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

% ***Reserved on: 09.01.2023***
Pronounced on: 10.03.2023

\+ **W.P.(C) 7542/2003**

D.T.C. ..... Petitioner
Through: Ms. Manisha Tyagi and Ms. Damini Vishwakarma, Advocates.

versus

SALEK CHAND ..... Respondent
Through: Mr. G.S. Charya, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition emanates from the order dated 15.09.2000 passed by the Presiding Officer, Industrial Tribunal No. II, Tis Hazari court, Delhi (***"Impugned Order -I")*** and order dated 03.10.2002 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts Delhi ***("Impugned Order-II").*** The Impugned Order-I and Impugned Order-II would collectively be also referred to as Impugned Orders, where so required. The Petitioner hereby is impugning the legality of the aforesaid Impugned Orders and is seeking issuance of an appropriate writ for quashing the said Impugned Orders.
2. A brief factual matrix shows that the Petitioner filed an Application under Section 33 (2) (b) of the Industrial Disputes

Act, 1947 ***("I.D. Act")*** seeking the approval of the learned Labour Court for terminating the services of the Respondent. Learned Labour Court adjudicated on the issue of validity of the domestic enquiry conducted by the Petitioner/Management and vide Impugned Order-I held that the said domestic enquiry was conducted after following the principles of natural justice and therefore there is no fault in the enquiry proceedings. However, after analyzing the evidence before the enquiry officer, the learned Labour Court held that there was no evidence before the enquiry officer to hold the Respondent guilty of the alleged misconduct. In view of the same, the validity of the enquiry was decided against the Petitioner. Later, *vide* Impugned Order-II, the learned Labour Court dismissed the application filed by the Petitioner/Management under Section 33(2)(b) of the I.D. Act on the ground that there existed no evidence before the enquiry officer to establish misconduct on the part of the Respondent.

FACTS RELEVANT FOR THE ADJUDICATION OF THE PRESENT DISPUTE

3. It is an admitted fact that the Respondent was appointed by the Petitioner as a Conductor (Retainer crew) w.e.f. 21.06.1984 on monthly rates of pay and was allotted badge no. 21355. In November, 1991, while the Respondent was performing his duty in bus no. 8993 Route no. 2, an inspection was conducted on the aforesaid bus at about 12:05 hours. During the said inspection, the checking officials of the Petitioner detected irregularity with respect to the ticket collection by the Respondent i.e. re-selling of

a pre-sold ticket to a lady passenger. A challan memo was filed on 29.11.1991 containing the alleged episode.

4. On the basis of the Challan memo filed by the inspecting official Sh. Jagdish Prasad, Respondent was served with the charge sheet dated 17.12.1991 for the alleged misconduct committed by him within the meaning of para 19(b)(f) & (h) of the Standing Orders governing the conduct of the DTC employees. Content of the aforesaid charge sheet is extracted below:

> *"That on the basis of report of Sh. Jagdish Parasad A.T.I, T.No. 22374. He was served charge sheet no. NND/A.I. (T)/Checking -204/91/791 dated 17.12.91. The following charges were levelled against him:*
> *1) You resold a ticket already sold by the advance booker to the passenger.*
> *2) You tried to mislead the officials.*
> *3) You caused financial losses to the Corporation.*
> *4) You tarnished the reputation of the Corporation."*

5. The disciplinary enquiry was initiated against the Respondent on 10.07.1992 which concluded on 14.07.1992. During the course of the disciplinary enquiry, the charges levelled against the Respondent were found to be proved by the enquiry officer and as a consequence, Respondent was removed from the service on 20.10.1992.
6. The Petitioner moved an application under section 33(2)(b) of the I.D. Act before the learned Labour Court seeking approval of their action of removing the Respondent from the service.
7. The Respondent opposed the aforesaid application/petition and submitted before the learned Labour Court that the enquiry was not conducted as per the procedure laid down in the Circular

dated 28.05.1980 issued by the Petitioner. Further, that the enquiry officer was biased and relied upon hearsay evidence from the checking staff without examining the concerned passenger.

8. Learned Labour Court framed the following preliminary issue:

> *"Whether the Applicant held a valid and legal enquiry against the respondent according to the principles of natural justice?"*

9. The petitioner to buttress its case examined Shri C.K. Goel, AW1 who relied upon the documents **Exhibit AW1/1 to AW1/5** while the Respondent examined himself and filed his affidavit as **Exhibit RW/A**.

10. Learned Labour Court dismissed the said application in a two-stage process. *Firstly*, the learned Labour Court *vide* Impugned Order-I held that the said domestic enquiry was conducted after following the principles of natural justice and there is no fault in the enquiry proceedings. However, after analyzing the evidence before the enquiry officer, the learned Labour Court held that there was no evidence before the enquiry officer to hold the Respondent guilty of the alleged misconduct. In view of the same, the validity of the enquiry has been decided against the Petitioner.

11. Subsequently, vide Impugned Order-II, the learned Labour Court decided Issue no. 1 i.e. ***"Whether the respondent committed misconduct as mentioned in the petition and alleged in the charge sheet issued by the petitioner?"*** against the Petitioner and held that the Respondent's guilt is not proved through the

evidence presented before the enquiry officer. The issue of one-month salary remitted to the Respondent at the time of termination was decided in favor of the Petitioner. Therefore, in the light of the finding of issue no.1, the approval application filed by the Petitioner/Management under Section 33(2)(b) of the I.D. Act was dismissed *vide* Impugned Order-II.

12. Aggrieved by the Impugned Orders, the Petitioner preferred the present writ petition challenging the correctness of the aforesaid orders.

13. Vide the order dated 16.03.2009, this Hon'ble Court was pleased to allow the application filed under Section 17-B of the I.D. Act and directed the Petitioner to pay to Respondent the last drawn wages or the minimum wages, whichever is higher, from the date of the award i.e., 03.10.2002 till the final disposal of the petition.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

14. Ms. Manisha Tyagi, learned counsel appearing for the Petitioner has submitted that the enquiry conducted against the Respondent was in accordance with the concerned statutory rules and the principles of natural justice. An adequate opportunity for representation was provided to the Respondent during the disciplinary enquiry. It is also highlighted by the learned counsel that a show cause notice dated 30.09.1992 was issued to the Respondent, to which the latter did not care to reply.

15. Furthermore, it was submitted that the Respondent failed to make a case that his signature was obtained under coercion or fraud, nor has he been able to justify the reason for carrying excess sale

proceeds during the work hours. Additionally, the Respondent accepted his guilt by accepting and signing the Challan memo issued by the checking staff on the spot. Even if the Respondent had an issue with the charges levelled against him, he could have taken up the dispute to the higher Authority. However, no objection was raised by him during that period, which is suggestive of the acceptance that irregularity was committed by him.

16. Learned counsel further went on to submit that it is a well-settled principle of law as laid down in ***Delhi Transport Corporation v. N.L. Kakkar, Presiding Officer*** reported as ***2004 SCC OnLine Del 200*** that domestic enquiry conducted by the Petitioner/Management in accordance with the statutory regulations cannot be brushed aside by the simple reason that the passengers were not examined. Therefore, in the present case, absence of recorded statement of the lady passenger does not adversely impact the validity of the finding of the enquiry officer.

17. To cement the arguments made, the counsel has relied upon the judgment delivered in ***State of Haryana v. Rattan Singh (1977) 2 SCC 491***; ***Roshan Lal Sharma v. Delhi Transport Corporation 2011 SCC OnLine Del 3558; Dayal Singh v. DTC***

18. With these submissions, learned Counsel for the Petitioner prays for setting aside of the Impugned Orders.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

19. *Per contra*, Mr. G.S. Charya, learned counsel appearing on behalf of the Respondent has submitted that the charges levelled

against the Respondent are merely based on hearsay evidence, and therefore the enquiry finding was rightly vitiated by the learned Labour Court. Neither the statement of the lady passenger was recorded, nor she was summoned as a witness in the enquiry proceedings. It is further submitted by the learned counsel that the inspecting officials should have recorded the statement of the passenger whose allegations formed the basis of the charges levelled against the Respondent. Even if the inspecting official was unable to record the same for some reason, such reason should have been mentioned in the charge sheet.

20. For buttressing his arguments, learned counsel has relied upon the judgment and order delivered in ***Harbans Lal v. Jagmohan Saran, (1985) 4 SCC 333***; ***Delhi Transport Corporation v. Virender Singh, 2004 SCC OnLine Del 900***; ***Delhi Transport Corporation v. Gordhan Dass, 2004 SCC OnLine Del 1093.***

21. With these submissions, learned counsel for the Respondent prays for dismissal of the present writ petition.

LEGAL ANALYSIS

22. This Court has heard the arguments advanced by the learned counsel for both parties and perused the documents on record and Judgments relied upon by the parties.

23. The present proceedings emanate from the approval application filed by the Petitioner under section 33 (2)(b) of the I.D. Act. Hence, this Court deems it appropriate to discuss the law regarding Section 33(2)(b) of the I.D. Act at the outset itself.

24. Three Judges Bench of the Hon'ble Supreme Court of India in the matter of ***Punjab National Bank Ltd. Vs. Workmen*** reported as ***(1960) 1 SCE 806***, interpreted the scope of Section 33 of the I.D. Act and held that the jurisdiction of the learned Labour Court in dealing with such applications are limited. The Hon'ble Supreme Court held as under:-

> *"24. Where an application is made by the employer for the requisite permission under Section 33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it accordingly as it holds that a prima facie case is or is not made out by the employer.*
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> *25. But it is significant that even if the requisite permission is granted to the employer under Section 33 that would not be the end of the matter. It is not as if the permission granted under Section 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of Section 33 is thus substantially different from the effect of compliance with Section 240 of the Government of India Act, 1935, or Article 311(2) of the Constitution. In the latter classes of cases, an order of dismissal passed after duly complying with the relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of Section 33 the*

removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by Section 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of the tribunal".

25. The three-Judge Bench of the Hon'ble Supreme Court examined the scope of Section 33 (2) (b) of the I.D. Act in ***Mysore Steel Works Pvt. Ltd. Vs Jitendra Chandra Kar and Others*** reported as ***(1971) 1 LLJ 543 (SC)*** and held as follows:

"10. The question as to the scope of the power of an Industrial Tribunal in an enquiry under Section 33(2) of the Industrial Disputes Act has by now been considered by this Court in a number of decisions and is no longer in dispute. If the Tribunal comes to the conclusion that the domestic enquiry was not defective, that is, it was not in violation of the principles of natural justice, it has only to see if there was a prima facie case for dismissal, and whether the employer had come to a bona fide conclusion that the employee was guilty of misconduct. In other words, there was no unfair labour practice and no victimisation. It will then grant its approval. If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the dismissal was justified. If it comes to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified it would give its approval to the order of dismissal made by the employer in a domestic enquiry. (See P.H. Kalyani v. Air France) where, therefore the domestic enquiry is conducted in violation of the principles of natural justice evidence must be adduced before the Tribunal by the employer to obtain its approval. Such evidence must be adduced in the manner evidence is normally adduced before the Tribunal, that is, witnesses must be examined and not by merely tendering the evidence laid before the domestic enquiry, unless the parties agree and the tribunal given its assent to such a procedure. (See K.N. Barmab v. Management of Badla Beta Tea Estate). It is clear, therefore, that the jurisdiction of a tribunal under Section 33(2) is of a limited character. Where the domestic enquiry is not defective by reason of violation of principles of natural justice or its findings being perverse or by reason of any unfair labour practice, the tribunal has only to be satisfied that there is a prima facie case for

dismissal. The tribunal in such cases does not sit as an appellate Court and come to its own finding of fact".

26. The view taken in ***Mysore Steel Works Pvt. Ltd. (supra)*** was reiterated by Hon'ble Supreme Court in the case of ***Lalla Ram Vs. D.C.M. Works Ltd.*** reported as ***(1978) 3 SCC 1.***

27. Recently in ***John D'Souza Vs Karnataka State Transport Corporation,*** reported as ***2019 (18) SCC 47,*** the Hon'ble Supreme Court reiterated the scope of enquiry permissible under Section 33(2)(b) of the I.D. Act. The relevant portion of the said Judgment, reads, inter alia, as follows:

"24. 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.

25. *The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an `industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an `industrial dispute' referrable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.*

> *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. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified.*

28. From these Judgments, it is evident that the enquiry envisaged under Section 33 (2) (b) of the I.D. Act is a limited enquiry and in the nature of summary proceedings. While examining the Application under Section 33(2)(b) of the I.D. Act, the Industrial Tribunal needs to examine the following aspects:

    (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders was conducted and whether principles of natural justice have been complied with.

    (ii) whether a *prima facie* case for dismissal based on legal evidence adduced before the learned Labour Court is made out

(iii) whether the employer had come to a *bona fide* conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee

(iv) whether the employer has paid or offered to pay wages for one month to the employee and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

29. Based on the legal principles as explained by the Hon'ble Supreme Court, this Court now proceeds to examine the facts of the present case. In the present case vide Impugned Order-I, learned Labour Court found that the Petitioner/Management conducted the disciplinary proceedings in accordance with law. The relevant extract of the Impugned Order-I reads as follows:

> *"I do not find any fault in the proceedings of the enquiry. There is no merit in the case of the Respondent that he has denied full opportunity to defend himself. He cross examined the witnesses and it could have been done only if the enquiry officer permitted him. The respondent was given opportunity of representation, to cross examine the witness of the Management, and to lead his own defense witness. Therefore the principles of natural justice were followed."*

30. After holding that the disciplinary proceedings were conducted in accordance with law, the learned Labour Court proceeded to examine the evidence adduced by the parties before the enquiry

officer to find out whether a *prima facie* case is made out or not. The allegation against the Respondent was that he re-issued a ticket to a lady passenger which was already sold through advance booking. Learned Labour Court observed that even though the enquiry officer did not believe the statements of the checking staffs, he held the Respondent guilty of misconduct as the ticket bears the signature of the Respondent. According to the learned Labour Court, *'putting the signature on the ticket does not amount to admission of charges'*. Learned Labour Court decided the validity of the enquiry against the Respondent observing as follows:

> *"9……..Since the enquiry officer found that the checking staff should have recorded the statement of the concerned lady passenger and should have recorded her name and address and that checking staff failed to do so, therefore the Respondent could not have been held guilty merely on the basis of signatures of the respondent on the ticket in question. There was no evidence before the enquiry officer to hold the respondent guilty. The finding is perverse.*
> *10. In view of the above circumstances, I hold that the issue of validity of the enquiry cannot be decided in favor of the Petitioner. It is decided against the Petitioner."*

31. As discussed herein above, the jurisdiction of the learned Labour Court while examining an application under Section 33 (2) (b) of the I.D. Act is limited. The enquiry of the learned Labour Court is limited to ascertain whether a *prima facie* case for dismissal based on legal evidence adduced before the learned Labour Court is made out or not. In the present case, the enquiry officer, based on the ticket which bears the signature of the Respondent, held that the Respondent was

guilty of misconduct. Respondent failed to explain the circumstances under which he signed the said ticket, which was issued through advance booking. Hence it is not correct to say that there is no *prima facie* evidence against the Respondent.

32. The Hon'ble Supreme Court in the matter of ***Cholan Roadways Ltd. Vs. Thirugnanasambandam*** reported as ***2005(3) SCC 241*** examined the standard of proof required in an enquiry conducted by the Industrial Tribunal and held as follows:

> *"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 (AIR 1958 SC 79). 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. vs The Workers of the Company (1952) Lab. AC 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 under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles……..”*

33. Keeping in view the legal principles as laid down by the Hon’ble Supreme Court in the above-mentioned case laws, this Court is of the considered view that the learned Labour Court erred in holding the validity of the enquiry in favor of the Respondent. Further, in view of the law laid down by this Court in ***N.L Kakkar (supra)***, disciplinary enquiry, being lawfully and properly conducted by the Petitioner cannot be vitiated on the sole ground of non-examination of the passenger. There was other reliable evidence before the enquiry officer to hold the Respondent guilty of the alleged misconduct. Hence, in view of the same, the learned Labour Court erred in deciding the validity of the enquiry against the Petitioner.

34. Learned Labour Court after deciding the validity of the enquiry against the Petitioner afforded an opportunity to the Petitioner/Management to prove the alleged misconduct. Learned Labour Court *vide* Impugned Order-II held that the Petitioner failed to prove the misconduct and dismissed the approval application filed by the Petitioner. However, learned Labour Court observed that the Petitioner remitted one month’s

wages to the Respondent in compliance with Section 33(2)(b) of the I.D. Act at the time of his removal from service.

35. There was enough *prima facie* evidence before the enquiry officer to proceed against the Respondent. In-depth examination of the validity of the disciplinary proceeding is to be conducted in an appropriate proceeding under Section 10 of the I.D. Act. Hence, the learned Labour Court ought to have allowed the approval application filed by the Petitioner.

36. In view of the detailed discussions herein above, it is evident that (i) the Petitioner conducted the domestic enquiry in accordance with the relevant rules and the domestic enquiry is in accordance with the principles of natural justice (ii) *prima facie* case of misconduct is made out against the Respondent based on legal evidence adduced before the enquiry officer (iii) the Petitioner had come to a *bona fide* conclusion that the Respondent was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the Respondent (iv) Petitioner has remitted one month's salary to the Respondent as per the requirement of Section 33(2)(b) of the I.D. Act (v) Petitioner applied for the approval within the time limit as prescribed under Section 33 (2)(b) of the I.D. Act. All the requirements under Section 33 (2) (b) of the I.D. Act were satisfied and therefore the learned Labour Court erred in not allowing the approval application filed by the Petitioner.

37. In view of the detailed discussion herein above, the Impugned Orders are hereby set aside. The approval application filed by

the Petitioner under Section 33 (2)(b) of the I.D. Act is hereby allowed.

38. The Respondent is at liberty to challenge his termination order in an appropriate proceeding in accordance with law. It is further clarified that in case the Respondent initiates any fresh proceedings challenging the domestic enquiry conducted by the Petitioner, the same is to be considered afresh without being influenced by any observations made by this Court/ learned Labour Court in the Impugned Orders.

39. It is further clarified that the proceedings under Section 17-B of the I.D. Act are independent proceedings and not dependent upon the final order passed in the main proceedings. Hence, in view of the law laid down by the Hon'ble Supreme Court in ***Dilip Mani Dubey Vs M/s SIEL Limited & Anr.*** reported as ***2019(4) SCC 534***, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the I.D. Act is not recoverable.

40. In view of the aforesaid observations, the present writ petition is allowed. No order as to cost.

GAURANG KANTH, J.

MARCH 10, 2023
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