
(2015) 06 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16117 of 2011

Divisional Manager and Authorized Disciplinary Authority

APPELLANT

Vs

Rameshwar Lal and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2015) 146 FLR 598

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Vinayak Joshi, for the Appellant; Usman Khan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—Aggrieved of the order dated 30th November, 2010, the Rajasthan State Road Transport Corporation (for short, the Corporation), has instituted the present writ application praying for the following relief(s):

"(i) Quash and set aside the order dated 30.11.2010 passed by the learned Industrial Tribunal Rajasthan, Jaipur in M.I.T. Case No. 309/1993; and

(ii) While allowing the application so filed by the petitioner corporation under Section 33(2)(b) of Industrial Disputes Act, 1947, approval of the order dated 07.09.1993 passed by petitioner may kindly be granted;

(iii) Any other appropriate order or directions which this Hon'ble Court may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner;

(iv) Cost of the writ petition may also be awarded in favour of the petitioner."

2. Shorn off unnecessary details, the indispensable skeletal material facts, are

that the petitioner-Corporation proceeded with a domestic enquiry for overwriting/cutting and manipulation of the record of the Corporation by the respondent-workman while performing his duties as Conductor on the vehicle of the Corporation. The Enquiry Officer on conclusion of the enquiry on both the charges, affording an opportunity of hearing and cross-examination to the respondent-workman, returned a finding of guilt. Copies of the enquiry reports were furnished to the respondent-workman and he was also afforded an opportunity of personal hearing. The process ultimately led to termination of the services of the respondent-workman, vide order dated 7th September, 1993 (Annexure-7). The petitioner-Corporation filed an application under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947", for short), for approval and confirmation of the order dated 7th September, 1993, terminating the employment of the respondent-workman; which was declined by the Industrial Tribunal on 30th November, 2010, of which the petitioner-Corporation has aggrieved of.

3. Learned counsel for the petitioner-Corporation, Mr. Vinayak Joshi, reiterating the pleaded facts and grounds of the writ application, vehemently argued that the impugned order dated 30th November, 2010, declining the application for approval of the order of dismissal of the respondent-workman dated 7th September, 1993, is absolutely illegal, arbitrary and contrary to the provisions of law for the domestic enquiry, was held to be fair and valid by the Tribunal and thereafter it was not open for the Tribunal to enter into re-appreciation and re-appraisal of the evidence and arrive at a different conclusion than the one arrived at by the departmental authority. According to the learned counsel, the Tribunal, on one hand held the domestic enquiry as fair and valid, as would be evident from the order dated 25th March, 2003, and on the other hand recorded a finding that the Enquiry Officer committed gross illegality while returning a finding of guilt on the basis of evidence and materials available on record. Thus, illegality is apparent on the face of record.

4. It is further submitted that the respondent-workman admitted the fact that he signed the way-bill. The explanation furnished for overwriting/cutting and changing the entry of 11 passengers to one (01) passenger, stating it to be slip of pen, was not a satisfactory explanation and the Enquiry Officer committed no error while returning a finding of guilt. Further, on the other charge, the respondent-workman was found guilty of misconduct for six passengers were found without ticket while he was on duty as Conductor.

5. It is emphasized that the Tribunal assumed the role of an appellate forum while adjudicating upon the findings arrived at by the Enquiry Officer and penalty imposed by the disciplinary authority. Moreover, once the domestic enquiry conducted was found to be fair, proper and valid, the Tribunal could not have interfered with findings, and therefore, the impugned order dated 30th November, 2010, declining the application of the petitioner-Corporation, under Section 33(2)(b) of the Act of 1947, is bad in the eye of law.

6. To reinforce his submissions, the learned counsel has placed reliance on the opinions in the case of Bihar State Road Transport Corporation Vs. Presiding Officer, Industrial Tribunal, Patna and others , Shantanu Borthakur and Another Vs. Management of Gauhati Stock Exchange Limited and Another, (2008) 117 FLR 1068 : (2008) 2 GLT 454 : (2008) 3 LLJ 429 , Cholan Roadways Limited Vs. G. Thirugnanasambandam, (2005) 1 ACC 143 : AIR 2005 SC 570 : (2005) 104 FLR 440 : (2005) 1 JT 116 : (2005) 1 LLJ 569 : (2005) 3 SCC 241 : (2005) SCC(L&S) 395 , The North West Karnataka Road Transport Corporation, Hubli and Another Vs. S.S. Poleshi, (2001) 88 FLR 255 : (2000) 4 KarLJ 538 : (2000) 2 LLJ 1581 , Balvir Kumar Arya Vs. Rajasthan State Road Transport Corporation Jaipur and Another, (1981) WLN 413 , State of Haryana and Another Vs. Rattan Singh, AIR 1977 SC 1512 : (1977) LabIC 845 : (1982) 1 LLJ 46 : (1977) 79 PLR 492 : (1977) 2 SCC 491 : (1977) 9 UJ 298 , Rafiq Mohammad v. Rajasthan State Road Transport Corporation, (by Divisional Mechanical Engineer), Jodhpur; 1990 II LLM 883 , Vijaya Mohini Mills Vs. Industrial Tribunal and Another, (1993) 1 LLJ 605 , Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, AIR 2001 SC 930 : (2001) 88 FLR 912 : (2001) 2 JT 72 : (2001) 1 LLJ 725 : (2001) 1 SCALE 373 : (2001) 2 SCC 574 : (2001) SCC(L&S) 469 : (2001) 1 SCR 487 : (2001) AIRSCW 593 : (2001) 1 Supreme 342 , Cholan Roadways Limited Vs. G. Thirugnanasambandam, (2005) 1 ACC 143 : AIR 2005 SC 570 : (2005) 104 FLR 440 : (2005) 1 JT 116 : (2005) 1 LLJ 569 : (2005) 3 SCC 241 : (2005) SCC(L&S) 395 , M.M. Soni, Chief Manager, RSRTC Vs. Bhagat Singh and Another, (2004) 3 RLW 1649 : (2004) 2 WLC 658 , Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, (2007) 114 FLR 613 : (2007) 7 JT 510 : (2007) 2 LLJ 1046 : (2007) 7 SCALE 758 : (2007) 9 SCC 755 : (2007) 6 SCR 873 and D.T.C. Vs. Rameshwar and Another, (2013) 138 FLR 265 : (2013) LabIC 2494 : (2013) 4 LLN 177 : (2013) LLR 620 .

7. In response to the notice of the writ application, the respondent-workman has filed his counter-affidavit supporting the order dated 30th November, 2010, passed by the Industrial Tribunal, while reiterating his stand in reply to the application seeking approval of the termination of the employment before the Tribunal.

8. Mr. Usman Khan, learned counsel for the respondent-workman, invited the attention of this Court to the statements of the complainant deposed before the Enquiry Officer to indicate that the complainant admitted the fact that he did not conduct any inspection and made a remark on the basis of the information of the Inspectors, who conducted the inspection. Complainant (Narayan Singh) also admitted the fact that he did not accompany the Inspector into the Bus, who conducted the inspection in the Bus. Neither statements of any of the passengers were recorded nor the cash with the respondent-workman was checked.

9. According to the learned counsel, the case at hand is a case of perverse findings and/or no evidence as would be evident from the materials available on record. Therefore, the Industrial Tribunal committed no error in declining the

application of the petitioner-Corporation under Section 33(2)(b) of the Act of 1947, seeking approval of an illegal order by which the services of the respondent-workman, have been terminated in a grossly illegal and arbitrary manner. The incidents of earlier misconduct as detailed out in the charge-sheet were not substantiated by any documentary evidence or by any witness.

10. The learned counsel for the respondent-workman, to fortify his submissions, has placed reliance on the opinion in the case of Divisional Manager, RSRTC, Ajmer v. Loomb Singh and Anr., in DBSAW No. 744/2001, decided on 24th July, 2013, in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, AIR 1999 SC 677 : (1999) 81 FLR 630 : (1999) 8 JT 603 : (1999) 1 LLJ 604 : (1998) 6 SCALE 588 : (1999) 2 SCC 10 : (1999) SCC(L&S) 429 : (1998) 3 SCR 594 Supp : (1999) AIRSCW 129 : (1998) 9 Supreme 452 , Union of India (UOI) Vs. B.K. Dutta, (1973) 6 WLN 663 and Central Bank of India Ltd. Vs. Prakash Chand Jain, AIR 1969 SC 983 : (1969) 19 FLR 191 : (1969) 2 LLJ 377 : (1969) 1 SCR 735 .

11. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

12. The respondent-workman on the first charge-sheet dated 1st October, 1990, was charged for over-writing in the place of destination i.e. Ahmedabad to Abu Road and for over-writing/cutting/interpolation in the number of passengers instead of 11 to 01. The Tribunal on an appreciation of facts, evidence and material available on record concluded that in the way-bill only one ticket number 907 is indicated and has not been indicated as 917 as a result of addition of 11 passengers; which makes it clear that such an error was possible on account of slip of pen. Further, this fact has also been admitted during the course of inquiry by the complainant (Shri Parmanand). The copy of the ticket issued by the petitioner-Corporation was also not produced before the Tribunal so as to ascertain as to what was written in the place of destination. The complainant (Shri Parmanand) also admitted, in cross-examination, the fact that he could make a statement as to the place of destination after perusal of the ticket. The vehicle (Bus) was also inspected at Palanpur Check-post by one Shri Vidhyanand and he did not find any passenger without ticket in the Bus. Shri Parmanand, the complainant, made a categorical statement, during the course of enquiry, that no passenger could travel without ticket at the Check post. The Enquiry Officer, in his conclusion, also concluded that number of passengers as indicated 11 instead of 01 was an error on account of slip of pen and the charge was not proved. However, the Enquiry Officer sustained the charge as partly proved, on the basis of statement of the respondent-workman. No substantial documentary or independent evidence was produced on behalf of the petitioner-Corporation during the course of enquiry to sustain the charge(s).

13. In order to prove the charges levelled in the charge-sheet No. 1360 dated 31st May, 1991, wherein the respondent-workman was charged for carrying six

passengers without tickets, out of 79 in the Bus on 29th May, 1991 and did not mend his ways as he was also found guilty of such a misconduct on earlier occasions, as detailed out in the charge-sheet; produced Narayan Singh as a witness out of four complainants in all Shri Narayan Singh, the complainant, repeating the contents of the charge admitted the fact that he neither recorded the statement of any of the passengers in the Bus nor checked the cash of the respondent-workman. The complainant further admitted the fact that he did not himself inspect the vehicle and made a remark on the basis of inspection that was carried by other officials. None of the officials, who inspected the vehicle, were produced in evidence to substantiate the charge nor any other independent evidence was brought on record. On the contrary, Shri Chunni Lal, who appeared as a witness in support of defence, on behalf of the respondent-workman, supported the version of the respondent-workman and was also cross-examined by the Enquiry Officer.

14. The factual matrix on the basis of which the Tribunal arrived at the findings could not be disputed by the learned counsel for the petitioner-Corporation, on the basis of any material available on record. Much emphasis was laid on the opinion of the Hon"ble Supreme Court in the case of Cholan Roadways Ltd. (supra), wherein the Hon"ble Apex Court of the land under paragraphs 13, 18 and 37, held thus:--

"13. It is neither in doubt nor in dispute that the jurisdiction of the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal under Section 33(2)(b) cannot be equated with that of Section 10 of the Industrial Disputes Act. In this case admittedly an enquiry has been held wherein the parties examined their witnesses. The Respondent was represented and assisted by three observers. Shri M. Venkatatesan was the Branch Manager, CRC Tanjore Town Branch, who had submitted his report and proved the same before the Inquiry Officer. He furnished a detailed account of the position of the bus vis-?-vis the other bus after the collision took place. He found that there was no brake tyre mark of the bus on the road. All the two settlers seats on the entire left side of the bus were found totally damaged. The left side roof arch angle of the bus was found totally out. Not only 4 persons were found to be dead at the spot, the driver and conductor of the bus and 10 other passengers were also sustained injuries in this accident. Out of the said 10 passengers, 3 subsequently died in the hospital owing to the injuries sustained by them. He further found that on the left side of the road in the earthen margin, there was a tamarind tree's protruding branch and which was found to have been already cut and the bottom stump of the branch was found protruding to a length of 3 inches. The bus was found to have been brought to a halt only at a distance of 81 ft. from the place of impact against the tree. He further noticed that even after the impact of the bus against the tree, the delinquent is said to have swerved the bus further to the right side from left side without applying brake and reducing speed and later only be brought the bus to a halt at some distance as a result of which the entire side

roof angle of the bus got cut.

18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd. Vs. R.N. Banerjee*, AIR 1958 SC 79 : (1958) 1 LLJ 247 : (1958) 1 SCR 514 . While exercising jurisdiction under Section 33(2(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In *Martin Burn's* case (supra) this court stated:

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham and Carnatic Co. Ltd. v. The Workers of the Company* (1952) LAC 490(F)."

37. Ordinarily, we would have remitted the matter back to Industrial Tribunal for its consideration afresh but as the matter is pending for a long time and as we are satisfied having regard to the materials placed before us that the Industrial Tribunal should have granted approval of the order of punishment passed by the Appellant herein against the Respondents, we direct accordingly. The Respondents may, however, take recourse to such remedy as is available to in law for questioning the said order of dismissal."

15. A glance of the singular facts in the case of *Cholan Roadways Ltd.* (supra), would reveal that the Hon"ble Supreme Court interfered after having satisfied on the basis of materials available on record. The facts, circumstances and materials available on record, would reveal that the case at hand, is entirely different and distinguishable with the one as referred to and relied upon. The Hon"ble Apex Court of the land while determining the fact as to whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It is quite possible that the Tribunal considering this question may itself have arrived at a different conclusion. The Tribunal is not to substitute its own judgment in question. But has to consider whether the view taken is a possible view on the evidence on the record. This principal has been propounded by the Hon"ble Apex Court of the

land in the case of *Martin Burn Ltd. v. R.N. Banerjee* as would be evident from a bare perusal of paragraph 18 as extracted hereinabove.

16. The view has been reiterated by the High Courts as has been referred to and relied upon by the counsel for the petitioner-Corporation.

17. It is trite law that if a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order based on such evidence and material would be perverse. By a long line of decisions of the Hon"ble Supreme Court a broad distinction has to be drawn between the decisions which are perverse and those which are not. If there is some evidence on record which is acceptable and which could be relied upon, however compendious it may be, the conclusions cannot be treated as perverse and the findings arrived at will not be open for interference by the Tribunal/Court. It is equally well-settled law that normally Tribunal/Court would not interfere with the findings of fact recorded during the course of domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny; as has been held by the Hon"ble Apex Court of the land in the case of *Kuldeep Singh* (supra).

18. The order of removal was vitiated on account of failure on the part of disciplinary authority, to consider the explanation of the respondent-workman as well as for accepting the conclusions arrived at by the Enquiry officer, which was not supported by any evidence, and therefore, the Tribunal committed no error in declining the application of the petitioner-Corporation seeking approval of removal of the respondent-workman vide order dated 30th November, 2010. In the case of *Central Bank of India Ltd. (supra)*, the Hon"ble Apex Court of the land relying upon the earlier opinions with the reference to the limited nature and extent of the enquiry permissible under Section 33 (2)(b) of the Act of 1947, under paragraph No. 3 and 4, held thus:--

"3. The jurisdiction and functions of a Tribunal under Section 33(2)(b) of the Act were explained by this Court in *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour Association*, AIR 1960 SC 1352 : (1960) 2 LLJ 39 where it was held:--

"The settled position in law therefore is that permission should be refused if the tribunal is satisfied that the management's action is not bona fide or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the management has not acted bona fide. A finding that the management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every

case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion."

The point was again considered by this Court in the case of *The Lord Krishna Textile Mills Vs. Its Workmen*, AIR 1961 SC 860 : (1961) 2 FLR 112 : (1961) 1 LLJ 211 : (1961) 3 SCR 204 and it was held:--

"In view of the limited nature and extent of the enquiry permissible under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal? Has an enquiry been held as required by the standing order? Have the wages for the month been paid as required by the proviso? and, has an application been made as prescribed by the proviso?" The Court then proceeded to consider whether the Tribunal in that case had acted rightly, and noted that one had merely to read the order to be satisfied that the Tribunal had exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits. The Tribunal did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. The Court then indicated that the Tribunal had proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and had come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges had been proved against the workmen in question. It was then held that, in making these comments against the findings of the enquiry, the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under Section 33(2)(b). The Court then indicated the principle applicable by saying:

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as under Section 33(2)(b). It is conceivable that even in holding an enquiry under Section 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to "bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or

adequate or satisfactory evidence."

4. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under Section 33(2)(b) of the Act, it can disregard the findings even by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in *State of Andhra Pradesh Vs. Sree Rama Rao*, AIR 1963 SC 1723 : (1964) 2 LLJ 150 : (1964) 3 SCR 25 , where this Court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant. The Court held:--

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

19. Thus, by now the law is well-settled that there are two situations wherein the findings of a domestic tribunal, dealing with disciplinary proceedings against a workman, are open for interference where the findings are not based on legal evidence and/or are of the nature, on the basis of which, no reasonable person could have arrived at. In both the situations aforesaid, the findings would be treated as perverse.

20. For the reasons and discussions hereinabove, as well as having regard to the nature of evidence, brought on record, this Court is of the opinion that the Tribunal was justified in declining the approval to the order of removal which was made on the basis of the evidence recorded by the Enquiry Officer which could not be treated legal evidence.

21. In the result, the writ application is devoid of any substance and deserves to be dismissed.

22. Ordered accordingly.

23. No costs.