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

#28

\+ **LPA 185/2009**

% Decided on : 25th May, 2009

BILORI ..... Appellant
Through Mr. Anuj Aggarwal with Ms. Neelam Tiwari, Advocates.

versus

DTC ..... Respondent
Through Mr. G.S. Chaturvedi, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

1. Whether reporters of the local papers be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

AJIT PRAKASH SHAH, CJ (in Court)

The appellant joined as Conductor with the Delhi Transport Corporation (hereinafter referred to as 'DTC') in 1983. The appellant was served with a charge sheet alleging that while he was on duty on 4.10.1988 on bus No. 9467 plying from Delhi to Ballabhgarh, there was a checking and it was found that he had not issued tickets to a group of passengers who were traveling from old Faridabad to Ballabhgarh after taking Rs.4.50 from them. It was alleged that the appellant admitted his fault and issued three unpunched tickets No. 25-27518 to 25-27520 of Rs.1.50 Paise each. It was also alleged that the statements of the passengers were recorded by the checking staff but the Conductor declined to counter sign the same. Thus the appellant alleged to have committed irregularities which amount to misconduct within the meaning of para 2(II) and 19(b)(f)(h) & (m) of the standing orders governing the conduct of DTC employees. The enquiry officer gave his finding against the appellant and thereafter he was served with the show cause notice and his services were terminated w.e.f. 5.5.1989.

2. At the time of removal of the appellant from service, DTC workers' demand for implementation of IVth Pay Commission's report was pending adjudication before the Industrial Tribuanl and therefore the respondent filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act') for approval of the

Industrial Tribunal for its decision for removal of the appellant from service. The Industrial Tribunal vide its order dated 20.1.2000 passed in O.P. No. 36/89 granted approval under Section 33(2)(b) of the Act for removal of the appellant from service. The appellant thereafter raised an industrial dispute which came to be referred for adjudication by the Industrial Tribunal II vide Reference No. F.24(4713)/2000- Lab. / 3138-42 dated 6.2.2001. The terms of reference were to the following effect:-

> "Whether the punishment imposed upon Sh. Bilori by the management vide their orders dated 5.5.1989 and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

3. The Tribunal framed the following issues:

> "(i) Whether the punishment imposed upon the workman vide order dated 5.5.1989 is illegal and unjustified?
> (ii) Terms of reference."

4. After considering the evidence led by the parties, the Tribunal held that the punishment imposed upon the appellant by the management vide order dated 5.5.1989 is not illegal and unjustified and the he is not entitled for any relief. The reasoning given by the Tribunal is rather cryptic and reads as follows:

> "7. It is admitted case of the parties that an approval application has been moved before this Tribunal and this Tribunal found the charges proved against the workman and has granted the approval for removal o f workman.
>
> 8. Consequently, keeping in view the fact that the approval of removal of workman has already been granted by this Tribunal and judgment of Hon'ble High Court in case of Delhi Transport Corporation Vs. Shyam Singh & Ors. (reported in 2005 LLR 190), it is held that the punishment imposed upon the workman vide order dated 5.5.1989 is not illegal and unjustified….."

5. Being aggrieved the appellant preferred WP(C) No. 12616/2006 which came to be dismissed by the learned single Judge by order under appeal. The learned single Judge held that the appellant has not challenged the finding recorded by the Industrial Tribunal in its order dated 3.8.1999 on the approval application and he has raised the industrial dispute restricted only to the quantum of punishment after about 11 years of his removal from service. Therefore, it was not obligatory upon the Industrial Tribunal while dealing with the reference on the point of quantum of punishment to go into the question of legality and validity of the enquiry proceedings. It was further held that the punishment of removal from service passed by the respondent against the appellant for his proved

misconduct by no means can be said to be disproportionate.

6. Learned counsel appearing for the appellant strenuously contended that the learned single Judge committed an error in concluding that the order of reference dated 6.2.2001 was limited and restricted to the question of "quantum of punishment" whereas, it is apparent from the terms of reference that the reference pertains to "the punishment" imposed upon the appellant i.e., the punishment of termination. He submitted that it is settled law that the order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is vague or unclear and it is obligatory upon the Industrial Tribunal to construe the reference in the light of the background facts against which it is made and to bring out the real dispute for its decision. He further submitted that the award suffers from an error apparent on the face of record inasmuch as the Industrial Tribunal had adjudicated the reference on the basis that the approval application moved by the management under Section 33(2)(b) of the Act had been allowed. He submitted that the workman had a substantive right to seek adjudication through reference of industrial dispute notwithstanding the grant of approval application under Section 33(2)(b) of the Act. The scope of scrutiny under Section 33(2)(b) of the Act involves an extremely limited and restricted jurisdiction wherein the industrial adjudicator is required to arrive at only a prima facie satisfaction of applicability of the termination. However, under Section 10 read with Section 11A of the Act, the aggrieved workman has a right to complete and effective adjudication of the legality of his termination from service and in such adjudication the scope of enquiry is not restricted and the Industrial Tribunal is empowered to re-appreciate the evidence and can also substitute the punishment if such punishment is found to be unjustified. According to him, both the learned single Judge and the Industrial Tribunal erred in relying upon the findings recorded under Section 33(2)(b) of the Act wherein it was manifestly stated that it was merely the prima facie satisfaction which had led to the granting of the approval application.

7. On the other hand, learned counsel appearing for the respondent submitted that from the bare reading of the terms of reference it is clear that the reference was confined to the quantum of punishment and it is not permissible for the Industrial Tribunal to

travel beyond the terms of reference. He further submitted that since the workman has not challenged the order of the Industrial Tribunal passed under Section 33(2)(b) and has not raised an industrial dispute with regard to the correctness of the findings of the enquiry officer, it is not open now for the appellant to make a grievance against the findings of guilt recorded against him by the enquiry officer which has been confirmed by the Industrial Tribunal while granting approval to the respondent under Section 33(2)(b) for removal of the appellant from service. Insofar as the issue of punishment is concerned, the counsel for respondent argued that the appellant even in the past was found guilty of misconduct of identical charges and in this regard, he referred to contents of Annexure R-1 at page 76 of the paper book which reveals that even in the past, the appellant was punished on five occasions for collecting fares from the passengers and not issuing tickets to them and that his past conduct was taken into account by the management in deciding to remove him from service when he was caught by the checking staff for the sixth time in collecting fares from the passengers and not issuing tickets to them.

8. Having heard the learned counsel for the parties and having perused the language of the reference and the background from which it was referred for adjudication, it seems very clear to us that the impugned award cannot be sustained since it is based on hyper technical and a narrow view of the terms of reference. There is a long line of judicial pronouncements taking a view that order of reference should be liberally construed and the reference should not be rendered nugatory merely because it is not properly worded and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. In this regard, a reference may be made to the following observation made by the Bombay High Court in the case of ***Sitaram Vishnu Shirodkar v. The Administrator, Government of Goa*** **1985-I-LLJ-480**:

> "Section 10(1)(c) of the I.D. Act empowers the appropriate Government to refer the existing or apprehended industrial dispute or any matter appearing to be connected or relevant to the dispute relating to any item specified in the Second Schedule to a Labour Court for adjudication. Section 2(k) of the I.D. Act defined the term 'industrial disptue'. Any dispute or difference between the employer and individual workman connected with or arising out of discharge, dismissal, retrenchment or termination is deemed to be

> an industrial dispute under Section 2-A of the I.D. Act. The definition of 'industrial dispute' is itself wide enough to include any dispute or difference 'connected with the employment or non-employment'. There is a long line of decisions of the Supreme Court taking a view that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The obvious reason for this approach is not only the width of language used in the definition of 'industrial dispute' in Sections 2-A and 10 of the I.D. Act but also the object behind the labour legislations. Industrial peace has to be achieved as early as possible and the battle is generally between unequals. At least one party, namely, the worker cannot afford to fight continuous long drawn battle against the employer and hence technical, formal and procedural points have almost no place in such disputes. Indeed the duty of Courts and Tribunals is to discourage ingenuity on such points and to adjudicate at controversy on merits. Many times the reference is cryptic and vague and is not properly worded. Sometimes it is not even possible to mention therein the defence of the other party. In such case it is the duty of the adjudicating authority to examine the pleadings, documents etc. and to locate the exact nature of dispute."

9. A reference may also be made to the decision in the case of ***The India Paper Pulp Co. Ltd. v. The India Paper Pulp Workers Union*** 1949-I-LLJ-258, wherein in the referring order, merely the word 'industrial dispute' was mentioned without even a whisper about its nature. Attack on that order was repelled as merely technical with the following observations :

> "The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 19 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference."

10. In The State of ***Madras v. C. P. Sarathy*** 1953-I-LLJ-174 it has been held that reference can be made in wider terms without particularizing its nature provided of course that dispute falls within the definition of 'industrial dispute' and the parties between whom it exists are indicated. It was observed :

> "But adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to legal rights of the parties……

> The rules under the Act provide for the Tribunal calling for statements of their respective cases from the parties and the dispute would thus get crystallized before the Tribunal proceeds to make its Award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the disputes from or before referring them to a Tribunal under Section 10(1)."

11. In the case of ***Delhi Cloth and General Mills Company, Ltd. v. The Workmen*** 1967-I-LLJ-423 it was observed :

> "In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance leading to the trouble. In this case, the reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which has been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under Section 10(4) of the Act it is not competent to the Tribunal to entertain such a question."

12. In ***Sheshrao Bhaduji Hatwar v. P.O., First Labour & others*** **(1992) 1 LLJ 672**, the terms of reference made by the Labour Court were as follows:

> "Shri S. B. Hatwar, who had been terminated from the employment of M/s. Saluja Kirana Stores, Rationing Dukan, Untkhana Chowk, Nagpur, should be reinstated with payment of back wages and continuity of service, with effect from August 8, 1982."

The Labour Court quashed the aforesaid reference made to it as untenable under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947. Allowing the writ petition, the Court observed:

> “Legal position is thus clear that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may contain the defence or may not. If points of difference are discernible from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference.”

13. The facts of the present case must be considered in the light of the aforesaid legal position. The services of the appellant were terminated after holding a departmental enquiry and thereafter on approval application was preferred which was allowed by the Industrial Tribunal. A dispute was thereafter raised by the worker’s Union questioning

the validity of the termination. The use of the words "illegal and/or unjustified" makes it clear that the terms of reference pertain to termination and are not restricted to the "quantum of punishment".

14. Secondly, there is a clear error apparent on the face of award inasmuch as the Tribunal had adjudicated the reference on the ground that the approval application moved by the management under Section 33(2)(b) of the Act had been allowed. It is well settled that the workman had a substantive right to seek adjudication through a reference notwithstanding the findings recorded in the proceeding for approval under Section 33(2)(b) of the Act. The findings under Section 33(2)(b) of the Industrial Disputes Act cannot operate as res judicata [See ***Delhi Transport Corporation v. Ram Kumar*** (182) (1) SLJ 255].

15. In the result, the appeal is allowed. The order of the Industrial Tribunal as well as the impugned order of the learned single Judge stand set aside. The matter is remitted back to the Industrial Tribunal to consider the industrial dispute on all the aspects in accordance with law. Considering the fact that the reference is pending since 2001, the Industrial Tribunal is directed to decide the proceedings expeditiously and preferably on or before 31st December, 2009.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

MAY 25, 2009
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