CHOLAN ROADWAYS LTD.

v.

G. THIRUGNANASAMBANDAM

DECEMBER 17, 2004

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

Labour laws :

Industrial Disputes Act, 1947—Sections 33(2)(b) and 10—Grant of approval of dismissal order—Jurisdiction of Industrial tribunal—Scope of—Held : Jurisdiction of the tribunal is limited and cannot be equated with section 10—Tribunal has to see whether **prima facie** *case against delinquent employee is made out on the evidence adduced in the domestic enquiry—On facts, refusal of approval of dismissal order of driver by tribunal on the ground of non-examination of passengers when evidence adduced during domestic enquiry showing negligence of driver—Single Judge and Division Bench of High Court upheld the order—On appeal held : Courts below failed to pose unto themselves correct questions—Tribunal did not apply the principle of* **res ipsa loquitur** *and took into consideration an irrelevant fact that the passengers of the bus were mandatorily required to be examined—It also failed to apply standard of proof-'preponderance of probability' in relation to domestic enquiry—Hence, order of tribunal set aside and tribunal directed to grant approval to the dismissal order—Constitution of India, 1950—Article 136.*

Maxims :

Res ipsa loquitur—*Principle of—Discussed.*

A bus met with an accident resulting in death of seven passengers. Branch Manager of the appellant-Roadways Company conducted on the spot inquiry and submitted a report to the effect that the respondent-driver of the bus drove the bus in a rash and negligent manner. Thereafter, disciplinary proceedings were initiated against the respondent and charges were framed. Inquiry Officer found the respondent guilty of misconduct and the Disciplinary Authority dismissed him from services. Appellant filed an application under section 33(2)(b) of the Indus-

A trial Disputes Act, 1947 for grant of approval of the dismissal order. Presiding Officer rejected the grant of approval on the ground of failure to observe principles of natural justice by not examining the passengers. Appellant filed writ petition challenging the order. Single Judge and also the Division Bench of High Court dismissed the same. Hence the
B present appeal.

Appellant—Roadways Company contended that the evidence clearly shows that the bus was being driven in a rash and negligent manner resulting in the death of seven passengers; that in the enquiry of this nature it was not necessary to examine the passengers of the bus; and
C that the appellant not only afforded an opportunity to the respondent to cross-examine the witnesses examined on their behalf but also gave opportunity to examine defence witnesses, as such the principles of natural justice were followed.

D Respondent-driver contended that in the domestic enquiry the alleged misconduct of the respondent cannot be said to have been proved inasmuch as no finding has been recorded as regards the culpability of the respondent *vis-à-vis* commission of the said misconduct; and that only because an accident had taken place, the same by itself in absence of strict proof thereof cannot be a ground to infer that misconduct on
E the part of the respondent stood proved.

Allowing the appeal, the Court

HELD : 1.1. The jurisdiction of the Industrial Tribunal under
F Section 33(2)(b) of the Industrial Disputes At, 1947 is a limited one. The jurisdiction of the Industrial Tribunal under Section 33(2)(b) cannot be equated with that of Section 10 of the Act. 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 delin-
G quent, keeping in view the fact that if the permission or approval is granted, the discharge or dismissal order passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Tribunal in terms of the 1947 Act. [1131-D-E; 1133-F-G]

H *Martin Burn Ltd.* v. *R.N. Banerjee,* AIR (1958) SC 79, referred to.

1.2. The principle of Evidence Act has no application to a domestic enquiry. However, there cannot be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry but the said principle cannot be stretched too far nor can be applied in a vacuum. It is further trite that the standard of proof required in a domestic enquiry *vis-à-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. [1132-F-1133-E; 1134-D]

Maharashtra State Board of Secondary and Higher Secondary Education **v.** *K.S. Gandhi and Others,* **[1991] 2 SCC 716, referred to.**

1.3. 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. Errors of fact can also be a subject-matter of judicial review. [1140-B]

E **v.** *Secretary of State for the Home Department,* **(2004) Vol. 2 Weekly Law Report 1351, referred to.**

Judicial Review, 'Appeal and Factual Error' by Paul P. Craig Q.C. **2004 Public Law 788, referred to.**

2.1. In the instant case, admittedly an enquiry has been held wherein the parties examined their witnesses. Respondent was represented and assisted by three observers. Branch Manager submitted his report to the effect that the driver of the bus drove the bus in a rash and negligent manner and proved the same before the Inquiry Officer. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the bus deserved serious consideration at the hands of the Tribunal. [1131-D-E; 1134-E-F]

2.2. The enquiry officer has categorically rejected the defence of the respondent that the bus was being driven at a slow speed. The principle of *Res ipsa loquitur* is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the respondent to prove that the vehicle was not being driven by him rashly or negligently. The Industrial Tribunal did not apply the principle

of *Res ipsa loquitur* which was relevant for the purpose of this case and took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. In a case involving accident it is not essential to examine the passengers of the bus. Furthermore, 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. Therefore, the Presiding Officer, Industrial Tribunal as also the Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. Thus, a case for judicial review was clearly made out. Order of High Court is set aside and the Industrial Tribunal is directed to grant approval to the dismissal order against the respondent. [1128-G-H; 1140-C-D; 1140-A]

M/s. Bareilly Electricity Supply Co. Ltd. **v.** *The Workmen and Ors.,* **[1971] 2 SCC 617 and** *Zunjarrao Bhikaji Negarkar* **v.** *Union of India and Ors.,* **[1999] 7 SCC 409, distinguished.**

Pushpabai Parshottam Udeshi and Ors. **v.** *M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd.,* **AIR (1977) SC 1735;** *(Smt.) Sarla Dixit and Another* **v.** *Balwant Yadav and Others,* **[1996] 3 SCC 179;** *Divisional Controller KSRTC (NWKRTC)* **v.** *A.T. Mane,* **(2004) SCALE 308;** *Thakur Singh* **v.** *State of Punjab,* **[2003] 9 SCC 208 and** *State of Haryana and Others* **v.** *Rattan Singh,* **[1977] 2 SCC 491, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3392 of 2002.

From the Judgment and Order dated 6.6.2001 of the Madras High Court in W.A. No. 46 of 1993.

K. Ramanurthy, A. Krishnamoorthy and Sriram J. Thalapathy for the Appeallant.

J. Buther, R.S. Chauhan, Ms. Geeta Kalra and Ambhoj Kumar Sinha for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. : This appeal is directed against the judgment and order dated 6.6.2001 passed by a Division Bench of the Madras High Court in W.A. No. 46/1993 as also the judgment and order passed by the learned Single Judge of the said Court in a Writ Petition No. 11113/88 whereby and whereunder the writ petition filed by the Appellant herein for setting aside order dated 29.4.88 passed by the Industrial Tribunal, Tamil Nadu, Madras in Approval Petition No. 125 of 1985 rejecting the grant of approval sought for as regard order of dismissal passed against the Respondent herein was dismissed.

The factual matrix of the matter is not much in dispute.

The Respondent herein was a driver of a bus bearing No. TMN-4148 plying between Tanjore and Nagapattinam. On 18.5.1985 while the said bus was driven by the Respondent herein it met with an accident resulting in death of 7 passengers. According to the Appellant the said bus was being driven in a rash and negligent manner. The road at the place of the accident was 300 ft wide and straight one. The Respondent allegedly despite noticing that another bus was coming from the opposite direction did not slow down the vehicle in order to avoid collision therewith. It is said that the Bus was being driven at a speed of 80 k.m.p.h. The bus driven by the Respondent herein is said to have swerved suddenly to the extreme left side of the road which was lined with tamarind trees on both sides. The impact of the said collusion was so severe that the bus dashed against the protruding branches and stumps of the tamarind trees, then dashed against the bus resulting the left side of the bus completely damaged as a result whereof 7 passengers died and several persons were seriously injured.

The Motor Vehicles Claims Tribunal, Madras awarded a sum of Rs. 9 lakhs to the dependants of the victims as compensation for loss of life. It is not in dispute that the Branch Manager of the Appellant, Mr. Venkatesan visited the scene of the accident at about 4 p.m. on the same day and conducted an investigation. During the said inspection some passengers were examined. He submitted a detailed report. In furtherance of the said report, a disciplinary proceeding was initiated against the Respondent on the following charges:

> "1. On 18.5.85 while you served as the driver in the bus bearing No. TMN 4148 you have been very careless in your duty and

A around 3.00 p.m. near Poondi dashed against a tamarind tree which was at the edge of the road and thereby caused a very big accident.

2. While you were on duty as aforesaid, even though it was a straight road and was visible to a distance of about 300 ft. In respect
B of the buses which come from the opposite direction, you have been very negligent and in a careless and irresponsible manner move the bus very fast and dashed the front left side of the bus against the branch of the tamarind tree which was cut and found at the left side of the road and after that turned the bus towards the right side and thereby caused heavy damage to the bus. On account of your
C aforesaid act the entire left side of the bus dashed against the tamarind tree branch which resulted in the passengers at the left side of the bus to sustain grievous injuries and that seven passengers died in the aforesaid accident and about 10 passengers sustained grievous injuries and that you were responsible for the same.

D

3. Further, you were responsible for the loss of accessories of the bus to the tune of Rs.30,000 and also you were responsible for the loss of revenue for the Corporation.

4. Further, you were responsible for tarnishing the fair name of the
E Corporation amongst general public."

In the domestic inquiry that followed the said charge-sheet, two witnesses were examined on behalf of the Appellant.

F The Inquiry Officer upon consideration of the materials brought on records by the parties therein found the Respondent guilty of misconduct in relation to the charges framed against him. The Inquiry Officer rejected the contention of the Respondent herein that the bus was being driven at a slow speed and the accident took place to save a boy who suddenly crossed the road holding:

G

"Thus it has been proved beyond doubt by the evidence adduced by the management's side that the delinquent was careless, negligent and rash in driving the bus at the time of the occurrence resulting in this accident and he is responsible for this accident and
H consequences thereof and the defence evidence by way of two

> statements adduced by the delinquent in proof of his defence cannot be given any credit or credence for reasons already expatiated. The delinquent has not alleged any brake failure in his earlier statement in Ex.P-9 or in his written explanation to charge memo, in which he has stated that he effectively used brake and halted the bus after impact."

The Respondent was, thereafter, dismissed from the services by the Disciplinary Authority.

As an industrial dispute was pending before the Industrial Tribunal the Appellant herein filed an application under Section 33(2)(b) of the Industrial Disputes Act for grant of approval of the said order of dismissal. The learned Presiding Officer, Industrial Tribunal by an order dated 29.4.88 despite holding that 'the scope of adjudication in a proceeding under Section 33(2)(b) of the Industrial Disputes Act is limited and while granting approval it does not sit as a court of appeal re-appreciating the evidence for itself but has to examine the findings of the Enquiry Officer on the evidence adduced in the domestic enquiry to ascertain whether a *prima facie* case had been made out on the charges leveled or if the findings are perverse', came to the following findings:

> "In the instant case, the domestic enquiry conducted cannot be considered as fair and proper and is vitiated on account of the failure of the Enquiry officer to observe the principles of natural justice by not examining the passengers who had given the statements."

On such finding the approval sought for by the Appellant herein was rejected. A writ petition was filed by the Appellant questioning the correctness or otherwise of the said order dated 1.12.1992 before the High Court. A learned Single Judge of the High Court upheld the said order. A writ appeal No. 46/1993 filed by the Appellant against the order passed by the learned Single Judge was dismissed opining:

> "Though the learned counsel for the Appellant placed reliance upon the judgment of the Apex Court in *State of Haryana & Another* v. *Rattan Singh* reported in AIR (1977) SC 1512, we hold that the said pronouncement of the Apex Court will not have any application to

A the present case as it was a converse case where the finding are based upon some evidence, namely, eye witness, and therefore, in that context, the Supreme Court held that non-examination of the passenger will not vitiate the enquiry. The said pronouncement will not have any application to the facts of the present case and it is
B clearly distinguishable."

Mr. K. Ramamurthy, learned senior counsel on behalf of the Appellant would contend that the learned Tribunal and consequently the learned Judges of the High Court committed a serious error in passing the impugned judgments insofar as they failed to take into consideration that in an enquiry
C of this nature it was not necessary to examine the passengers of the bus. The learned counsel urged that the admitted photographs of the bus in question after it met with an aforementioned accident clearly demonstrate that the same was being driven in a rash and negligent manner as a result of which 7 passengers died and some others suffered serious injuries. It was submitted
D that the Appellant had not only afforded an opportunity to the Respondent to cross examine the witnesses examined on behalf of the Appellant but also was given the opportunity to examine his defence witnesses and in that view of the matter the principles of natural justice must be held to have fully been complied with. In support of the said contention, learned counsel has strongly relied on a decision of this Court in *Divisional Controller KSRTC (NWKRTC)*
E v. *A.T.Mane,* (2004) 8 SCALE 308.

Mr. J. Buther, learned counsel on behalf of the Respondent, on the other hand, would submit that in the domestic enquiry the alleged misconduct of the Respondent cannot be said to have been proved inasmuch as no
F finding has been recorded as regards the culpability of the Respondent *vis-à-vis* commission of the said misconduct. It was further contended that only because an accident had taken place, the same by itself in absence of the strict proof thereof and having regard to the fact that the Respondent had been acquitted in the criminal trial, cannot be held to be a ground to infer that the misconduct on the part of the Respondent stood proved. The learned
G counsel in support of his argument has placed reliance upon a decision of this Court in *M/s Bareilly Electricity Supply Co. Ltd.* v. *The Workmen and Others,* [1971] 2 SCC 617 and *Zunjarrao Bhikaji Nagarkar* v. *Union of India & Others,* [1999] 7 SCC 409

H Section 33(2)(b) of the Industrial Disputes Act reads as under:

"(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman

(a) ***

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman.

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

It is neither in doubt nor in dispute that the jurisdiction of the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal under Section 33(2)(b) cannot be equated with that of Section 10 of the Industrial Disputes Act. In this case admittedly an enquiry has been held wherein the parties examined their witnesses. The Respondent was represented and assisted by three observers. Shri M. Venkatatesan was the Branch Manager, CRC Tanjore Town Branch, who had submitted his report and proved the same before the Inquiry Officer. He furnished a detailed account of the position of the bus *vis-à-vis* the other bus after the collision took place. He found that there was no brake tyre mark of the bus on the road. All the two seaters seats on the entire left side of the bus were found totally damaged. The left side roof arch angle of the bus was found totally out. Not only 4 persons were found to be dead at the spot, the driver and conductor of the bus and 10 other passengers were also sustained injuries in this accident. Out of the said 10 passengers, 3 subsequently died in the hospital owing to the injuries sustained by them. He further found that on the left side of the road in the earthen margin, there was a tamarind tree's protruding branch and which was found to have been already cut and the bottom stump of the branch was found protruding to a length of 3 inches. The bus was found to have been brought to a halt only at a distance of 81 ft. from the place of impact against

A the tree. He further noticed that even after the impact of the bus against the tree, the delinquent is said to have swerved the bus further to the right side from left side without applying brake and reducing speed and later only be brought the bus to a halt at some distance as a result of which the entire side roof angle of the bus got cut.

B

The learned Presiding Officer, Industrial Tribunal, as noticed hereinbefore, opined that the passengers of the bus should have been examined. It does not appear from the order dated 29.4.88 passed by the Presiding Officer, Industrial Tribunal that the Respondent herein made any prayer for cross examining the passengers who travelled in the ill-fated bus C and who were examined by the said Shri M. Venkatesan. It is evident from the order of the learned Tribunal that only in the show-cause filed by the Respondent in response to the second show-cause notice, such a contention was raised. The learned Presiding Officer, Industrial Tribunal in his impugned judgement further failed to take into consideration that even if the D statements of the said passengers are ignored, the misconduct allegedly committed by the Respondent would stand proved on the basis of the evidence adduced by Shri M. Venkatesan together with the circumstantial evidences brought on records. The learned Single Judge of the High Court although referred to the sketch drawn by PW-1 on the site (Ex.P-2) and 4 photographs (Ex.P-8) but ignored the same observing that unless witnesses E were examined in support of the two exhibits, it is not possible to draw any inference therefrom. The Division Bench of the High Court did not examine the materials on records independently but referred to the findings of the Industrial Tribunal as also the learned Single Judge to the effect that from their judgments it was apparent that the driver had not been driving the bus F rashly and negligently.

It is now a well-settled principle of law that the principle of Evidence Act have no application in a domestic enquiry.

In *Maharastra State Board of Secondary and Higher Secondary Edu-* G *cation* v. *K.S. Gandhi and Others,* [1991] 2 SCC 716, it was held:

> "It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities H to receive and place on record all the necessary, relevant, cogent

and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.....The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires."

There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum.

The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd.* v *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 "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
B 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
C whether the view taken is a possible view on the evidence on the record. (See *Buckingham & Carnatic Co. Ltd.* v *The Workers of the Company,* [1952] Lab. AC 490 (F)."

It is further trite that the standard of proof required in a domestic enquiry *vis-à-vis* a criminal trial is absolutely different. Whereas in the
D former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative.

The tribunal while exercising its jurisdiction under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned
E legal principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the
F hands of the tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently.

Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. As noticed hereinabove, the enquiry
G officer has categorically rejected the defence of the Respondent that the bus was being driven at a slow speed.

In *Pushpabai Parshottam Udeshi and Others* v. *M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd. and Another,* AIR (1977) SC 1735 this Court
H observed:

"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...."

The said principle was applied in *Sarla Dixit (Smt.) and Another* v. *Balwant Yadav and Others,* [1996] 3 SCC 179.

In *A.T. Mane* (supra), this Bench observed:

"6...Learned counsel relied on a judgment of this Court in support of this contention of his in the case of *Karnataka State Road Transport Corpn.* v. *B.S. Hullikatti,* [2001] 2 SCC 574. That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time he was found guilty and bearing that fact in mind this Court held thus:-

"Be that as it may, the principle of *res ipsa loquitur,* namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant corporation."

7. On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the above case and the law laid down therein applies to the facts of the present case also."

A In *Thakur Singh* v. *State of Punjab,* [2003] 9 SCC 208, this Court observed:

> "4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that the bus was driven over
B a bridge and then it fell into canal. In such a situation the doctrine of *res ipsa loquitur* comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part."
C

The burden of proof was, therefore, on the Respondent to prove that the vehicle was not being driven by him rashly or negligently.

D Furthermore, in a case involving accident it is not essential to examine the passengers of the bus. In *State of Haryana & Others* v *Rattan Singh,* [1977] 2 SCC 491 this Court observed:

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

Yet again, this Court in *A.T. Mane* (supra) referring to the decision of this court in *Rattan Singh* (supra) held:

> "6...In such circumstances, it was not necessary or possible for the
H appellant-corporation to have examined the passengers to establish

the guilt of the respondent. He also submitted that the finding of the Labour Court and the learned Single Judge that the punishment is disproportionate to the misconduct is wholly misconceived." A

In *M/s Bareilly Electricity Supply Co. Ltd.* (supra) this Court was seized with a different question namely the employer's liability to pay the bonus to the workmen which had a direct relation with the profit earned by the company for the year 1960-61. In support of financial condition of the management which had a direct nexus with the employer's capacity to pay bonus and in that situation it was held that mere production of a balance-sheet by the management would not serve the purpose as the entries contained therein, if called in question, must be proved. The tribunal in that case came to the conclusion that management had failed to prove the original cost of the machines, plant and machinery, its age, the probable requirements for replacement, the multiplier and the divisor. In those circumstances the claim was held to have been properly disallowed by the Tribunal holding: B C D

"14..... No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the Enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognized rules of procedure. In these circumstances it was observed at page 264: E

"Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of law." F G

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are com- H

A petent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant B produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant C to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act both of which incorporate D these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in E existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are F well recognized and admit of no doubt."

The said decision, for the reasons stated hereinabove, cannot have any application to the fact of the present case.

G The learned Counsel for the respondent also placed reliance upon a decision of this Court in *Zunjarrao Bhikaji Nagarkar* (supra). In that case, this court was concerned with the charge of misconduct against the appellant therein concerning an allegation that he favoured M/s Hari Vishnu Pakaging Ltd. Nagpur (assessee) by not imposing penalty on it under Rule 173-Q of the Central Excise Rules, 1944 when he had passed an order-in-Original No. H 20 of 1995 dated 2.3.1995 holding that the assesee had clandestinely manufac-

tured and cleared the excisable goods willfully and evaded the excise duty and had ordered confiscation of the goods. The misconduct was said to have been committed by the appellant while exercising his judicial function. Having regard to the factual matrix obtaining therein, this court observed:

> "37. Penalty to be imposed has to be commensurate with the gravity of the offence and the extent of the evasion. In the present case, penalty could have been justified. The appellant was, however, of the view that imposition of penalty was not mandatory. He could have formed such a view....."

It was further observed:

> "41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even *prima facie.* The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.
>
> 42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

In the aforementioned factual matrix of the case it was held that every error of law would not constitute a charge of misconduct.

A This decision also has no application to the facts of the present case. 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 B 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, further more, 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 irrel- C evant fact not garmane 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 D was, thus, clearly made out.

Errors of fact can also be a subject-matter of judicial review. (See *E.* v *Secretary of State for the Home Department,* (2004) Vol.2 Weekly Law Report page 1351). Reference in this connection may also be made to an interesting article by Paul P. Craig Q.C. titled 'Judicial Review, Appeal and E Factual Error' published in 2004 Public Law Page 788.

The impugned judgment, therefore, cannot be sustained and, thus, must be set aside.

F Ordinarily, we would have remitted the matter back to Industrial Tribunal for its consideration afresh but as the matter is pending for a long time and as we are satisfied having regard to the materials placed before us that the Industrial Tribunal should have granted approval of the order of punishment passed by the Appellant herein against the Respondents, we direct accordingly. The Respondents may, however, take recourse to such G remedy as is available to in law for questioning the said order of dismissal.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeal is allowed. No costs.

H N.J. Appeal allowed.