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

% **Date of order: 17th May, 2024**

\+ W.P.(C) 17665/2005

M/S D.T.C. ..... Petitioner

Through: Mr. Uday N Tiwary and Mr. Akshat Tiwary, Advocates

versus

RAJINDER SINGH, DRIVER ..... Respondent

Through: Appearance not given

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

C.M APPL. No. 29892/2024 (early hearing)

1. The instant application has been filed seeking an early hearing of the captioned writ petition.

2. For the sufficient cause being shown in the instant application, the same is allowed and the matter in the 'regular category' is taken up for hearing.

3. Accordingly, the application stands disposed of.

W.P.(C) 17665/2005

4. The instant petition has been filed on behalf of the petitioner ("petitioner corporation" hereinafter) under Article 226 of the Constitution

of India seeking setting aside of the award dated 23rd March, 2004 ("impugned award" hereinafter) passed by the learned Presiding Officer, Industrial Tribunal – III, Karkardooma Courts, Delhi in ID No. 7/1998.

5. The relevant facts leading to the filing of the present petition are as follows:

a. The respondent workman on 20th April, 1988, joined the petitioner corporation at the post of a 'retainer crew driver'.

b. Thereafter, on 17th March, 1991, while performing his duties, the respondent workman was involved in a fatal accident where a cyclist lost his life due to a collision with the respondent's bus.

c. Pursuant to the above, a committee comprising of the ATS (RSC) and ATS (CCR) inspected the above said incident and filed a joint report thereby, concluding that the accident occurred due to the negligent driving of the respondent workman.

d. Subsequently an F.I.R bearing No. 85/91 was registered against the respondent workman under Section 279 and 304-A, of the Indian Penal Code, 1860.

e. Pursuant to the findings of the aforementioned committee, disciplinary proceedings were initiated against the respondent and he was placed under suspension w.e.f. 20th March, 1991. Furthermore, the charges leveled against the respondent workman were duly proved and *vide* order dated

22nd January, 1992, he was punished with 'stoppage of next three due increments with cumulative effect'.

f. Meanwhile, on 20th November, 1995 the respondent workman was acquitted by the learned Trial Court in the above said FIR.

g. In the interregnum, the respondent workman raised an industrial dispute challenging the order dated 22nd January, 1991, passed by the disciplinary authority wherein, the learned Labour Court, *vide* the impugned award dated 23rd March, 2004, passed in ID No. 7/1998 held that the punishment of stoppage of next three due increments with cumulative effect imposed on the respondent was unjustified and he was held entitled to receive all such benefits that were stopped by virtue of the order dated 22nd January, 1992.

h. Being aggrieved by the same, the petitioner has approached this Court seeking setting aside of the impugned award dated 23rd March, 2004.

6. Learned counsel appearing on the behalf of the petitioner corporation submitted that the learned Labour Court erred in passing the impugned award as it failed to take into consideration the entire facts and circumstances of the case.

7. It is submitted that the learned Court below failed to take into account the death of the cyclist that occurred due to the negligence on part of the

respondent workman, as rightly concluded by the joint report of ATS (RSC) and ATS (CCR) dated 18th March, 1991.

8. It is further submitted that whilst passing the impugned award, the learned Court below erred in law by ignoring the findings made by the Enquiry Officer (North) in his report dated 30th December, 1991.

9. It is submitted that the learned Labor Court failed to take into consideration the report of the DTC Accident Committee which had examined the accident on 20th June, 1991, wherein, the liability for the accident was imputed upon the respondent workman. It is further submitted that the learned Court also ignored the order dated 22nd January, 1992 which was passed by the concerned Depot Manager as per the rules and regulations of the petitioner corporation and evidence on his record which resulted in the stoppage of workman's three increments.

10. It is submitted that the learned Labour Court wrongfully placed the burden on the petitioner corporation since the onus to prove that the bus was not being driven negligently was on the respondent workman, which he failed to discharge by refusing to lead any evidence and even refused to cross-examine the management witness.

11. It is also submitted that the learned Court below failed to take into account that the standard of proof in criminal proceedings is stricter and the case needs to be proved beyond reasonable doubt whereas in civil disputes, the standard of proof is preponderance of probabilities. It is further submitted that the learned Labour Court has ignored the principles of evidentiary law in passing the impugned award by relying on the outcome of

the criminal trial, i.e., the acquittal order 20th November, 1995 passed by the Trial Court.

12. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

13. *Per Contra,* the learned counsel appearing on the behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the same is a misuse of the process of law and is liable to be dismissed.

14. It is submitted that the respondent workman was falsely accused in the F.I.R No. 85/91 and the same can be deduced from the fact that the learned Trial Court acquitted the respondent as there were no merits in the charges leveled against him under the penal provisions.

15. It is submitted that learned Labour Court has rightly set aside the punishment imposed by the findings of the disciplinary authority as the respondent was not responsible for the unfortunate accident. It is also submitted that the depot manager passed the order of punishment on the basis of an improper enquiry thus, the instant petition is liable to be dismissed.

16. It is submitted that the impugned award does not suffer from any illegality and the same has been passed in accordance with the settled position of law therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

17. Heard the leaned counsel appearing on behalf of the parties and perused the material on record.

18. It is the case of the petitioner corporation that the impugned award passed by the learned Labour Court is erroneous and illegal since, it wrongfully set aside the punishment imposed upon the respondent workman by the concerned Depot Manager *vide* the order dated 22nd January, 1992. It has also been contended on behalf of the petitioner corporation that the learned Labour Court has wrongly placed reliance upon the order dated 20th November, 1995 passed by the Trial Court in the criminal proceedings as the degree of proof in a departmental proceeding is one of 'preponderance of probabilities', whereas in a criminal trial, the guilt of the accused is to be proved beyond reasonable doubt. An outcome of a departmental proceeding, therefore, could not have been reversed on the basis of the outcome of a criminal trial.

19. In rival submissions, the learned counsel appearing on behalf of the respondent workman refuted the submissions advanced on behalf of the petitioner submitting to the effect that there is no illegality in the impugned award and the same has been passed in accordance with the law. It is contended that the petitioner corporation failed to produce any eye witness to prove that the respondent workman was driving negligently and also there has not been any other complaint about the alleged accident. Thus, the facts and circumstances of the present case had been rightly ascertained by the learned Labour Court resulting in the setting aside of the punishment imposed by the Depot manager.

20. At this stage, it is imperative for this Court to peruse the impugned award and ascertain the reasoning afforded by the learned Labour Court. The relevant extracts of the same are reproduced herein below:

> "..***ISSUE No.2***
> *7. The onus to prove the issue is on the management. Management produced MW-1 Shri Chander Prakash and other also numbered as MW-1 Shri K,C, Lohiya, Both the witnesses stated in their affidavits that they inspected the place of incident. Both admitted that incident did not take place in their presence. They also admitted that no eye witness made the complaint to the management, They further admitted that neither any statement was taken nor any name or address was recorded. Sh. Chander Prakash categorically stated that intimation with regard to accident was given by the workman in the Control Room and he further admitted - even in criminal case workman has been acquitted. There is nothing on the record or brought by above said witnesses before me while leading the evidence to establish that workman Shri Rajender Singh committed the misconduct alleged, Neither any eye witness has been named to be present at the time of incident nor anybody complained about the incident. Consequently issue is decided against the management.*
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> ***ISSUE No. 3***
> *8. The punishment imposed upon the workman by the management is stoppage of three increments with cumulative effect vide order dated 22.1.92. Admittedly the punishment was imposed on the basis of enquiry conducted which has already been held to be vitiated. As per finding on issue No.2, the management has also failed to prove the alleged misconduct against the workman. Consequently, it is held that the punishment awarded by the management is illegal and unjustified. Issue is accordingly decided against the management.*

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Keeping in view the findings on above mentioned issues, it is held that the punishment of stoppage of three increments with cumulative effect imposed on Shri Rajender Singh is illegal and unjustified and workman is entitled for all the benefits, stopped by the virtue of order dated 22.1.92. The management is required to be directed accordingly…"

21. Upon perusal of the aforestated extracts of the impugned award, it is made out that whilst adjudicating upon issue no. 2, i.e., whether the workman had committed the misconduct alleged against him, the learned Labour Court observed that as per MW-1, i.e., Sh. Chander Prakash and Sh. KC Lohiya, it is admitted that the accident in question did not take place in their presence and that no eye witness had ever made any complaint to the management. Furthermore, neither any name was taken, nor any address of the eye witness was ever recorded. The learned Labour Court also observed that the above said witnesses had admitted to the fact that the workman stands acquitted in the criminal trial thus, taking the above observations into account, the learned Court below decided the aforesaid issue in favour of the respondent workman and against the petitioner corporation.

22. With regard to the issue no. 3, i.e., whether the punishment awarded by the management was illegal and unjustified, the learned Labour Court observed that the punishment imposed upon the respondent workman by the petitioner corporation was based on the findings of the enquiry conducted by ATS (RSC) and ATS (CCR) which has already been held to be vitiated and considering the decision *qua* issue no. 2, it was held that the punishment

awarded by the management was illegal and unjustified. Accordingly, the issue was decided in favour of the workman and against the petitioner corporation resulting in setting aside of the punishment imposed on the respondent workman *vide* order dated 22nd January, 1992.

23. Therefore, the instant matter begets the question as to 'whether the exoneration in criminal proceedings can be taken as a factor to exonerate the respondent workman from the punishment imposed in a domestic enquiry?'

24. It is a settled position of law that a criminal proceeding and proceedings in a departmental enquiry are distinct. A departmental proceeding does not take place in a Court of law having judicial authority, hence, the requirements of sufficient proof and the procedure followed therein are entirely different from a criminal proceeding.

25. In ***Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya,*** **(1997) 2 SCC 699**, the Hon'ble Supreme Court discussed in length the distinction between the proceedings *qua* a criminal trial and domestic enquiry. It was held by the Hon'ble Court that criminal proceedings are a result of violation of a duty that the accused owes to the society at large whereas departmental enquiry proceedings delve into the question of whether such a conduct of the accused warrants any change in his/her service conditions.

26. Furthermore, the trial before the concerned criminal court has to be in strict accordance with the statutory provisions of evidence and procedure whereas enquiry proceedings have to be in accordance with the relevant service rules. Hence, the strict standard of proof mandated by the provisions

governing rules of evidence is not required in a departmental proceeding.

The relevant paragraphs of ***Mohd. Yousuf Miya (Supra)*** is as under:

> "*..7. The rival contentions give rise to the question whether it would be right to stay the criminal proceedings pending departmental enquiry? This Court in Meena case [(1996) 6 SCC 417 : (1996) 7 Scale 363] had elaborately considered the entire case law including Kusheshwar Dubey case [(1988) 4 SCC 319 : 1988 SCC (L&S) 950] relieving the necessity to consider them once over. The Bench, to which one of us, K. Venkataswami, J., was a member, had concluded thus: (SCC pp. 422-24, paras 14 and 17)*
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> > *"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is 'that the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated*

in D.C.M. [Delhi Cloth and General Mills Ltd. v. Kushal Bhan, (1960) 3 SCR 227 : AIR 1960 SC 806 : (1960) 1 LLJ 520] and Tata Oil Mills [Tata Oil Mills Co. Ltd. v. Workmen, (1964) 7 SCR 555 : AIR 1965 SC 155 : (1964) 2 LLJ 113] is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly even reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of

criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

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There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

8. *We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is*

launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case

beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings..."

27. In ***Lalit Popli v. Canara Bank*, (2003) 3 SCC 583**, it was held by the Hon'ble Supreme Court that the requirement of 'proof beyond reasonable doubt' has no application in departmental proceedings. The relevant paragraphs of the afore cited judgment are as under:

"*...16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] .) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no*

application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct…"

28. Therefore, in view of the aforesaid judicial dictum, this Court is of the view that preponderance of probabilities establishing guilt and material on record are sufficient grounds to hold one accountable for misconduct and hence, the threshold required for establishing guilt is much lower in departmental proceedings as opposed to criminal proceedings. Both proceedings are independent and exclusive of each other and, therefore, the acquittal in criminal proceedings cannot serve as a bar in enquiry proceedings to hold the accused guilty of misconduct.

29. In the instant matter, a young boy aged about 9 years lost his life after getting brutally crushed in the rear wheels of the bus which was being driven by the respondent workman. The boy was cycling from the opposite side and the driver failed to give him the way to pass, resulting in this unfortunate accident.

30. It has been propounded by the Hon'ble Supreme Court in ***Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*, (1977) 2 SCC 745** that the doctrine of *res ipsa loquitur* departs from the general practise where the party is required to merely prove negligence. It was observed that when the facts and circumstances are so clear that they tell their own story, the burden to prove that the accident did not occur due to his negligence shifts on the person accused. The relevant paragraphs are as under:

"*..6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.*

Applying the principles stated above we have to see whether the requirements of the principle have been satisfied. There can be no dispute that the car was under the management of the company's manager and that from the facts disclosed by PW 1 if the driver had used proper care in the ordinary course of things the car could not have gone to the right extreme of the road, dashed against a tree and moved it a few inches away. The learned counsel for the respondents submitted that the road is a very narrow road of the width of about 15 feet on either side of which were fields and that it is quite probable that cattle might have strayed into the road suddenly causing the accident. We are unable to accept the plea for in a country road with a width of about 15 feet with fields on either side ordinary care requires that the car should be driven at a speed in which it could be controlled if some stray cattle happened to come into the road. From the description of the accident given by PW 1 which stands unchallenged the car had proceeded to the right extremity of the road which is the wrong side and dashed against a tree uprooting it about 9 inches from the ground. The car was broken on the front side and the vehicle struck the tree so violently that the engine of the car was displaced from its original position one foot on the back and the steering wheel and the engine of the car had receded back on the driver's side. The car could not have gone to the right extremity and dashed with such violence on the tree if the driver had exercised reasonable care and caution. On the facts made out the doctrine is applicable and it is for the opponents to prove that the incident did not take place due to their negligence. This they have not even attempted to do. In the circumstances we find that the Tribunal was justified in applying the doctrine. It was submitted by the learned counsel for the respondents that as the High Court did not consider the question this point may be remitted to the High Court. We do not think it necessary to do so for the evidence on record is convincing to prove the case of rash and negligent driving set up by the claimants…"

31. Furthermore, in ***Shyam Sunder v. State of Rajasthan,*** **(1974) 1 SCC 690,** the Hon'ble Supreme Court ruled that the maxim '*res ipsa loquitur*' is not a substantive law or evidentiary rule, but is rather used when the cause of an accident is principally within the knowledge of the parties involved. The relevant paragraphs of the said judgment are as under:

> "*...9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies...*"

32. It is also pertinent for this Court to refer to the judgment rendered by the Hon'ble Supreme Court in the case of ***T.N. State Transport Corpn. (Coimbatore) Ltd. v. M. Chandrasekaran,*** **(2016) 16 SCC 16**, wherein, it was held that the burden to prove that the accident occurred due to some other cause than the driver's negligence lies upon the employee itself. The relevant paragraphs of the same is as under:

> "*..14. In the present case, the sole reason which weighed with the Commissioner was that no independent witness was produced—not even a single passenger of the bus was examined by the Department. The decision relied on by the appellant squarely deals even with this reasoning. It has been*

held that in State of Haryana v. Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491 : 1977 SCC (L&S) 298] the Court held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid. Similar view has been taken in Karnataka SRTC v. A.T. Mane [Karnataka SRTC v. A.T. Mane, (2005) 3 SCC 254 : 2005 SCC (L&S) 407] . Both these decisions have been noticed in the reported decision relied on by the appellant. The burden to prove that the accident happened due to some other cause than his own negligence, is on the employee, as expounded in Thakur Singh v. State of Punjab [Thakur Singh v. State of Punjab, (2003) 9 SCC 208 : 2004 SCC (Cri) 1183] referred to in the reported decision. In the reported case relied on by the appellant, it has been noted as under : (Cholan Roadways case [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , SCC p. 253, para 34)

> *"34. ... In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is*

"preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

15. Applying the principle stated in Cholan Roadways Ltd. [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , what needs to be considered is about the probative value of the evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the respondent rashly or negligently. The material relied on by the Department during the enquiry supported the fact that the respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the impact was so severe that the two vehicles were extensively damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied on by the Department, as a result of which the doctrine of res ipsa loquitur came into play and the burden shifted on the respondent who was in control of the bus to establish that the accident did not happen on account of any negligence on his part. Neither the Commissioner nor the High Court considered the matter on that basis nor posed unto themselves the correct question which was relevant for deciding the application under Section 33(2)(b). On the other hand, the order of punishment dated 13-10-2003, ex facie, reveals that the report of the enquiry officer referring to the relevant material established the factum and the nature of accident warranting an inference that the respondent had driven the bus rashly and negligently. Further, the observation in the unreported decision of the Division Bench of the same High Court was not relevant for deciding the application under Section 33(2)(b). Significantly,

> *the order of punishment also adverts to the past history of the respondent indicative of the respondent having faced similar departmental action on thirty-two occasions, including for having committed minor as well as fatal accidents while performing his duty…*"

33. The doctrine of *res ipsa loquitur* is squarely applicable to the facts of the instant matter. While driving the vehicle, the respondent workman had to exercise due care and precaution and lack of such due care resulted in a minor's death. It cannot be said that respondent workman had no role in the accident and it was all the result of external factors. The respondent is guilty of negligence as he failed to exercise necessary care and precaution which resulted in the unfortunate accident.

34. This Court is of the view that the learned Labour Court's task was to merely ascertain as to whether the punishment inflicted upon the workman in the enquiry proceedings was justified or not and in order to do the same, the learned Labour Court ought to have taken the settled principle of law into consideration. As per the settled position of law, the learned Labour Court erred in relying upon the fact that MW-1, i.e., Sh. Chander Prakash and Sh. KC Lohiya admitted that they were not present during the time of incident and also admitted that there were no eye witnesses and further admitted that no one made the complaint to the management, and that neither any name was taken, nor any address of the eye witness was recorded.

35. The above said admissions on the part of the MW-1 do not make out a case where it can be established that the enquiry proceedings were

unjustified. In this regard, this Court is of the view that there was sufficient material on record of the enquiry officer to arrive at the finding, thereby, imposing punishment and the learned Labour Court erred by wrongly setting aside the said punishment on the basis of acquittal order and the afore stated admissions by MW-1.

36. It is evident that in light of the law of 'preponderance of probabilities', the respondent ought to have been more careful and this Court is of the considered view that the incident occurred due to the negligent act of the respondent workman which makes the punishment imposed upon him adequate and right for not showing due care while performing his duties. It is held that the learned Labour Court erred in failing to appreciate that the rules of evidence are distinct in the proceedings of a criminal trial and a domestic enquiry conducted by a department.

37. It is held that there is force in the propositions put forth by the petitioner corporation and there is sufficient material on record to show that the impugned award suffers from illegality and such illegality or infirmity is apparent on the face of the record. Therefore, this Court is inclined to exercise its extraordinary writ jurisdiction conferred under Article 226 of the Constitution of India.

38. It is observed by this Court that the learned Labour Court failed to apply the correct standard of proof in relation to a domestic enquiry which is 'preponderance of probability' and applied the standard of proof required for a criminal trial, hence, a case for judicial review is made out.

39. This Court is of the view that the departmental enquiry conducted by the petitioner corporation wherein the punishment of stoppage of three due increments as inflicted upon the respondent workman was in accordance with the law and the said finding was arrived at after establishing the facts from the material placed on its record as a result of which the doctrine of *res ipsa loquitur* came into play and the burden to prove the contrary was on the respondent workman who was in control of the bus causing the accident.

40. In view of the foregoing paragraphs, this instant writ petition is allowed and the impugned award dated 23rd March, 2004 passed by the learned Presiding Officer, Industrial Tribunal – III, Karkardooma Courts, Delhi in ID No. 7/1998 is set aside.

41. Accordingly, the captioned writ petition stands disposed of along with pending applications, if any.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 17, 2024
gs/ryp/da

Click here to check corrigendum, if any