



2024:DHC:3992



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 3rd May, 2024**

+ **W.P.(C) 245/2013**

DELHI TRANSPORT CORPORATION Petitioner

Through: **Ms.Manisha Tyagi and Mr.Varun
Garg, Advocates**

versus

ASHOK KUMAR Respondent

Through: **Mr.Kamlesh K.Mishra, Mr.Dipak
Raj, Mr.Bibhuti Bhushan Mishra, Ms.
Renu, Ms.Shivani, Ms.Manya Mishra
and Mr.Deep Raj, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"a. issue a writ of certiorari or any other appropriate writ, order or direction for quashing the impugned orders dated 23.7.2012 and 24.4.2012 on O.P. No.428/93 passed by the Ld. Labour Court, Karkardooma, Delhi.

b. issue writ prohibition or any other appropriate order or direction restraining the respondent to be re-instated and for recovery of further amount and in furtherance of the impugned order;

c. issue any other writ, order or direction quashing the



*impugned award and restoring the action of the management in removing the workman;
d. any other relief as deemed fit and proper in the facts & circumstances of the case and in the interest of justice."*

2. The respondent workman in the present case was working as a conductor in the petitioner entity namely Delhi Transport Corporation ('DTC' hereinafter) since 1st March, 1980. It is stated that a report was sent by one Mr. R.C. Pardeshi Traffic, Superintendent on 27th September, 1984 stating to the effect that the respondent workman did not abide by the procedure prescribed for the conductors, and the same amounts to misconduct as per standing order Para 19(a), (h) and (m) of the Regulation of Delhi Road Transport Authority, 1950 ('DRTA' hereinafter).

3. Thereafter, a chargesheet dated 29th October, 1984 was issued against the respondent for the aforementioned misconduct and an enquiry was initiated against him. Pursuant to completion of the same, the services of the respondent workman were terminated *vide* order dated 20th January, 1993 under Regulation 9(b) of DRTA Condition of Appointment & Service.

4. The said rule was struck down by this Court in ***DTC Mazdoor Congress v. Union of India, 1986 SCC OnLine Del 180*** and DTC was directed to take back employees dismissed under the said rule. Thereafter, the DTC had filed an appeal against the said order, however, the Hon'ble Supreme Court dismissed the said appeal in ***Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600*** and therefore, the DTC took back all workmen on 1st December, 1990.



5. Pursuant to taking back the workmen, the petitioner initiated disciplinary proceedings against the said workman and an order of removal from service was passed on the grounds of misconduct on 20th July, 1993.
6. Subsequently, *vide* order dated 17th September, 1998, the approval application filed by the DTC under Section 33(2)(b) of Industrial Disputes Act, 1947('ID Act' hereinafter) was dismissed by the learned Industrial Tribunal on the grounds of double jeopardy.
7. Pursuant to the same, the petitioner DTC filed a writ petition bearing W.P. (C) No. 3169/1999 against the above said order of the learned Tribunal before this Court wherein the said order was set aside and the matter was remanded back to the learned Tribunal for adjudication.
8. Consequently, *vide* orders dated 24th April, 2012 and 23rd July, 2012 the learned Tribunal vitiated the enquiry conducted against the respondent workman due to non-compliance with the principles of natural justice and rejected the approval application.
9. Aggrieved by the same, the petitioner DTC has filed the instant petition.
10. Learned counsel appearing on behalf of the petitioner DTC submitted that the enquiry was held as per principles of natural justice and the respondent was given an opportunity to bring a co-worker to defend the case, however, he refused.
11. It is further submitted that the learned Tribunal erroneously concluded that the passenger witnesses were a necessary and proper witnesses and the non-examination of the said witnesses does not imply that the respondent



workman is not guilty.

12. It is also submitted that the scope of scrutiny under section 33(2)(b) of the I.D. Act, only contemplates powers to the Tribunal to determine (1) whether the proposed action is in accordance with the standing order, (2) whether the employees have been given one month's notice wages and (3) whether prescribed application has been moved, therefore, the learned Tribunal travelled beyond the jurisdiction granted under the said provision.

13. It is submitted that the learned Tribunal has failed to appreciate that it is a settled law that examination of the passenger witnesses is not a pre-requisite for holding the respondent guilty of misconduct as the other corroborating evidences can prove the said misconduct.

14. It is submitted that the impugned orders are bad in law since the same have been passed without taking into consideration the entire facts and circumstances of the case and hence, the same may be set aside.

15. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and reliefs be granted, as prayed.

16. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant writ petition submitting to the effect that the enquiry conducted against him was sham and bogus as the officers conducted it with a pre-determined mind and with an intent to remove the respondent workman.

17. It is submitted that as rightly held by the learned Tribunal, no corroborative evidence was taken from the passengers to prove the charge



levied against the respondent.

18. It is submitted that a similar case has been already dealt with by this Court in W.P. (C) 8615/2003 titled ***DTC v. Anant Ram***, therefore, the ratio in the said case is applicable to the instant case.

19. It is submitted that under the powers conferred by the Constitution of India in Article 226, this Court may not appreciate the evidences and therefore, the material on record as relied upon by the learned Court below attained finality.

20. Therefore, in view of the foregoing submissions, the learned counsel for the respondent submitted that the present petition, being devoid of any merit may be dismissed.

21. Heard learned counsel appearing on behalf of the parties and perused the material available on record.

22. In order to adjudicate the present case, this Court deems it imperative to analyse the findings of the impugned orders and ascertain the reasoning afforded by it. The relevant paragraphs of the impugned orders are reproduced below:

(Order dated 24.4.12)

19. Findings on issue framed on 16.02.1995:-

The issue is: Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?

20. AW 1 Sh. Mohd. Yusuf, Enquiry Officer, who was examined before remand back of the case, has admitted in his cross-examination that he was the disciplinary authority and he conducted the enquiry. This admission of AW 1 shows a major



flaw in the enquiry in as much as enquiry officer should be a neutral person, not influenced or associated with any of the parties to the dispute.

21. *In fairness to the delinquent official, as well as to the enquiry officer, the enquiry should not be entrusted to:-*

- (a) an officer who held the preliminary enquiry,*
- (b) an officer directly subordinate to an officer who has already expressed a definite opinion on the point at issue, and where such opinion is adverse to the delinquent official.*

22. *Thus, in the present case, enquiry officer, being the disciplinary authority himself, could not appear to have been fair with workman. Hence, Sh. Mohd. Yusuf, the Depot Manager has violated the principles of natural justice by acting as Enquiry Officer himself. He should have engaged some other independent/neutral/fair person as Enquiry Officer, who could have given, findings, which could not only be fair and unbiased, but also appear to have been so in the matter. Management appears to have been biased by appointing its disciplinary authority as Enquiry Officer. Thus, the enquiry is vitiated on this very ground and it is held that the applicant did not hold a legal and valid enquiry against the respondent according to principles of natural justice. This issue is decided accordingly.*

23. **Findings on issue no.3 framed on 03.02.2012**

Issue no.3 is: Whether management has complied the requirements as per proviso to Section 33(2) (b) of Industrial Disputes Act? OPM

24. *Proviso to Section 33(2) (b) of Industrial Disputes Act is reproduced as below:-*

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.



25. Management has pleaded in its approval petition that workman was remitted one month wages vide money order No.4025, 4026 on 20.7.93, on which date workman was removed from service. Workman in his reply has merely denied this position stating that full one month's wages were not remitted to him. However, during the course of arguments, no serious dispute has been raised in this regard on behalf of workman. Moreover, no evidence has been led by workman in this regard. Mere denial of a fact without any evidence or arguments is not sufficient. Hence, this issue is decided in favour of management and against the workman and it is held that management has complied the requirements as per proviso to Section 33(2) (b) of Industrial Disputes Act. Issue no.3 is decided accordingly.

26. Interim order is passed accordingly. Hon'ble Apex Court in *The Management Hotel Imperial, New Delhi and others vs. Hotel Workers' Union*, reported in AIR 1959 SC 1342, has held that:-

It is also open to the Tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by section 17.

27. In view of above judgment of Hon'ble Apex Court, copy of this interim order be sent to GNCT of Delhi for information.

(Order dated 23.7.12)

26. **Findings on issue framed on 16.02.1995:-**

The issue is: Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?

27. Vide order dated 24.04.2012, this issue has been decided already holding that the applicant did not hold a legal and



valid enquiry against the respondent according to principles of natural justice.

28. Findings on issue no.3 framed on 03.02.2012

Issue no.3 is: Whether management has complied the requirements as per proviso o Section 33(2) (b) of Industrial Disputes Act? OPM

29. Vide order dated 24.04.2012, this issue has been decided already holding that management has complied the requirements as per proviso to Section 33(2) (b) of Industrial Disputes Act.

30. Thereafter, case was fixed for management evidence on remaining issues. However, on 29.05.2012, both the parties submitted that they do not v/ant to lead any evidence other than the evidence led already.

31. My findings on remaining issues are as under:-

32. Findings on issue no.2 framed on 03.02.2012

The issue is: If answer to issue no. 1 framed on 16.02.05 is in negative, whether respondent/ workman committed misconduct as alleged? OPM

33. First of all, it is clarified that Sh. Mohd Yusuf, enquiry officer was examined as AW 1 prior to remand back of the case from Hon'ble High Court of Delhi and thereafter, Sh. Satya Dev, member of checking team was also examined as AW 1.

34. The charges levelled in the said Charge Sheet are that on 27.4.94, while on duty with PO Bus No.3809, plying on route No.405, he did not get his bus stopped at Delhi Gate even on giving whistle by the Checking Officials and on their further checking- at Red Fort and on enquiry, he instigated the public against them and also misbehaved with them. It was further alleged in the charge sheet that he was performing his duty without uniform and without ticket bag on his shoulder.

35. As to the charge of not stopping the bus at Delhi Gate, it is worth noting that there is no complaint of checking staff that there was any passenger who wanted to board or alight from the bus at Delhi Gate. No statement of any passenger has been



recorded by Checking Staff, complaining in this regard. Since, there was no passenger who wanted to board or alight from the bus, there was no logic to stop the bus at Delhi Gate. Further it is admitted by AW 1 Sh. Satya Dev in his cross-examination that there is not device in any bus of DTC which may enable the conductor to stop the bus. Hence, this grievance of the management has no basis.

36. As to the charge that on further checking at Red Fort and on enquiry, workman instigated the public and also misbehaved with checking staff. AW 1 Sh. Satya Dev, member of checking team has deposed in his cross-examination that he did not remember whether any public or any co-passenger of the bus was made witness on the way bill. It is admitted by AW 1 Sh. Mohd. Yusuf, the enquiry officer that checking staff had not recorded the statement of any passenger or any other independent witness at the time of checking of respondent's bus. It is admitted by AW 1 Sh. Satya Dev that the conductor handed over the way bill to Mr. R.C. Pradeshi in his presence upon demand for the same. He has admitted that the checking team make necessary remarks against the driver of the bus. It is worth noting that if the checking team made remarks against the driver, it could also make remarks against the conductor in the way bill, which has not been done. It is further admitted by AW 1 Sh. Satya Dev, member of checking team, in his cross-examination that conductor did not misbehave with checking team. In his cross-examination, he has further admitted that conductor did not stop or object for any remarks to be written in the said way bill. It is deposed that bus was allowed to proceed after handing over the way bill to the conductor peacefully.

37. Admittedly, no statement of any passenger was recorded, which could throw light on the charge of instigation of public and misbehaviour. It is admitted on behalf of management that way bill was handed over to checking team peacefully and workman did not object for any remarks to be written on the



said way bill. Thus, checking team could have made remarks easily on the way bill, with regard to instigation of public and misbehaviour,, but no such thing has been done in this case. Moreover, page 139 of the present court file shows that in enquiry proceedings, Sh RC Pardeshi, Traffic Supervisor has stated in his statement that they gave challan to the Driver of the Bus. In my considered opinion, if the challan was given to the Driver of the bus, it could have been given to Conductor also, but no challan was given to Conductor. It was clarified in this regard by Sh. R.C. Pardeshi in his statement that since the conductor started arguing and large crowd collected there, they did not challan the Conductor. However, as stated above, no evidence of instigation of public has been brought on record and AW 1 Sh. Satya Dev has admitted that conductor did not misbehave with the checking staff. Thus, the said clarification of Sh. R. .C Pardeshi cannot be entertained. Entry in the way bill was not objected by the conductor. It shows that the checking staff were in belief at the time of incident that conductor has not committed misconduct. Hence, it is held that charges of instigation of public and misbehaviour with checking staff are after thought and thus, management has failed to prove the same.

38. As regards ticket bag, it is alleged in the charge sheet that workman was without ticket bag. However, in the examination-in-chief AW 1 Sh. Satya Dev has stated that conductor did not give ticket leather bag. This grievance of management is self-contradictory.

39. Moreover, there is no case of management that workman issued tickets of lessor amount than he received from passenger. Thus, taking of ticket bag from the conductor has no relevance, as it would have been required only in case of above allegation, in order to, check the cash and tickets. Hence, this charge of management has no basis.



40. Now, the only grievance against the workman which remains is that he was found without uniform by checking staff. In this regard statement of Traffic Supervisor Sh. R. .C Pardeshi may be referred again. In his statement, Mr. Pardeshi has not alleged anything in this regard. He has narrated each and ever incident as mentioned in the charge sheet except regarding Uniform. No entry was made in the way bill that the workman was found without uniform. No other evidence has been led by management in this regard. Thus, charge of without uniform levelled against the workman is without any basis.

41. In view of above discussion, it is held that management has failed to prove the misconduct as alleged in the charge sheet 29.10,1984. This issue is decided accordingly.

42. **Relief**

In view of my finding on above issues, the approval petition is rejected. Copy of this order be sent to GNCT of Delhi for information."

23. Upon perusal of the aforementioned orders, it is observed that the learned Tribunal vide order dated 24th April, 2012 decided Issue No. 1 and 3 against the petitioner entity and in favour of the respondent workman, thereby, vitiating the enquiry conducted by the Enquiry Officer for non-compliance with the principles of natural justice as the petitioner entity allowed the Disciplinary Officer to also act as the Enquiry Officer.

24. The contents of the impugned award depicts that the learned Tribunal had referred to the material on record, and therefore held the enquiry officer failed to record any statement of the passengers with regard to the alleged misconduct on part of the respondent workman.

25. Furthermore, the complaint regarding absence of ticket bag is self-contradictory as AW 1 has deposed that conductor was not given ticket



leather bag. On the aspect of absence of uniform, the learned Tribunal duly noted that no entry has been made in the waybill regarding absence of uniform and the statement of Traffic Supervisor also did not allude to this aspect.

26. In this backdrop, the learned Tribunal has given a finding that the management has failed to prove misconduct as alleged in the charge sheet against the respondent workman. Even otherwise, the enquiry conducted stands vitiated due to non-compliance with principles of natural justice.

27. With regard to the above, the short question that arises for this Court's consideration is whether the order of the learned Tribunal in rejecting the approval application filed under Section 33(2)(b) of the I.D. Act warrants interference of this Court under Article 226 of the Constitution of India.

28. This Court is of the view that *firstly*, a perusal of the learned Tribunal's record indicates that it had delineated three issues for determination and made categorical observation that the removal of the respondent workman was not warranted.

29. Additionally, the learned Tribunal also observed a glaring instance of violation of the principles of natural justice in the conduction of the disciplinary proceedings by the petitioner entity as the Disciplinary Officer of DTC was appointed as the enquiry officer.

30. In this context, this Court deems it imperative to briefly discuss the legal position behind the incorporation of principles of natural justice. The term "principles of natural justice" has been derived from the expression "*jus natural*" of the Roman Law. The fundamental principle of common law



that no one should be a judge in his own cause was laid down with the underlying principal that justice should not only be done but must appear to be done.

31. The perusal of the impugned order clearly establishes that the learned Tribunal vitiated the enquiry on the grounds that the disciplinary officer had acquired the role of the enquiry officer as well, therefore, the learned Tribunal arrived at the conclusion that there is likelihood of bias in the enquiry proceedings. At last, this Court also deems it appropriate to deal with the question whether the Tribunal has exercised jurisdiction beyond scope of scrutiny as envisaged u/s 33(2)(b) of the I.D. Act or not.

32. In *John D'Souza v. Karnataka SRTC, (2019) 18 SCC 47*, the Hon'ble Supreme Court has observed that summary proceeding u/s 33(2)(b) do contemplate ascertaining compliance with the principles of natural justice. The relevant paragraph is extracted herewith:

*“23. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded **reasonable opportunity to defend himself in consonance with the principles of natural justice**. As a natural corollary thereto, the Labour Court or the forum concerned will lift the veil to find out that there is no **hidden motive to punish the workman** or an abortive attempt to punish him for a non-existent misconduct.*

30. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section



*33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in **violation of principles of natural justice** and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman...”*

33. Upon perusal of the same, it is made out that the adjudication of an application filed under Section 33(2)(b) of the ID Act needs to be done in two phases, where the Tribunal needs to determine if such enquiry suffers from illegality due to violation of the principles of natural justice.

34. At this juncture, it is also apposite to discuss the settled position of law in relation to the scope of interference contemplated under Article 226 of the Constitution of India, especially with reference to a labour matter.

35. In any case, it is settled that the scope of review afforded under Article 226 to the High Court is limited and the Court is not supposed to re-appreciate the evidence as an appellate Court just because a different view is possible on the basis of the factual matrix, unless a glaring illegality is apparent in the order passed by the Industrial Tribunal/Courts below.

36. Accordingly, this Court is of the considered view that it has been rightly held by the learned Tribunal that the petitioner entity erred in conducting the disciplinary proceedings against the respondent workman that were not in compliance with the principles of natural justice and adjudication of the said question duly falls within the jurisdiction of the learned Tribunal.



37. This Court is of the considered view that the learned Tribunal has dealt with each of the issues framed by it, affording a detailed reasoning after having appraised the evidence placed on record, the cross-examination as well as the settled position of law.

38. The writ jurisdiction of the High Court under Article 226 is supervisory in nature and it cannot sit in appeal over the orders passed by the learned Tribunal as doing so would amount to re-examination of the evidence adduced in the proceedings before the concerned Tribunal, especially when no material has been placed on record to show that the impugned orders suffer from any infirmity.

39. In view of the foregoing discussion, this Court does not find any force in the arguments advanced by the petitioner and therefore, does not deem it appropriate to exercise its writ jurisdiction conferred under Article 226 of the Constitution of India to interfere with the impugned award.

40. Therefore, in light of the discussions held in the preceding paragraphs, the impugned orders dated 27th April, 2012 and 23rd July, 2012 are hereby upheld and the present petition being devoid of any merit is dismissed.

41. Pending applications, if any, also stand dismissed.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 3, 2024

dy/av/ryp

Click here to check corrigendum, if any