
(2015) 12 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3584/1998

RSRTC

APPELLANT

Vs

Tej Ram and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b), 33(2)(b), 34(2)(b)

Citation : (2015) 12 RAJ CK 0010

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : Mukesh Kumar Verma, for the Appellant; Mahendra Shah, for the Respondent

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.—Aggrieved of the order dated 15th November, 1997; declining the application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short "Act of 1947"), the petitioner - Rajasthan State Road Transport Corporation (for short, "Corporation"), has instituted the instant writ application challenging the legality, validity and correctness of the order.

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein are that the respondent-workman-Teja Ram (deceased), was proceeded with for a disciplinary action for he misbehaved with the Manager (Traffic), Alwar Depot, of the petitioner Corporation under intoxication on 4th January, 1994. The respondent-workman was placed under suspension on 4th November, 1994, and was served with a charge sheet for acts and omissions as contemplated under Order 34 of the Standing Orders. On conclusion of the inquiry, the Inquiry Officer returned a finding of guilt against the respondent-workman for having committed nuisance while on duty at the premises of the petitioner Corporation within the ambit of Clause (b) and (h) of the Order 34 of the Standing Orders. The Disciplinary Authority on a

consideration of the findings arrived at by the Inquiry Officer on the basis of evidence and materials available on record as well as affording an opportunity of personal hearing to the respondent-workman, inflicted a penalty of removal from service of the Corporation vide order dated 22nd November, 1994. Since, a general reference was pending, an application under Section 33(2)(b) of the Act of 1947, was moved before the Industrial Tribunal, Jaipur (for short "the Tribunal"), for approval of the penalty of removal from service of the Corporation vide order dated 22nd September, 1994.

3. The Tribunal on a consideration of the facts and materials available on record, concluded that the domestic inquiry conducted by the Corporation was fair and proper. However, on the issue of sufficiency of evidence justifying the penalty inflicted declined the approval on the application under Section 33(2)(b) of the Act of 1947; of which the petitioner Corporation is aggrieved of.

4. Learned counsel for the petitioner Corporation, Mr. Mukesh Kumar Verma, reiterating the pleaded facts and grounds of the writ application, asserted that the respondent-workman on 4th January, 1994, though was on leave, came to the premises of the Corporation while he was intoxication and entered the office of Shri A.K. Johari, Manager (Traffic), Ajmer Depot, at about 10.00 A.M. and abused him and also made an attempt to assault him, which disturbed the atmosphere and discipline of the workshop. The respondent-workman was placed under suspension vide order dated 4th January, 1994, and was served with a charge sheet for misconduct as contemplated under Clause 34 of the Standing Orders, 1965. Further, the domestic inquiry was held strictly in accordance with the procedure prescribed affording ample opportunity of defence to the respondent-workman. The Inquiry Officer on a proper analysis of the evidence and materials available on record during the course of inquiry, returned the finding of guilt.

5. It is further contended that the inquiry was held to be fair and proper by the Tribunal. Having held the inquiry to be fair and proper, the Tribunal, still interfered with the penalty of dismissal from service of the Corporation vide order dated 22nd September, 1994, and therefore, the Tribunal committed a gross error while declining the application of the petitioner Corporation under Section 34(2)(b) of the Act of 1947.

6. It is submitted that a bare glance of the text of Clause 34 of the Standing Orders would reveal that if one commits nuisance while on duty at any place including corporation premises, branch, booking offices or routes and comes on duty in drunken condition or takes liquor or intoxication while on duty or being found in drunken condition during working hours, amounts to a misconduct. Therefore, the finding arrived at by the Tribunal that the respondent-workman was on leave on 4th January, 1994, as he was attending a court case at Shahapura, and therefore, could not be treated on duty, is an erroneous conclusion arrived at contrary to the specific stipulation as contained under sub-clause (h) of Clause 34 of the Standing Orders.

7. According to the learned counsel, the Tribunal fell in patent error in declining approval on the application in the face of the conclusion that the domestic inquiry conducted by the Corporation was fair and proper. Thus, after having concluded the domestic inquiry to be fair and proper, the Tribunal had a very limited jurisdiction while considering the approval of the application under Section 33(2) (b) of the Act of 1947, and could not have declined the application. The Tribunal, therefore, exceeded the jurisdiction. The impugned order dated 15th November, 1997, passed by the Tribunal has also been assailed for the inherent perversity as the respondent-workman admitted his presence at 10.00 A.M. in the premises of the Corporation on 4th January, 1994, in response to the reply to the charge sheet submitted by him on 5th January, 1994.

8. The relationship between employer and employee does not come to an end merely in view of the fact that the respondent-workman was on leave. Even while on leave, the employee of the Corporation remains very much the employee of the Corporation and is expected to maintain good behaviour and he is also obliged to maintain the dignity of the office. Moreover, the respondent-workman was subjected to medical examination by the police, which confirmed the intoxication of the respondent-workman, and thus, the misconduct was within the four corners of Clause 34 of the Standing Orders.

9. It is further contended that there is evidence in abundance available on record to sustain the finding of guilt of the respondent-workman in view of the statements of witnesses, namely, Shri Upkar Singh, LDC; Kailash Chand Sharma, LDC; Mahendra Singh, Class-IV; Jagdish Prasad Singhal, Junior Engineer; Raghunandan Sharma, Junior Engineer; Sanjay Choudhary, LDC and Shiv Lal Yadav, Security Guard, who were present and were examined during the course of inquiry. Therefore, the finding arrived at by the Tribunal to the effect that no independent witness was examined, is an erroneous finding in view of the fact that the domestic inquiry was held to be fair and proper, and therefore, the question of re-examining the same witnesses before the Tribunal simply did not arise.

10. The fact that the respondent-workman was in a drunken condition stands proved from the medical examination conducted, while he was taken by the police to the hospital. The defence that the respondent-workman had taken some cough syrup, as prescribed by the doctor, was only a pretext for no prescription to that effect was brought on record.

11. In response to the notice of the writ application, the respondent-workman has filed his counter-affidavit, reiterating the stand before the Tribunal while supporting the impugned order dated 15th November, 1997, relying upon the opinion of the Hon"ble Supreme Court in the case of State of West Bengal v. Shiva Nand Pathak: 1988 (79) FLR Page 684 : (1988) 5 SCC 513, in order to sustain the plea of personal bias. The fact that the respondent-workman was on leave has also been reiterated.

12. Learned counsel appearing on behalf of the respondent-workman (deceased), through legal heirs, asserted that the Tribunal committed no error while refusing approval on the application under Section 33(2)(b) of the Act of 1947, vide impugned order dated 15th November, 1997, having regard to the totality of facts, circumstances and materials available on record.

13. The charge-sheet, was served on 3rd February, 1994, though made specific allegation that the respondent-workman reached the office premises of the Manager (Traffic) of Ajmer Depot at 10.00 A.M. and misbehaved using foul language in presence of as many as seven employees. But, according to the learned counsel, the information furnished to police by the Manager (Traffic), namely, Shri A.K. Johari, was entirely a different than the charge contained in the charge sheet dated 3rd February, 1994. As per information furnished to the police, according to Shri Johari, one driver was insisting for operating the bus on the route in an intoxicated condition.

14. Further, there is no record of statements of seven witnesses, who allegedly deposed before the Inquiry Officer and are said to have witnessed the alleged incident. The medical report was also not produced before the Tribunal, and therefore, the finding arrived at by the Inquiry Officer was rightly adjudged as a perverse finding.

15. Since the respondent-workman was on leave on the date of alleged incident, therefore, the alleged misconduct was not within the ambit of Clause 34 of the Standing Orders, which are attracted to an employee on duty. Hence, the impugned order dated 15th November, 1997, calls for no interference by this Court in exercise of writ jurisdiction under Article 226 and/or 227 of the Constitution of India. In support of his contentions, learned counsel has relied upon the opinion in the case of Central Bank of India Ltd. Vs. Prakash Chand Jain, ; Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, ; Rajasthan State Road Transport Corporation Vs. Gopal Singh and Another, ; Collector Singh v. L.M.L. Ltd., Kanpur: 2014 (8) ST 123 ; M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others, ; Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, ; A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., ; Vijay Singh Vs. State of U.P. and Others, and Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, .

16. 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.

17. The respondent-workman on the date of incident i.e. 4th January, 1994, was on leave as he was to attend the court case at Shahpura. The incident as narrated by the Manager (Traffic), Ajmer Depot, was the subject matter of domestic inquiry by the Corporation. The Inquiry Officer on the conclusion of the inquiry proceedings, returned a finding of guilt against the respondent-workman.

18. On an application preferred under Section 33(2)(b) of the Act of 1947, the Tribunal found the inquiry fair and proper as would be reflected from the impugned order dated 15.11.1997. However, while considering the grant of approval under Section 33(2)(b) of the Act of 1947, the Tribunal found discrepancies between the information furnished to the police and the contents of the charge of which the respondent-workman was found guilty. It was further observed that none of the witnesses, who were present at the time of incident occurred, was produced in evidence to substantiate the charge and the statement of Shri Johari could not be relied upon for inherent contradiction between the information furnished to the police and the contents of the charge, on which a finding of guilt was returned by the Inquiry Officer.

19. At this juncture, it will be relevant to consider the text of Standing Order 34(b) and (h), which has been extracted by the Industrial Tribunal under paragraph of the impugned award, which reads thus:--

"34. The following acts and omissions shall be treated as misconduct:

(b) committing a nuisance while on duty at any place including Corporation premises, branch, booking offices or routes.

(b) coming on duty in drunken state or drinking liquor or in intoxication while on duty on being found drunk during working hours."

20. While considering the misconduct allegedly within the ambit of Standing Order 34, as extracted herein above, in the backdrop of the refusal to grant approval to an application under Section 33(2) (b) of the Act of 1947, it would be apposite to consider the text of Section 33(2)(b) of the Act of 1947, which reads thus:--

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings -

(1)

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute (or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman) -

(a)

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3)

(4)

(5)"

21. In the case of Mahendra Singh Dhantwal (supra), the Hon'ble Supreme Court while examining the applicability of Section 33(2)(b) of the Act of 1947 as well as the scope of supervision observed that where the action is punitive, namely, dismissal or discharge for misconduct, the Tribunal has to oversee the action to guarantee that no unfair labour practice or victimization has been practiced thereby. If the procedure of fair hearing has been observed the Tribunal has to find in an application under Section 33 that a prima facie case is made out for dismissal. If, on the other hand, there is violation of the principles of natural justice in the enquiry, the Tribunal can go into the whole question relating to the misconduct and come to its own conclusion whether the same is established.

22. The Hon'ble Supreme Court in the case of The Lord Krishna Textile Mills Vs. Its Workmen, ; observed that in view of the limited nature and extent of the enquiry permissible under s. 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 s. 33(2)(b) and the proviso are satisfied or not. Further, Do the standing orders justify the order of dismissal? Has an enquiry been held as provided 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 question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall for consideration 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 s. 33(2)(b) . There is a 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. Thus, while conducting an enquiry, the Tribunal cannot assume powers of an appellate court, which is entitled to go into all questions of facts. The view has been reiterated by the Hon'ble Supreme Court in the case of P.C. Jain (supra), holding thus:--

"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 given by the Enquiry Officer only if the findings are perverse. The test of perversity is that findings may not be supported by any legal evidence at all, or where the finding arrived at by the domestic Tribunal is one at which no reasonable person could have arrived on the material before the Tribunal. It was not for the Tribunal to sit in judgment over the view taken by the Enquiry Officer about the value to be attached to the evidence of these witnesses, even though the Tribunal thought

that the witnesses were unreliable because of circumstances found by the Tribunal in their evidence when dealing with an application under Section 33(2) (b) of the Act."

23. In the case of State of Haryana and Another Vs. Rattan Singh, ; a 3 judge bench of the Hon"ble Supreme Court in no uncertain terms held thus:--

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

24. In the case of Mahendra Singh Datwal (supra), while explaining the scope and applicability of Section 33(2)(b) , a 3 judge bench of the Hon"ble Supreme Court observed that the standing orders may only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit, but still may be misconduct in the special facts of a case. The observations made by the Hon"ble Supreme Court under paragraph 23 are relevant, which read thus:--

"23. Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman

may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct, in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily, the standing orders may limit the concept but not invariably so."

25. In the case of Collector Singh (supra), the Hon"ble Supreme Court did interfere with the penalty of dismissal from service of the appellant - Collector Singh for proved misconduct where a semiskilled workman threw jute/cotton waste balls hitting the face of Laxman Sharma, Foreman in the company and on an objection, he further abused and used filthy language and also threatened him with dire consequences outside the premises of the factory. However, later on, the appellant - Collector Singh submitted an apology letter stating to have thrown the piece of jute by mistake and sought pardon. Instead of penalty of dismissal from service, the respondent - Management was directed to pay an amount of compensation of Rs. 5,00,000/- to the appellant within a period of six weeks.

26. In the case of Rajesh Kumar Jamidar & Ors. (supra), while dealing with the issue of malice in law, the Hon"ble Supreme Court held thus:--

"37. The power of judicial review of a superior court although a restricted one, has many facets. Its jurisdiction is not only limited in the cases where the administrative orders are perverse or arbitrary but also in the cases where a statutory authority has failed to perform its statutory duty in accordance with law. An order which is passed for unauthorized purpose would attract the principles of malice in law. (See The Manager, Government Branch Press and Another Vs. D.B. Belliappa, ; Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, and P. Mohanan Pillai Vs. State of Kerala and Others,)."

27. In the case of M/s. Glaxo Laboratories (I) Ltd. (supra), a 3 judge bench of the Hon"ble Supreme Court held that the misconduct prescribed in a standing order, which would attract a penalty should have a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours. The Hon"ble Supreme Court in unequivocal terms held that the normal approach in law to the construction of a standing order that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment.

28. In the case of A.L. Kalra (supra), the Hon"ble Supreme Court dealt with the issue of misconduct observing that acts of misconduct must be precisely and specifically stated in Rules (or Standing Orders) and cannot be left to be interpreted ex post facto by the management. In the case of A.L. Kalra (supra), the issue was with reference to advance taken from office but neither the

documents of purchase furnished, nor unutilized amount refunded within the stipulated period in compliance of the Rules.

29. In the case of Vijay Singh (supra), the Hon"ble Supreme Court dealt with the issue of competence of Disciplinary Authority to impose punishment under prescribed under Statutory Rules while withholding the integrity certificate.

30. In the instant case at hand, from the facts and materials available on record, it is evident that the Tribunal held the enquiry as fair and proper and this fact was also admitted by the representative of the respondent-workman. However, while dealing with the findings arrived at on the basis of domestic enquiry, which was conducted in accordance with the provisions of the relevant standing orders, affording ample opportunity of hearing to the respondent-workman; the Industrial Tribunal entered into appreciation and sufficiency of evidence, as would be evident from the impugned award wherein the Tribunal while declining the grant of approval of the application under Section 33(2)(b) observed thus:

31. The Tribunal further while considering the sufficiency of evidence also considered the cross-examination, observing thus:--

32. A glance of the law declared by the Hon"ble Supreme Court in the cases aforesaid would reveal that if fair and full enquiry is conducted, no further opportunity to examine witnesses is required. Here it may be necessary to reiterate what has been often observed by the Hon"ble Supreme Court that the Tribunals while exercising quasi judicial functions are not Courts, and therefore, they are not bound to follow the procedure prescribed for trial of actions in the Courts nor they are bound by the strict Rules of evidence. From the materials available on record, there is evidence in abundance and the witnesses who were examined during the course of enquiry proceedings were not required to be again produced before the Tribunal by the petitioner-Corporation. The Industrial Tribunal is required to see whether a prima facie case is made out as regards to the validity of the domestic enquiry held into the allegations of misconduct. A three judge bench of the Hon"ble Supreme Court in the case of Martin Burn Ltd. Vs. R.N. Banerjee, ; in no uncertain terms held that 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. In the case of Cholan Roadways Limited Vs. G. Thirugnanasambandam, , explaining the scope of jurisdiction of the Tribunal under Section 33(2)(b) and 10 of the Act of 1947, the Hon"ble Supreme Court under paragraph 13, 18 and 37, observed 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. Venkatesan 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 settees 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 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*, . 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 & 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."

33. For the reasons and discussions aforesaid as well as in view of the law declared by the Hon"ble Supreme Court, the writ application succeeds and is hereby allowed. The impugned award dated 15th November, 1997, is hereby quashed and set aside. The finding arrived at by the Tribunal that the domestic enquiry is fair and proper, and the charges are proved, are confirmed.

34. However, in the facts and circumstances of the case, there shall be no order as to costs.