(2012) 08 DEL CK 0109

Delhi High Court

Case No: Writ Petition (C) No. 351 of 2006 and CMs. 259 of 2006 (stay) and 8109 of 2011 (directions) and W.P. (C) No. 195 of 2006 and CM 186 of 2006

D.T.C		APPELLANT
	Vs	
Jagdish Prasad		RESPONDENT

Date of Decision: Aug. 16, 2012

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33(2)(b)

Citation: (2012) 135 FLR 625 : (2012) LLR 1016

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Manisha Tyagi, in W.P. C No. 351/2006 and CMs. 259/2006 stay and 8109/2011 directions and W.P. C No. 195/2006 and CM 186/2006 stay, for the Appellant; Anil Mittal, Shri Bhagwan and Mr. Amritansh Batheja, In W.P. (C) No. 351/2006 and CMs. 259/2006 (stay) and 8109/2011 (directions) and W.P. (C) No. 195/2006 and CM 186/2006 (stay), for the Respondent

Judgement

Hon''ble Ms. Justice, Mukta Gupta

1. By these petitions the Petitioner seeks quashing of the order dated 27th May, 2003 dismissing the application of the Petitioner u/s 33(2)(b) of the Industrial Disputes Act (in short ''ID Act'') for approval of its action to remove the Respondent from service and the award dated 10th September, 2004 holding that the service of the Respondent was illegally terminated and that the Respondent would be deemed to be continuous in service from the date of his removal and entitled to all the benefits as stated in the claim. Learned counsel for the Petitioner contends that in a domestic enquiry it is not essential to examine the passenger witnesses and the finding of the learned Tribunal rejecting the application u/s 33(2)(b), I.D. Act on the ground that the passenger witnesses were not produced is wholly illegal. Reliance is placed on DTC Vs. Shree Kumar and Anr. 2004 V AD (Delhi) 597. Further, there is no allegation of victimization or resort to unfair labour practices by the Respondent.

The Petitioner was permitted to lead evidence and report of inquiry in this regard was filed which is prima facie evidence and was duly proved. The Respondent during enquiry admitted his signatures on the statements of the passengers recorded by the enforcement team on 29th July, 1992. Undue importance has been given by the learned Tribunal to the fact that passenger witnesses have not been examined. It is stated that sufficient evidence was laid before the Tribunal to prove the misconduct of the Respondent and thus the impugned orders/award be set aside.

2. Learned counsel for the Respondent on the other hand contends that the Petitioner at this stage cannot raise a plea regarding validity of the inquiry report as the same was set aside vide order dated 9th September, 2002 and further there is no challenge to the same in the present petition as the said order has not even been annexed and no pleadings or grounds have been urged in this regard. Even otherwise the inquiry report was correctly held to be perverse vide order dated 9th September, 2002 as it did not discuss the evidence of independent witness Shyam Lal who appeared during the inquiry and stated that the enforcement team threatened them to implicate and asked them to sign as directed. Reliance is placed on C.P. Govil v. Union of India, 1(1965) DLT 16 to urge that if material evidence is ignored then the finding of the inquiry is perverse and vitiated. Further, during the proceedings before the Industrial Tribunal only one witness was produced i.e. AW2 Sukh Lal who only proved the inquiry proceedings. He admitted that he was not the reporter in the case. The Respondent himself entered in the witness box and denied all the allegations made against him. The Respondent further deposed that Rs. 113.70 was the balance of the passengers and that was deposited in the cash section on 20th July, 1992 with remark, and further Rs. 56 in the bag belonged to the Respondent. It is stated that the passengers are the primary witnesses and they having not been examined before the Industrial Tribunal, the Tribunal was justified in holding that there was no evidence against the Respondent. Reliance is placed on Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, and Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . There is no infirmity in the impugned order.

3. I have heard learned counsel for the parties.

5. Briefly the facts leading to the filing of the present petition are that the Respondent joined the services of the Petitioner as a conductor on 23rd February, 1985. On routine checking on 20th July, 1992 by the checking staff on Bus No. 9115 it was found that the Respondent had not issued tickets to 5 passengers after collecting the due fare and had also issued tickets of less denomination to 3 passengers after collecting the due fare and the cash was also found to be excess by Rs. 113/-. On being confronted by the passengers, the Respondent accepted his guilt. Statements of passengers were recorded and a challan was issued to the Respondent on this count. Since the act of the Respondent amounted to misconduct in terms of paras 19(b),(f) & (h) of the Standing Orders governing the conduct of DTC

employees, he was placed under suspension on 22nd July, 1992. A charge-sheet was issued to the Respondent and a domestic enquiry was held. The inquiry officer vide its report dated 19th July, 1993 held the Respondent guilty of misconduct under paras 19(b),(f) & (g) of the Standing Orders governing the conduct of the DTC employees. A show cause notice was issued to the Respondent as to why his services be not terminated for the misconduct to which he filed a reply. On 8th October, 1993 the Respondent was removed from services of the Petitioner Corporation and an application u/s 33(2)(b) ID Act was filed before the Industrial Tribunal and one month''s wages were also remitted to him. On the preliminary issue qua the validity of the enquiry, vide order dated 9th September, 2002 the learned Tribunal held the inquiry report to be perverse as it did not consider the statement of the independent passenger witness Shyam Lal and permitted the Petitioner to lead fresh evidence. As fresh evidence the Petitioner examined one of its officers who exhibited the entire inquiry report. Neither the inquiry officer nor any of the other witnesses were examined before the learned Tribunal. Thus the learned Tribunal vide its order dated 27th May, 2003 rejected the application of the Petitioner u/s 33(2)(b) of the ID Act on the ground that the passenger witnesses were not produced to prove the misconduct of the Respondent and vide the impugned award dated 10th September, 2004 held the removal to be non est and void and thus the Respondent was deemed to continue in service with all benefits.

5. It may be noted that in W.P.(C) 351/2006 though a prayer for setting aside of the order dated 9th September, 2002 passed by the learned Tribunal was made whereby the finding of the inquiry officer was held to be perverse, however, neither this order has been annexed with the writ petition nor any factual matrix laid or ground urged in the petition to challenge the same. Thus, the finding of the Tribunal that the findings of the inquiry officer were perverse is not under challenge in the writ petition.

6. The Petitioner was permitted to lead evidence. Petitioner examined three witnesses. AW-2 Shri Sukh Lal, Traffic Inspector in Central Control Room, DTC, who had exhibited his affidavit in examination-in-chief and documents Ex.AW2/1 to Ex.AW2/5, is relevant for deciding the present petitions. This officer was the officer in-charge of the checking team. In his affidavit by way of evidence he stated that he checked the Bus No. 9115 under the supervision of Shri Rajbir Singh T.I. and made a challan No. 214111 against the Respondent. He also recorded the statements of the passengers which were also counter-signed by the Respondent. He had detained the tickets. He further exhibited the entire proceedings. The learned Tribunal has rejected the application of the Petitioner u/s 33(2)(b) on account of the fact that passengers who were the primary witnesses of the incident were not examined before it. Hon''ble Supreme Court in State of Haryana & Anr. Vs. Rattan Singh (1997) 2 SCC 491 held that it is not necessary to examine the passengers in a domestic enquiry. Their Lordships held:

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 misdirected 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 passages 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 commonsense 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 levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor''s testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

7. Further this Court in Delhi Transport Corporation v. Shree Kumar and another, 2004 V Apex Decision (Delhi) 597 held-

8. In the context of the aforesaid factual position and in the light of the arguments of the counsel appearing for the parties, I am required to consider as to whether there was any violation of the principles of natural justice in conducting the domestic enquiry and whether no punishment could be awarded to the respondent No. 1 as sought to be done in the instant case as neither the passenger witnesses nor the driver were examined by the petitioner in the enquiry as also before the Tribunal. The records disclose that whatever documents were asked for were furnished to the respondent No. 1 except for copies of the two circulars as they were not available with the petitioner. The finding of the learned Tribunal that no list of witnesses and list of documents along with documents were supplied to the respondent also cannot be accepted as it is apparent from the records that the list of witnesses and the list of documents along with documents were supplied to the respondent along with the charge sheet. The respondent No. 1 was also asked at the beginning of the proceedings if he wanted the assistance of a co-worker but he stated that he would conduct the case himself and in fact he cross-examined the management witnesses extensively. The records also do not disclose that the respondent at any stage had asked for the assistance of B.L. Babbar. In my considered opinion, Therefore, there is no violation of the principles of natural justice in conducting the case. It is not understood why the learned Tribunal found fault in the non-production of the enquiry officer before it as a witness though the entire records of the enquiry proceedings were made available to the learned Tribunal.

9. Strong reliance was placed by the counsel appearing for the respondent No. 1 on non-production of the driver and the alleged ticketless passengers either in the domestic enquiry or before the Tribunal. The learned Presiding Officer of the Tribunal has also made comments in respect of the aforesaid non-production. The aforesaid ticketless passengers gave in writing their statements to the checking officials that they had paid the due fare to the conductor but the conductor had not issued the tickets. The aforesaid statements of the passengers in writing were also signed by the respondent No. 1. The said statements of the passengers to the checking officials containing the admission of the respondent were placed before the enquiry officer. Apart from the said evidence, there was other independent evidence like the evidence of the checking staff both before the enquiry officer as also before the learned Tribunal on the basis of which conclusions could be arrived at that the respondent is guilty of the misconduct alleged against him. On reading of the entire evidence on record including such independent evidence like the evidence of the checking staff, the enquiry officer came to such a conclusion that the respondent is guilty of misconduct and, Therefore, it cannot be said that the findings of the enquiry officer were arrived at only on the basis of the solitary evidence in the nature of the statements of the passenger witnesses.

8. Vide order dated 27th May, 2003, the learned Tribunal while deciding the application u/s 33(2)(b) of the ID Act held that the misconduct of the Respondent

was not proved as the passengers the primary witnesses to the incident have not been produced. This finding of learned Tribunal is contrary to the law laid down in State of Haryana v. Rattan Singh (supra). It is thus evident that the rejection of the Petitioner''s application merely on the count that the passengers were not examined was incorrect and perverse as held by the Supreme Court. Learned counsel for the Respondent has laid stress on the fact that once permission is granted to adduce fresh evidence, the record pertaining to domestic enquiry cannot be said to constitute fresh evidence or material on record. In Neeta Kaplish (supra) their Lordships held:

23. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

24. In the instant case, the appellant had questioned the domestic enquiry on a number of grounds including that her own answers, in reply to the questions of the Presiding Officer, were not correctly and completely recorded and that the Enquiry Officer was not impartial and was biased in favour of the respondent. It was further contended that her own witnesses were not called and she was not given the opportunity to lead evidence. The Labour Court has discussed a few of these grounds but has not given any finding on the bias of Enquiry Officer or the ground relating to incorrectly recording the statement of the appellant. The Labour Court, however, found that the enquiry was not fairly and properly held. It was after recording this finding that the Labour Court called upon the Management to lead evidence on merits which it did not do.

9. In the present case however AW2 Sukh Lal not only placed on record the inquiry report but also his affidavit wherein he stated about the search conducted. This witness AW2 has been cross-examined by the Respondent. Thus, it cannot be said that there was no fresh evidence as laid down in Neeta Kaplish (supra) or there is any violation of the principles of natural justice. It is well settled that in an inquiry before the Tribunal, strict rules of evidence are not required to be adhered to and even hearsay evidence can be looked into. AW2 Sukh Lal, who was a member of the enforcement team, has appeared and testified to this effect including exhibiting the statement of the passengers recorded at that time which were duly signed by the Respondent. Learned counsel for the Respondent has laid lot of stress on the

statement of public witness Shyam Lal who appeared in the inquiry and testified in favour of the Respondent. This witness in the inquiry stated that they were threatened by the police and just made to write down his address. This witness in inquiry admitted that he had no ticket though he stated that his brother-in-law who had got down from the bus had the ticket. It may be noted that AW2 Sukh Lal when appeared as a witness before the learned Tribunal has not been cross-examined on this aspect. The Respondent has admitted his signatures on the statements of the witnesses recorded at the time of checking. The present is not a case of no evidence against the Respondent. Thus, the impugned order dated 27th May,2003 passed by the learned Tribunal holding that the misconduct of the Respondent is not proved as passengers have not been examined is set aside. Since the award dated 10th September, 2004 was decided in view of the order dated 27th May, 2003 holding that the misconduct of the Respondent was not proved thereby dismissing the application of the Petitioner u/s 33(2)(b) ID Act, the same cannot be sustained in view of setting aside of order dated 27th May, 2003. Consequently, the impugned award dated 10th September, 2004 is also set aside. The order of dismissal of the Respondent from service is restored. Petitions and applications are disposed of accordingly.