A DELHI TRANSPORT CORPORATION

v.

SHYAM LAL

AUGUST, 12, 2004

B [S.N.VARIAVA AND ARIJIT PASAYAT, JJ.]

Industrial Disputes Act, 1947—Section 33(1)(b)—Approval of order of removal from services—Grant of—Workman committing misconduct—Removal from services—Tribunal rejecting approval of removal order C *sought, however High Court granting the same—Division Bench upholding order of Tribunal—On appeal, held: Evidence considered was not in the nature of hearsay evidence and there is admission of guilt by the workman which is the best piece of evidence—Also Division Bench based its conclusions on cases on entirely different footings—Hence, order of* D *Division Bench set aside and matter remitted back.*

Respondent-workman was working as a conductor. It was found during checking done by officer concerned that respondent collected money but did not issue tickets. Departmental proceedings were E **initiated and on finding him guilty charge sheet was issued against him. Thereafter respondent admitted his guilt and on basis of the same, he was removed from service. Appellant-Corporation made reference to the Tribunal for approval of the order of removal. Tribunal did not grant approval holding that the admission was really of no consequence;** F **that the officer who had conducted enquiry had no direct evidence; and that the statement made by the person who had paid the amount in question before the officer conducting the checking was in the nature of hearsay evidence. Appellant-employer challenged the order. High Court allowed the writ petition and granted approval for dismissal of the respondent-workman. Aggrieved respondent filed Letters Patent** G **Appeal and the order of the Tribunal was upheld and that of the Single Judge was set aside. Hence the present appeal.**

Appellant-employer contended that the High Court erred in considering the instant case along with other cases which related to H **unauthorized absence and the consequence thereof.**

Respondent-workman contended that the Tribunal has analysed the factual and the legal position in its proper perspective and its refusal to accord approval cannot be termed to be arbitrary. A

Partly allowing the appeal, the Court

HELD : Tribunal's conclusions are *prima facie* not correct. The statement made by the passenger, who had paid excess money, to the checking officer is not in the nature of hearsay evidence. Also the effect of the admission regarding guilt by respondent have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon. Furthermore, Division Bench while dealing with Letters Patent Appeal filed by the workman based its conclusions on other cases where the factual background was not similar to those involved in the instant case. Therefore, order of Division Bench of High Court is set aside and the matter is remitted back to it for consideration of the case on its own merits in accordance with law. [511-B-D] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9610 of 2003 E

From the Judgment and Order dated 25.9.2002 of the Delhi High Court in L.P.A. No. 298 of 2002.

T.L.V. Iyer and Ms. A. Subhashini for the Appellant. F

H.K. Chaturvedi and Rishi Kesh for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT. J. : Delhi Transport Corportion (hereinafter referred to as the 'employer') calls in question legality of the judgment rendered by a Division Bench of the Delhi Court in Letters Patent Appeal No. 298/2002 filed by the respondent (hereinafter referred to as the 'workman') G

Background facts in a nutshell are as follows : H

A The respondent-workman was found to have committed misconduct while working as a conductor. He had collected money but had not issued tickets as was found during a checking done by the concerned officials. Departmental proceedings were initiated against him and he was found guilty. A charge sheet in this regard was issued to the workman on B 22.12.1988 and he submitted his reply on 30.12.1988. Subsequently on 13.1.1989 and 24.2.1989, the workman admitted his guilt and pleaded for leniency. Basing on his admission, he was found guilty in the departmental proceedings and removed from service.

A reference was made to the Industrial Tribunal under Section C 32(2)(f) of the Industrial Disputes Act, 1947 (in short the 'Act') for approval of the order of removal. The Tribunal did not accord approval being of the view that the admission was really of no consequence and the officer who had conducted enquiry had no direct evidence and the statement made by the person who had paid the amount in question before D the officer conducting the checking was in the nature of hearsay evidence and was not of any consequence. Accordingly, the approval sought for was rejected. The employer challenged the order of the Tribunal before the Delhi High Court and a learned Single Judge by judgment dated 21.12.2001 in CWP No. 6934/2000 and connected CMs, held tht the Tribunal's view E was not defensible. Accordingly, the writ petition was allowed and it was directed that approval in terms of Section 33(2)(b) of the Act was to be granted to the employer to dismiss the respondent-workman.

The workman assailed the judgment of the learned Single Judge by filing Letters Patent Appeal. By the impugned judgment by which several F L.P.As and writ petitions were disposed of, the view of the Tribunal was restored and that of learned Single Judge was set aside.

Learned counsel for the employer submitted that the High Court has fallen in grave errors by considering the present case along with other cases G which stood on different footings. They related to unauthorized absence and the consequence thereof. The present case stood on entirely different factual background and therefore, the High Court's judgment is not in order.

Per contra, learned counsel for the respondent-workman submitted H that the Tribunal has analysed the factual and the legal position in its proper

perspective and its refusal to accord approval cannot be termed to be arbitrary. A

We find that the Tribunal's conclusions are *prima facie* not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13.1.1989 and 24.2.1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon. B C

Be that as it may, we find that the Division Bench while dealing with Letters Patents Appeal filed by the workman based its conclusions on other cases which related to unauthorized absence and where the factual background was not similar to those involved in the present case. On that short score alone, the order of the Division Bench is to be quashed. We set aside impugned judgment of the High Court and remit the matter back to it for consideration of the case on its own merits in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is allowed to the extent indicated above with no order as to costs. D E

N.J. Appeal partly allowed.