

(1985) 12 DEL CK 0018
In the Delhi High Court
Case No : Civil Writ No. 92 of 1973

Management of DTC

APPELLANT

Vs

Bir Singh and Others

RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1986) 52 FLR 471 : (1994) 3 LLJ 837

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : S.N. Bhandari and Geeta Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Sunanda Bhandare, J.—Balbir Singh respondent No. 2 was employed as a Conductor with Delhi Transport Corporation. On 18th September, 1967 a check was conducted at Paharganj Dispensary by S/Shri Mohd. Akbar, T.I. and Sant Ram, A.T.I, who found that respondent No. 2 had not issued tickets to a group of two passengers who had boarded the bus at Pusa Road and alighted at Paharganj Dispensary without tickets even though a sum of 20 Paise instead of 40 Paise had been collected by respondent No. 2 from the said two passengers. Respondent No. 2 was challenged on the same day and thereafter a charge-sheet was issued to him for non-issuance of tickets to a group of two passengers and was directed to tender his Explanation within 10 days of the receipt of the charge-sheet. Thereafter an inquiry was conducted by the Deputy General Manager of the Corporation who gave his report on 4th November, 1969 holding respondent No. 2 guilty of charges mentioned in the charge-sheet. On the basis of the inquiry report the General Manager of the D.T.C. gave a show-cause notice on 24th November, 1969 to respondent No. 2. A reply was filed by respondent No. 2 to the show-cause notice. Since respondent No. 2 asked for a personal hearing the same was granted to him by the General Manager, however, by an order dated 15th June, 1971 respondent No. 2 was ordered to be removed from the

services of the Undertaking. Since respondent No. 2 was a concerned workman the petitioner-Corporation made an application u/s 33(2)(b) of the Industrial Disputes Act, 1947 before the Tribunal for approval. The Tribunal however refused to grant approval on the ground that both the Inquiry Officer and the General Manager (T) had failed to apply their mind to the facts of the case and completely ignored, the conductor's defense. The petitioner has challenged this order of the Tribunal in this present writ petition under Article 226 of the Constitution of India on the ground that the Tribunal had exceeded its jurisdiction inasmuch as the Tribunal proceeded to re-appreciate the evidence and lost sight of the limited scope and ambit of its jurisdiction in disciplinary matters while deciding an application u/s 33(2)(b) of the Industrial Disputes Act, 1947.

2. Learned Counsel for the petitioner contended that the Industrial Tribunal or the Labour Court could not act as an appellate authority or could not go into the adequacy of evidence while deciding an application u/s 33(2)(b) of the Industrial Disputes Act and the learned Tribunal had mis-directed itself by not taking into account that the report of the Inquiry Officer as well as the order of the General Manager were well considered documents containing elaborate reasons in full support of their final conclusion.

3. Though a counter-affidavit was filed by respondent No. 2 in response to the notice to show-cause why the petition should not be admitted, there was no appearance on behalf of respondent No. 2 at the time of the final hearing of the case. In the counter-affidavit it was contended by respondent No. 2 that both the Inquiry Officer as well as the General Manager (T) had not considered the defense evidence. It was contended that the charge-sheet against respondent No. 2 was for the non-issue of tickets to two passengers who had travelled from Pusa Road to Paharganj Dispensary. The fare for this journey was 40 Paise. The passengers had only paid 20 Paise and Therefore respondent No. 2 could not issue the tickets without collecting the balance of 20 Paise from these passengers. Before respondent No. 2 could collect the balance amount from these two passengers Ticket Inspectors had come in and at their instance the two passengers paid the balance and thereafter respondent No. 2 issued the tickets. It was also submitted that these two passengers had not alighted from the bus when the Ticket Checkers had come in. Thus it was contended that since no prima-facie case was made out the Tribunal was right in not according approval.

4. There can be no doubt that the Industrial Tribunal while exercising jurisdiction u/s 33(2)(b) of the Industrial Disputes Act, 1947 cannot sit in appeal over the findings of fact made by the Inquiry Officer and that it cannot substitute its own judgment for the judgment of the Inquiry Officer. For deciding the question of approval the Industrial Tribunal has to find out whether there has been a fair and proper inquiry and whether a prima-facie case has been made out for taking action against the concerned workman. For finding out whether a prima-facie case is made out or not the Tribunal naturally has to go into the evidence as

adduced before the Inquiry Officer and also as recorded before the Tribunal itself.

5. In the present case the Tribunal has given a finding that both the Inquiry Officer and the General Manager (T) failed to apply their mind to the facts of the case inasmuch as they completely ignored the Conductor's defense. The Tribunal has further held that the main contention of respondent No. 2 that he did not issue the two tickets because the full fare was not paid by the two passengers was not considered by the Inquiry Officer at all though it was specifically averred by respondent No. 2 in reply to the show-cause notice. The Tribunal having come to a conclusion that the decision of the Inquiry Officer and the General Manager (T) was not based on evidence on record, I see no reason to interfere with this finding while exercising jurisdiction under Article 226 of the Constitution of India.

6. In the result the petition is dismissed. In the circumstances of the case there will be no order as to costs.