue:

Whether fair and just enquiry was held according to principles of natural justice and as per standing orders and rules of the management?

The Industrial Tribunal vide order dated 10th May, 2000 on the said preliminary issue found that the respondent No. 1 workman had not denied the fact of receiving the charge sheet or having filed the reply to the charge sheet; it was also found that though the respondent No. 1 workman had demanded copies of certain documents and the management had informed that at that stage the documents could not be supplied but the workman was free to inspect the same, the workman participated in the enquiry without any objection or demand of copies of the documents and therefore he could not agitate that he was incapable of defending himself because of non supply of documents. It was also found that the workman could not take the said ground inasmuch as he had been given the opportunity to inspect the documents. The Industrial Tribunal further found that the respondent No. 1 workman had participated in the enquiry proceedings.

However, the Industrial Tribunal held:

- (i) That the respondent No. 1 workman was not given opportunity of representation and was denied the facility of defence assistance from amongst the co-workers and
- (ii) The Labour Welfare Inspector acted as the Presenting Officer of the management.

It was further held that the Labour Welfare Inspector should have been present during the enquiry to take care of the interest of the respondent No. 1 workman and to see that the enquiry is conducted in a proper manner but instead of doing so the Labour Welfare Inspector acted as the Presenting Officer. The Industrial Tribunal nevertheless held that the said Labour Welfare Inspector as the Presenting Officer had not put any questions to the witness and thus his appointment as Presenting Officer did not vitiate the enquiry.

5. The Industrial Tribunal decided the preliminary issue against the petitioner DTC and held no proper enquiry to have been held for the reason of the Enquiry Officer having not recorded the complete statement of Sh. Hanuman Prasad one of the witnesses of the petitioner; it was merely recorded that the statement of Sh. Hanuman Prasad was similar to the statement of another witness Sh. Sohan Lal. Save for the said fact, the enquiry was not found to be defective.

6. The Industrial Tribunal thereafter proceeded to decide whether the respondent workman was guilty of misconduct and reached the conclusion that the petitioner had been unable to prove misconduct i.e. plying of the bus on the wrong route without passengers.

7. A perusal of the orders of the Industrial Tribunal shows that it has totally misconstrued the scope of Section 33(2)(b) of the Act. The Industrial Tribunal appears to have lost sight of the distinction between deciding an application u/s 33(2)(b) and deciding a labour dispute. The application u/s 33(2)(b) has been dealt with as a labour dispute and the termination found illegal by placing the onus, as in a labour dispute, on the petitioner DTC.

8. It is settled law that a finding on an application u/s 33(2)(b) is not res judicata if a labour dispute is also raised. Reference in this regard may be made to Delhi Transport Corporation Vs. Ram Kumar and another, D.T.C. Vs. Delhi Administration and Others, and Bilori Vs. DTC, Thus if the employer seeks approval u/s 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 u/s 33(2)(b) cannot be decided as a labour dispute and the scope of enquiry u/s 33(2)(b) is much narrower.

9. There is a difference between Section 33(1) & Section 33(2). Section 33(1) deals with misconduct connected with the dispute which is already pending. In

such cases legislature prohibits discharge or dismissal save with the express permission in writing of the authority before which the dispute is pending. Per contra, Section 33(2) deals with a situation of misconduct not connected with the dispute pending adjudication. In such cases, the legislature does not require express permission in writing but only requires application for approval of the action taken. The reason for the difference is perceptible. If the misconduct is connected with the dispute already pending conciliation or adjudication, the intent is to maintain status quo. However, a misconduct not connected with the pending dispute is like a fresh cause of action. The law does not impose any obligation on the employer to seek approval before dismissing an employee. Post dismissal the employee is empowered to raise a dispute. A misconduct not connected with the pending dispute being a fresh or different cause of action from the pending dispute, the employer, but for Section 33(2) would be entitled to dismiss the employee and the only remedy of employee would be to raise an industrial dispute.

10. The Courts have thus held that the scope of jurisdiction of the Tribunal u/s 33(2)(b) is only to oversee the dismissal to ensure that no unfair labour practices or victimization has been practiced. If the procedure of fair hearing has been observed, and a prima facie case for dismissal is made out, the approval has to be granted. The jurisdiction of the Tribunal/Labour Court u/s 33(2) cannot be wider than this. Reference in this regard may be made to *Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another*, and *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, .

11. The Tribunal/Labour Court must not sit in appeal over the findings of the enquiry officer. Where the enquiry officer having considered all aspects of the case has found the employee guilty of misconduct, the Industrial Tribunal could not re-appreciate the evidence and refuse approval. All that can be examined by the Tribunal is that opportunity was given to the worker concerned to establish his innocence and there is a prima facie case made out against him on the basis of the record of domestic enquiry. The Tribunal is not to see whether on the weight of evidence a different conclusion is possible. The Tribunal is not empowered to review the decision of the management. The mere circumstance that the Tribunal was inclined to arrive at a different conclusion of fact on its appreciation of the same evidence will not entitle it to withhold the approval sought for by the management for dismissal of the worker so long as the management's findings could not be shown to be perverse or based on no evidence. The Tribunal is to look only to ensure that there is no lack of bona fides and victimization on the part of the management. The Tribunal can overturn the findings handed over by the enquiry officer only if they are perverse. A finding can be said to be perverse in case it is not supported by any legal evidence. If a finding arrived at by the enquiry officer is such that no reasonable person could have arrived at that finding on the material before him then also the finding can be said to be perverse. If the finding is not a perverse one, in the said sense, and if there is prima facie evidence to support the finding, the Tribunal cannot refuse

to grant approval to the order passed by the management. It is only on finding the principles of natural justice to have been violated or bias by the enquiry officer against the employee that the enquiry report is to be disregarded.

12. All the aforesaid well settled principles have been given a go bye in the present case. Inspite of finding that the principles of natural justice had been complied with by the enquiry officer and the respondent had a fair chance of contesting the charges, the enquiry has been held to be defective for frivolous reasons of the respondent having not had the facility of defence assistance and of the Labour Welfare Inspector acting as the Presenting Officer. The Tribunal itself has said that no prejudice has been caused to the respondent by the Labour Welfare Inspector acting as the Presenting Officer. Similarly, the finding recording the respondent not having been provided with legal assistance is inconsistent. The Tribunal records that the respondent cross examined the witnesses and that the findings of the enquiry officer are not frivolous and based on the facts of the case brought before him. No prejudice has been found to have been caused to the respondent by lack of defence assistance. It is also not the case that opportunity for defence assistance was sought or denied. In the circumstances, the limited requirements of Section 33(2)(b) were satisfied and no case for holding the enquiry to be defective was made out.

13. Similarly, it was not in dispute that the respondent was found with the bus at a place other than where it was required to be. It was thus not a case of the respondent having been falsely implicated by way of victimization. The finding of the enquiry officer that there was no justification for the respondent to be at the place where he was found, thus could not be interfered with within the limited scope of enquiry u/s 33(2)(b) of the Act. No case of perversity was made out. Admittedly there was evidence existing before the enquiry officer for reaching the conclusion arrived at by him. It was not for the Tribunal to determine whether the conclusion reached by the enquiry officer was correct or not.

14. The counsel for the petitioner has also relied on the judgment of the Single Judges of this Court in Delhi Transport Corporation v. Shri Shyam Singh WP(C) No. 1420/2002 decided on 29th September, 2004, Shri Jagdish Prasad v. NCT of Delhi WP(C) No. 866/2008 decided on 14th May, 2008 & Delhi Transport Corporation v. Upender Dutt WP(C) No. 6314/2004 decided on 6th September, 2006 and all of which take the same view as taken by me herein above.

15. Reference may also be made to Apparel Export Promotion Council Vs. A.K. Chopra, though not relating to Section 33(2)(b) but where the Supreme Court in the matter of interference in the report of the enquiry officer observed that in the absence of the correctness of the occurrence being doubted a contrary inference could not be drawn while appreciating the report of the enquiry officer. The Supreme Court reiterated that in disciplinary proceedings the disciplinary authority is the sole judge of 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 were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed. Similarly, unless the punishment imposed by the disciplinary authority shocks the conscience of the Court, the same is not to be interfered with.

16. The counsel for the petitioner also relies on *State of Haryana v. Ratan Singh* 1997 (34) FLR 265 where also the same principles have been reiterated by the Supreme Court.

17. The counsel for the respondent workman has relied on *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma* 2002 SCC (L&S) 279 but I am afraid the same does not help the respondent. Rather in the said judgment also it is laid down that all that the Tribunal is to see while dealing with the application u/s 33(2)(b) is as to whether the action of the employer is bona fide or not and to ensure that it is not by way of victimization and/or unfair labour practices. In the present case there is no plea also of the respondent workman that the action against him is actuated by the pendency of the labour dispute or that he is being victimized. The petitioner is a juristic person and no allegations against any official victimizing the respondent have been made.

18. The writ petition, therefore, succeeds. The orders of the Industrial Tribunal impugned in this petition are quashed. The petitioner DTC is held entitled to approval of its action of termination of employment of the respondent. The counsel for the respondent stated that no industrial dispute in this regard has been raised till now and further contends that the cause of action for raising the industrial dispute accrues only on the approval being granted. Needless to add that nothing contained herein shall come in the way of the respondent workman raising the industrial dispute, if any, and or an adjudication of the same in accordance with law.

No order as to costs.