

(2011) 11 DEL CK 0189
In the Delhi High Court
Case No : LPA No. 370 of 2002

Sh. Shish Ram

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33, 33(2), 33(3)

Citation : (2011) 10 AD 277 : (2011) 184 DLT 232

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Kittu Bajaj, for the Appellant; Arati Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—At the outset, we may record that the original appellant has already expired and was substituted by his legal heirs. The

appeal is presently sought to be prosecuted by the legal heirs of the deceased-appellant. We are informed by the learned counsel for the appellant

that legal heirs now comprise only of children of the appellant which includes three sons and three daughters of age varying between 27 to 45

years; the wife having also passed away in the meanwhile. The male legal heirs are gainfully employed; though without substantial income. Keeping

in mind these factors we had called upon the respondent to ascertain whether they would be willing to settle the matter by giving some

compensation to the legal heirs purely on compassionate grounds. We must record that the respondent had come up with a figure, which the legal

heirs were not willing to accept. In these circumstances, we are left with no alternative but to decide the matter on merits.

2. The captioned appeal has been preferred against the judgment of the learned Single Judge dated 21.12.2001 passed in Civil Writ Petition NO.

6288/1999 and Civil Writ Petition No. 7335/2000. The first writ petition was filed by the delinquent employee, while the second writ petition was

filed by the employer, i.e., Delhi Transport Corporation (hereinafter referred to as the ""DTC"").

3. The captioned appeal has been filed in the background of the following facts: The appellant, i.e., the delinquent employee was employed as a

conductor with the DTC. His employment commenced in the year 1967. Over the years the appellant committed several transgressions whereby

from time to time he was awarded some punishment or the other. This aspect is important as this was one of the allegation leveled in the

chargesheet, which is the subject matter of the present proceedings.

3.1 Continuing with the narrative, the appellant on 08.11.1985 was on duty on route no. 502, when he engaged in a fracas with a passenger,

namely, Sh. Girdhari Lal Verma travelling on the said bus bearing the said route number. The passenger evidently boarded the said bus from the

I.T.O. bus stop. The passenger for the purposes of buying a ticket handedover a two rupee note to the appellant against a fare of forty (40) paise.

The passenger intended to terminate his journey at I.N.A. market. It appears that the appellant for the reasons best known to him humiliated the

said passenger. In this process the two rupee note was returned to the passenger with the following remarks: ""Khulley peeshe ley ke ghar se nikda

kar. Challa aaya babu ban ke"". The complainant appears to have thereafter demanded the return of the balance amount against issuance of an

appropriate ticket. The appellant handed over the ticket but not without indulging in what the complainant termed as ""indecent"" ""gesticulations"".

Since, the balance amount had not been handed over to the complainant-passenger, he waited to receive the said amount. This appears to have

infuriated the appellant, who thereupon appears to have remarked as follows: ""SEAT PE JA KAR BAITH JA. TERE PEESHE MEN NA

RAKHOON."" The complainant tried to prevail upon the appellant to behave civilly towards him as he was in no hurry to receive the money. The

appellant at this point got up from his seat and raised his fists at the complainant as if he would strike him. According to the complainant, at this

point other passengers intervened in the matter in order to pacify the appellant. The complainant thereupon demanded the complaint book in order

to register a complaint against the appellant. The appellant, however, instead of handing over the complaint book purportedly made the following

remarks: ""KEY KAR LEGYA. JA JA KAR DE COMPLAINT CHAIRMAN SEY. KEY BIGAR LEGYA. BAHUT DEKHE MEN TERE

JAISE"".

3.2 It is in this background a complaint was lodged against the appellant pursuant to which the appellant was put under suspension vide order

dated 22.11.1985 w.e.f. 23.11.1985, pending inquiry into the matter. During the period of suspension the appellant was paid subsistence

allowance at the rates laid down in para 15(4)(A)(h) of the D.R.T.A (Conditions of Appointment & Service) Regulations, 1952 (hereinafter

referred to as ""Regulations"").

3.3 Pursuant to a preliminary inquiry held into the matter in issue, a chargesheet was served on the appellant on 05.12.1985, whereby the appellant

was asked to explain why action under clause 15(2) of the Regulations read with Road Transport Act, 1950 and the Delhi Transport Law

(Amendment) Law, 1971 ought not to be taken against him. The essence of the charge was communicated to the appellant. The appellant was,

based on the complaint lodged against him, called upon to show cause, why action ought not to be taken against him qua the allegations leveled

against him, as it had resulted in tarnishing the image of the DTC, at a public place, and that his conduct tantamounted to a misconduct within the

meaning of paragraph 19(b), (j), (h) and (m) of the Standing Orders governing the conduct of DTC employees. The statement of allegations and a

copy of the report, on which the chargesheet was based, was enclosed for perusal of the appellant. Importantly, in the chargesheet a specific

mention was made with regard to the fact that while passing final orders the appellant's past conduct would be taken into consideration.

3.4 Pertinently, the chargesheet also adverted to the fact that the response of the appellant to the chargesheet should reach to the concerned

authority (respondent no. 2) within ten days of the receipt of the chargesheet; and that the appellant is at liberty to inspect any relevant documents

on which reliance was placed and were available on record. For this purpose the

appellant was directed to report to the concerned authority

(respondent no. 2) within 24 hours of receipt of the chargesheet. The appellant was put to notice that any failure on his part to report to respondent

no. 2 for inspection of documents within 24 hours and non-submission of explanation to the chargesheet within the requisite ten (10) days would

result in an assumption that the appellant had no explanation to furnish qua the chargesheet. The appellant was also put to notice that further action

thereon would follow in accordance with the Regulations in place without any further reference to him.

3.5 It is not in dispute that the appellant did not file any reply to the chargesheet. However, on 05.08.1986 the order of suspension was revoked.

On completion of inquiry a show cause notice was issued to the appellant on 13.07.1987. By virtue of the said show cause notice, the appellant

was called upon to respond as to why the proposed penalty of removal from service ought not to be imposed on him. It is not in dispute that the

appellant, once again, for the reasons best known to him did not furnish a response to the said show cause notice.

3.6 Thus, after due consideration of the inquiry report the Disciplinary Authority passed an order dated 18.09.1991 directing removal of the

appellant from the services of DTC.

4. In view of the fact that a dispute between the employees at large and the DTC, pertaining to implementation of the 4th pay commission, was

pending resolution before the Industrial Tribunal (hereinafter referred to as ""Tribunal""), an application was filed by DTC u/s 33(2)(b) of the

Industrial Disputes Act, 1947 (in short ""I.D. Act"")) before the Tribunal by way of abundant caution seeking approval with regard to action taken

against the appellant for removal from service. This application was filed by the DTC on 18.09.1991 itself. Alongwith the application a copy of the

inquiry report and the entire inquiry record was filed with the Tribunal. The DTC also dispatched one month""s wages to the appellant by way of

money order on the very same day, i.e., 18.09.1991.

4.1 In response to the said application filed by the DTC, a reply was filed by the appellant, which was followed by a rejoinder of the DTC. The

Tribunal based on the pleadings filed, framed the following preliminary issue:- (i) Whether the applicant/DTC held a legal and valid inquiry against

the respondent, according to the principle of natural justice?

4.2 As regards the aforesaid issue, the Tribunal by an order dated 28.02.1998, came to the conclusion that the inquiry conducted against the

appellant was unfair and improper and, hence proceeded to decide the said preliminary issue against the DTC. It is important to note, however,

that this order dated 28.02.1998 of the Tribunal, inter alia, alludes to the following:

(i) the fact that DTC had filed the record of the inquiry (albeit photocopies) before it and that the same was marked as exhibit AW1/3;

(ii) the appellant examined only himself in support of his challenge to the validity of the inquiry; and

(iii) that there was no dispute between the parties that the appellant had been served with chargesheet dated 05.12.1985.

4.3 What appears to have persuaded the Tribunal to come to the conclusion, which it did, in its order dated 28.02.1998, was that the

management/ DTC did not examine any witness before the inquiry officer, and that the defence witness, i.e., the appellant, was put into the witness

box for examination prior to any witness being examined by the management/ DTC. The Tribunal construed this as both an unfair and improper

procedure for the reason that, according to it, all that the inquiry officer had before her was, the material, which formed part of the preliminary

inquiry and, those documents, which "might" have been forwarded to the inquiry officer. The Tribunal took umbrage of the fact that any document

which was not produced during the course of inquiry could not have been relied upon by the inquiry officer to come to the conclusion that the

appellant was guilty of the charges as framed against him. The Tribunal, further observed that neither the statement recorded in the preliminary

investigation was produced in the inquiry nor did the concerned passenger affirm having made the statement during preliminary investigation.

4.4 It is because of the aforesaid order, the Tribunal proceeded to give an opportunity to the DTC to prove its case on merits by framing the

following issues:

(i) Whether the respondent (appellant herein) committed misconduct for which he was chargesheeted?

(ii) Relief?

4.5 The Tribunal, by an order dated 20.05.1999 decided even the aforementioned issues against the DTC. In this second order, the Tribunal noticed the fact that his predecessor, who was then presiding over the Tribunal, had decided the preliminary issue against the DTC vide order dated 28.02.1998. The Tribunal's conclusion in this round was premised on the fact that the DTC had been given ample opportunity to lead evidence by way of affidavit or otherwise in support of its stand of misconduct by the appellant; it failed to do so. The Tribunal, also noticed the fact that the appellant in turn, had already orally submitted that he did not wish to lead any evidence as the onus with regard to the said issue was placed on the management/DTC. The brief reasons recorded in this order of the Tribunal are as follows:

Issue No. 1.

The petitioner has failed to lead any evidence to establish that the respondent while performing duties as conductor on bus no. 1298 of route no.

502, refused to give the passenger balance and complaint book on his demand and that he misbehaved and tried to manhandled the passenger.

The respondent was chargesheeted for the above misconduct. The concerned passenger has not been produced into the witness box nor his

affidavit has been filed. In the absence of evidence from the side of the petitioner in support of the issue, the issue is decided against the petitioner.

Relief.

Since the petitioner has failed to establish the misconduct on the part of the respondent for which he was chargesheeted and as mentioned in the

petition, therefore, the petitioner is not entitled for any relief. The application filed u/s 33(2)(b) of the I.D. Act is rejected.

5. Since the DTC did not reinstate the appellant, the appellant was constraint to file a writ petition under Article 226 of the Constitution of India;

being: CWP No. 6288/1999. Pleadings in this writ petition were completed upon orders passed by the learned Single Judge of this court. In the

meanwhile, DTC being aggrieved by the aforementioned orders of the Tribunal also, filed a writ petition in this court, being: CWP No. 7335/2000.

5.1 The learned Single Judge of this court vide the impugned judgment disposed of the aforementioned writ petition, as noticed hereinabove.

6. The appellant, being aggrieved by the impugned judgment passed by the

learned Single Judge, preferred the captioned appeal. The instant appeal came to be tagged erroneously with a batch of writ petitions which were disposed of by a Division Bench of this court on 21.09.2002. The DTC, being aggrieved with the order of the Division Bench filed a SLP with the Supreme Court. The Supreme Court after granting leave in the civil appeal passed an order dated 28.11.2003, whereby it remanded the matter to the Division Bench of this court for a fresh adjudication as the issue involved in other appeals before the Division Bench was not same as that which arose in the present appeal. In the batch of writ petitions, which were disposed of by the earlier Division Bench vide order dated 21.09.2002, broadly related to cases where employees were removed from service for being absent without leave. In that judgment, the Division Bench examined the aspect as to whether an order of removal could be sustained where a delinquent-employee had been granted leave without pay or his leave had been regularized before imposition of such a punishment.

7. It is in this background that the aforesaid appeal was heard by us. Before us, arguments were addressed by Ms Kittu Bajaj on behalf of the appellant, while on behalf of the DTC arguments were advanced by Ms Arati Mahajan, Advocate.

7.1 Ms Bajaj submitted that this was a case of no evidence as none had been placed before the inquiry officer. The charges, as framed, had not been proved. As a matter of fact it was submitted that the inquiry stood vitiated and hence the management, i.e., the DTC, could not rely upon the inquiry proceedings and/or the report generated thereon. It was further submitted that the management-DTC had failed to lead any evidence in the matter, as recorded by the Tribunal in its order dated 20.05.1999, and therefore the conclusion arrived at by the Tribunal, both in the order dated 28.02.1998 and 20.05.1999, ought to be sustained. Ms Bajaj laid great stress on the fact that in the writ petition filed by DTC, the order passed by the Tribunal qua the preliminary issue, had not been challenged and, therefore, the said order had attained finality. Ms Bajaj, also submitted that the learned Single Judge in the impugned judgment had re-appreciated the evidence based on the observations made in the preliminary inquiry report. Ms Bajaj also raised cavil with respect to the observations of the learned

Single Judge that the Tribunal had insisted with the management-

DTC to lead evidence to prove the case on merits. It was contended that the averments made in paragraph 13 of the application for approval, filed

by the management-DTC, would demonstrate to the contrary. In nutshell, Ms Bajaj submitted that the Tribunal had correctly adverted to the

procedural defects in the conduct of the inquiry which is apparent from the following:

(i) the statement of the defence witness, i.e., the appellant, was taken before the Management-DTC placed its case before the inquiry officer;

(ii) the findings of the inquiry officer which are based on the preliminary report were not supplied to the workman;

(iii) no evidence was placed by the management-DTC before the inquiry officer during the course of the inquiry proceeding;

(iv) there was no evidence in the form of statement of the complainant/ witness; and

(v) lastly, the testimony of the driver was not considered by the inquiry officer.

7.2 In support of her submissions, Ms Bajaj relied upon the following judgments: Bharat Iron Works vs Bhagubhai Balubhai Patel & Ors. 1976

(32) FLR 72(SC); K.N. Baruah vs Management of Budla Beta T.E. & Anr. 1967 (15) FLR 40 ; Karnataka State Road Transport Corpn. Vs.

Smt. Lakshmiddevamma and Another, ; State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., ; Kashinath Dikshita Vs. Union of India

(UOI)and Others, and D.T.C. Vs. Anup Singh, .

8. Ms Mahajan, on the other hand, placed reliance on the impugned judgment. The learned counsel further contended that in proceedings u/s 33(2)

(b) of the I.D. Act the Tribunal was only required to examine whether or not there exists a prima facie case against the delinquent workman. If a

prima facie case is made out, the approval has to be granted. In support of this submission reliance was placed on the judgment in the case of Delhi

Transport Corporation Vs. Ram Kumar and another, . Learned counsel further contended that the contours of what the courts would consider, as

the ingredients of a prima facie case, are spelled out in Martin Burn Ltd. Vs. R.N. Banerjee, . Based on the aforesaid, learned counsel submitted

that all that the Tribunal was required to examine was whether the evidence placed before it, was sufficient to establish that it was possible to arrive

at the conclusion, which the management had arrived at, and not, that there was a possibility of arriving at a different conclusion based on the same evidence. Taking the aforesaid contention further, the learned counsel submitted that it was not the function of the Tribunal to sit in appeal over the findings of the inquiry officer. Ms Mahajan also found fault with the Tribunal's conclusion which was premised on the fact that neither the complainant-passenger and nor were other passengers examined as witnesses before the inquiry officer. It was contended that courts by way of various judicial pronouncements have repeatedly held that passengers were not material witnesses in such like cases. In support of this proposition the learned counsel relied upon the following judgments: State of Haryana vs Rattan Singh 1977 (347) FLR 264; Delhi Transport Corporation vs N.K. Kakkar & Ors. 2004 (II) CLR 489 (Delhi); Delhi Transport Corporation vs Om Pal & Ors. 2004 (II) CLR 366 (Delhi).

REASONS

9. After hearing learned counsels for the parties, in our view, from the perusal of the record and submissions made before us, the following quite clearly emerges:

(i) A preliminary inquiry was conducted in the matter on 22.11.1985. At the stage of holding a preliminary inquiry, the statement of the complainant was recorded wherein, the complainant tendered his oral deposition with regard to the allegations made in the complaint filed.

(ii) At this stage, i.e., the preliminary inquiry stage, the appellant - delinquent employee, was also given an opportunity to make a submission. The

appellant, however, in his submission conveyed that he had tendered a written statement in Hindi on 20.11.1985, which ought to be treated as his

submission in the preliminary inquiry. He went on to say that he had nothing further to add to the written statement already made by him on

20.11.1985. By this statement the appellant while seeking to place the blame on the complainant-passenger does not dispute the fact that a fracas

erupted on the date of the alleged incident.

(iii) Importantly, on a question being put by the inquiry officer at this (preliminary) stage, as to whether the complainant was the very same person

(i.e., the passenger), who had lodged the complaint in issue and threatened him; was answered in the affirmative by the appellant.

(iv) A chargesheet dated 05.12.1985, was admittedly served on the appellant.

(v) Eventhough, the chargesheet was received by the appellant, no reply had been filed to the same.

(vi). The appellant was given several opportunities to appear before the inquiry officer in the subsequent domestic enquiry. The appellant chose not

to appear before the inquiry officer, including on the date fixed for making a final statement.

(vii) On conclusion of the domestic inquiry, a show cause notice dated 13.07.1987, was served on the appellant with regard to the proposed

punishment of removal from service. The appellant did not file his response to the same.

(viii) Lastly, on twenty one (21) occasions in the past the appellant's conduct had been found at fault with by the management-DTC. Out of 21

occasions on 11 occasions the appellant had been found guilty of the charge of non-issuance of ticket after collecting due fare and on two

occasions had refused to refund the balance money to the passenger after adjusting the fare.

10. It is in the background of the aforesaid that the Tribunal found fault with the proceedings of the inquiry officer. As noticed by us hereinabove,

the error which the inquiry officer had committed, according to the Tribunal, was that it had examined the defence witness prior to any evidence

having been led by the management-DTC. It is pertinent to note that the Tribunal in its first order dated 28.02.1998 (wherein it came to the

conclusion that the inquiry conducted by the management-DTC was both unfair and improper) has in no uncertain terms observed that the entire

inquiry record had been placed before it and proved. The said document was decidedly marked as exhibit AW-1/1. It is thus clear that in so far as

the management-DTC was concerned it was relying upon the proceedings which were conducted at the preliminary inquiry stage, wherein

admittedly, the statement of the complainant-passenger was recorded. At that stage the appellant, i.e., the delinquent employee, chose not to

record his statement but relied upon the written statement submitted on 20.11.1985. It is only before the inquiry officer that the appellant seems to

have changed his mind, and thus, proceeded to make a statement in support of the defence raised by him before the inquiry officer. In these

circumstances, in our view, for the Tribunal to come to the conclusion that there was a procedural breach of a substantive nature, which resulted in prejudice being caused to the appellant-delinquent employee, is to say the least, an erroneous appreciation of the circumstances which obtained in the said case. As a matter of fact the chargesheet itself put the appellant to notice as to what could follow in case, if he did not respond to the allegations leveled against him. The chargesheet clearly adverts to the fact that a statement of allegations stood enclosed therewith. Furthermore, the chargesheet also adverted to the fact that the report, i.e., the preliminary inquiry report, which preceded the issuance of the chargesheet, stood enclosed with it. Therefore, for the Tribunal to come to the conclusion that the proceedings were unfair and improper, in our view, loses sight of the aforementioned crucial facts which obtained in this case, which includes the fact (as noticed by us hereinabove) that even in respect of the show cause notice dated 13.07.1987, whereby the appellant was put to notice of the proposed punishment; no reply had been filed by him. The principles of natural justice have been crafted and shaped by judicial dicta over the years to ensure at the end of the day that there is fair play in action. The purpose being to forge together an amalgam of the requirement of, the strict letter of the law and those which further the cause of good conscious and equity. One of the modes of obtaining this hallowed objective is by tethering the concerned authority to the norm of fairness qua substantive procedure. [See State Bank of Patiala and others Vs. S.K. Sharma,]. In our opinion no known principle of natural justice was violated by the inquiry officer which would include his action of recording the statement of appellant prior to the management-DTC being called upon to lead evidence in the matter. The technical rules of the Evidence Act, 1872 are not applicable to a domestic inquiry. The appellant was accorded a fair opportunity to defend himself. The management-DTC on its part as is obvious had only relied upon the material placed on record at the preliminary stage. The report thus generated was proved before the inquiry officer. The management-DTC did not wish to add to the material on record. It was, therefore, incumbent on the Tribunal to ascertain whether it met the test of having established a prima facie case.

10.1 In our view, what the Tribunal lost focus of, was the scope and extent of the inquiry which it was required to make u/s 33(2)(b) of the I.D.

Act. In order to sustain an application for approval for discharge or removal from service under the aforementioned provision, all that the Tribunal,

is required to discover is the existence of a prima facie case as set by the employer against the delinquent employee. It would have to be borne in

mind that an approval of an application u/s 33(2)(b) of the I.D. Act does not rule out the possibility of taking recourse the provisions of section 10

of the I.D. Act. (see I.T.C. Ltd. Vs. Govt. of Karnataka and Others, , Hindustan General Electrical Corporation Ltd. Vs. The State of Bihar and

Others, and Navalbhai Karsanbhai Chauhan Vs. Shri Digvijay Woolen Mills Ltd., .

As to what is the scope of the expression ""prima facie case"" in

the context of a domestic inquiry, one can do no better than quote the observations made by the Supreme court in Martin Burn (supra):

....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. Case 1952 L.A.C. 490. The Labour Appellate Tribunal in the instant case discussed the evidence led before

it in meticulous detail and came to the conclusion that no prima facie case was made out by the appellant for the termination of the service of the

respondent. It applied a standard of proof which having regard to the observations made above was not strictly justifiable....

[Emphasis is ours]

10.2 In the case of Cholan Roadways Limited Vs. G. Thirugnanasambandam, the Supreme Court has cited with approval the principle enunciated

in Martin Burn (supra) case in addition it reiterates the principle of law which govern such an enquiry. The relevant parts are extracted hereinbelow:

....15. It is now a well-settled principle of law that the principle of Evidence Act have no application in a domestic enquiry.

16. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , it was held:

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental

proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable

material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue.....

.....The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact

must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of

proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and

domestic enquires.

17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It

is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum.

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 u/s 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).....

19. It is further trite that the standard of proof required in a domestic enquiry vis-a-vis a criminal trial is absolutely different. Whereas in the former

"preponderance of probability" would suffice; in the latter, "proof beyond all reasonable doubt" is imperative.

20. The tribunal while exercising its jurisdiction u/s 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal

principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of

the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with

another bus coming from the front deserved serious consideration at the hands of the tribunal. The nature of impact clearly demonstrates that the

vehicle was being driven rashly or negligently.

21. Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden

of proof would shift on the delinquent. As noticed hereinabove, the enquiry officer has categorically rejected the defence of the Respondent that

the bus was being driven at a slow speed.

22. xxxx

23. xxxx

24. In A.T. Mane (supra), this Bench observed:

5...Learned counsel relied on a judgment of this Court in support of this contention of his in the case of Karnataka State Road Transport

Corporation Vs. B.S. Hullikatti, . That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time

he was found guilty and bearing that fact in mind this Court held thus:-

Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for

themselves, is clearly applicable in the instant case. Charging 50

paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was

so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in

financial loss to the appellant corporation.

6. On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the

above case and the law laid down therein applies to the facts of the present case also.....

11. Applying the dictum laid out in the aforementioned case by the Supreme court, we are of the opinion that the Tribunal went beyond its

jurisdiction while examining the inquiry report. As a matter of fact the second order vide which the Tribunal proceeded to decide the matter on

merits, adverts very vaguely to some documents being placed before the inquiry officer which the inquiry officer ought not to have taken into

account. We are quite clueless as to which were those documents which the Tribunal found fault with and, therefore, evidently based on these

documents the inquiry officer came to the conclusion that the appellant, had engaged in misconduct as charged.

12. The contention of the learned counsel for the appellant, Ms Bajaj that the management-DTC in its writ petition had not laid a challenge to the

first order of the Tribunal, i.e., order dated 28.02.1998, is also not quite correct. A perusal of the writ petition and the prayer clause, in particular

prayer clause III, would show that the management-DTC had raised a cavil in respect of the order of the Tribunal dated 28.02.1998. In any event,

in our view, the order dated 28.02.1998 stood merged in the subsequent order dated 20.05.1999 passed by the Tribunal, which was, squarely

challenged in the writ petition filed on behalf of the management-DTC. Therefore, the argument of Ms Bajaj, even on this score is misconceived

both in law and on facts.

13. The other submission of the learned counsel for the appellant that the copy of the preliminary report was not supplied to the workman is,

according to us, not quite accurate, in view of the fact that the chargesheet itself adverts to the statement of allegations and the report. It is not

disputed before us that a preliminary inquiry was conducted and a report generated thereupon. Ordinarily, a prudent man, when faced with this situation where documents adverted to in the chargesheet are not made available, would respond by stating so, at the very initial stage. The fact that no reply was filed to the chargesheet would make it abundantly clear that this is a desperate plea made on behalf of the appellant to shore up his stand in the case. We have already noticed hereinabove that the chargesheet itself adverted to the fact that the appellant was free to inspect the record qua the documents on which reliance was placed by the management-DTC is plea, in our view is plea made to create prejudice which unfortunately does not find resonance in the record of the courts below.

14. As regards the submission of Ms Bajaj that the inquiry officer did not give due weight to the testimony of the driver, we have examined the report of the inquiry officer. A perusal of the report would show that on appreciation of the testimony he came to the conclusion that it could not be relied upon. One of the reasons for this conclusion was that at the relevant time the driver was at the head of the bus whereas the incident involving the appellant and the complainant occurred at the rear end of the bus. In our opinion the appreciation of evidence is within the domain of the inquiry officer. The inquiry officer having done so, we would not disturb it in these proceedings without being shown as to how it falls foul of any known principle of law or that of prudence.

15. Before we part with the judgment, let us also deal with the judgments cited by the appellant. The first judgment in a series of judgments cited by the learned counsel for the appellant is the judgment of the Supreme Court in the case of Bharat Iron Works (supra). The principle laid down in this judgment has been followed both in the earlier judgments of the Supreme Court as well as those which have followed the said case. Briefly, in this case the delinquent employees were charged with the misconduct of having assaulted newly appointed temporary workers, while returning from a hotel in close proximity to the factory where they had their mid-day meal. The delinquent employees allegedly were in the company of certain outsiders when the assault took place. The apparent cause for assaulting temporary workers was that while the delinquent employee had struck work, the temporary workers had joined the factory for work. Pursuant to

an enquiry, an order of dismissal was passed. Since certain other industrial disputes were pending adjudication between the management and its employees, an application u/s 33(2) and 33(3) of the I.D. Act was filed.

15.1 Despite the fact that the Tribunal had returned a finding that there was no defect in the conduct of the domestic inquiry, it proceeded to

dismiss the application for grant of approval, on the ground that the "findings of the inquiry officer were perverse and not bonafide". The Tribunal

also held that the plea of victimization advanced by the delinquent-employees was made out in the case. The matter travelled to the Supreme

Court. The Supreme Court observed in the said judgment that even though there was no defect in the domestic inquiry, the Tribunal was entitled to

examine the evidence to find out whether a prima facie case was made out or, that the findings returned by the inquiry officer were perverse. The

Supreme Court after examining the evidence placed on record, came to the conclusion that the Tribunal's finding were manifestly perverse in

holding that there was not even a prima facie case made out against the workman and that the findings of the inquiry officer were not bonafide.

Accordingly, the appeal of the management was allowed. It is evident that the facts obtaining in the said case are completely distinguishable from

those in the present case. As a matter of fact the judgment does not even remotely, advance the case of the appellant.

15.2 K.N. Baruah (supra): In this case the delinquent employee was charged with having assisted certain persons in entering the factory premises

and attempting to decamp with a certain quantity of untreated tea leaves lying on the floor of the sorting room of the factory. Since the factory

assistant accompanied by another employee, arrived at the scene, the delinquent employees ran away with their accomplices leaving behind the

tea. An inquiry was conducted. An order of removal from service was passed thereupon. The management filed an application u/s 33(2) of the

I.D. Act. Before the Tribunal it was contended that the principles of natural justice were not adhered to in the domestic inquiry as no opportunity

was given to the delinquent employee to cross-examine the management witness. The Tribunal came to the conclusion that the management witness

was not examined in the presence of the delinquent-employee and hence,

principles of natural justice were breached. Thereupon, the Tribunal considered the management's case on merits. The matter reached the Supreme Court. The Supreme Court observed that once the Tribunal held that the domestic inquiry was conducted in violation of principles of natural justice, it was incumbent upon the Tribunal to consider the matter based on the evidence adduced before it. At that stage, the Tribunal was not to consider, as to whether there was only a prima facie case for dismissal.

15.3 Once again it is not the principle in issue but the application of the principle to the facts of this case. In the facts of the present case, we have already held that no known principle of natural justice was violated and, therefore, the test to be applied by the Tribunal in coming to the conclusion whether or not approval ought to be granted to the application filed u/s 33(2)(b) of the I.D. Act was one of, establishment of, a prima facie case.

15.4 The third judgment cited before us is once again a judgment of the Supreme Court rendered in Karnataka State Road Transport (supra). This is a Constitution Bench judgment where two concurring judgments were rendered. The Constitution Bench was called upon to consider the decision rendered in Shambhu Nath Goyal Vs. Bank of Baroda and Others, . The question which came up for consideration before the Bench was the stage at which the employer can seek leave of the court to lead additional evidence in a proceeding u/s 10 or Section 33 of the I.D. Act. Two judges concurring with the view taken in Shambhu Nath Goyal (supra), came to the conclusion that the employer can seek leave to lead additional evidence at the stage "when it files a statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it". The other two judges who passed a separate but a concurring judgment held that the management should seek leave from the Court/Tribunal to lead additional evidence in the written statement itself, but at the same time, it should not be understood as placing fetters on the powers of the Court/ Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if, in the given facts and circumstances such a course is deemed just and necessary in the interest of justice. The object being: to avoid multiplicity of

proceedings. The judgment in our view only re-establishes the right of the management to seek leave to lead additional evidence to justify its action. In the instant case, in our view, the stage did not arise because the management-DTC continued to contend that its action did not violate principles of natural justice.

15.5 The fourth case cited before us is the judgment of the Supreme Court rendered in the case of Mohd. Sharif (supra). In this case the court sustained the decision to quash a departmental inquiry on the ground that in the chargesheet framed and served on the delinquent-employee crucial particulars like the date and time of the alleged incident and the situs of the incident were not adverted to. In addition, the court sustained the plea of breach of natural justice on the ground that the preliminary statements recorded in the preliminary inquiry, which preceded the disciplinary inquiry, were neither supplied nor was any opportunity given to inspect the file pertaining to the preliminary inquiry. As noticed above, the facts obtaining in the present case are diametrically opposite to those referred to in the said judgment. The judgment has no applicability to the instant case.

15.6 The judgment in the case of Kashinath Dikshita (supra) proceeds on the same basis where copies of statement of witness examined at the stage of preliminary inquiry preceding the commencement of a domestic inquiry and the documents relied upon were not furnished. This case is also distinguishable.

15.7 The last case referred to by the learned counsel for the appellant is the judgment of the Division Bench of this court in the case of Anup Singh (supra). This was a case where the delinquent-employee was charged with the misconduct of having pocketed the fare furnished by the passengers without issuing them tickets. In the inquiry the management examined the Assistant Ticket Inspector (in short "ATI"), who had evidently boarded the bus on which the said incident was supposed to have occurred. The Division Bench, on examining the evidence on record, came to the conclusion that there was no evidence available on record, whereby it could be established that the delinquent-employee had collected the cash from the passengers and not furnished the tickets. In coming to this conclusion the court held that the testimony of the ATI was based on

hearsay. The explanation given by the ATI that he had not checked the cash available with the delinquent-employee as there was no norm to check

cash in a moving bus, was not accepted. The court came to the conclusion that the evidence led, did not, prove the charge leveled against the

delinquent-employee. It is, however, to be noticed that the Division Bench in paragraph 16 of the judgment did observe that it may not be possible

to examine the passengers in all such like case, and in this regard noticed the judgment of the Supreme Court in the case of State of Haryana and

Another Vs. Rattan Singh, .

16. In view of the aforesaid, we find no error in the judgment of the learned Single Judge. Accordingly, the appeal is dismissed. There shall,

however, be no orders as to cost.