

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

+ **WP (C) Nos. 4632/2003**

Judgment reserved on: 18.03.2009

Delhi Transport Corporation Petitioner
Through: J.B. Malik, Adv.

versus

Sh. Kishan Dev Mishra Respondent
Through: Mr. Rakesh Kumar with Mr. Suwarn
Rajan, Advs.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned order dated 1.8.2002.
2. Brief facts of the case as set up by the petitioner in the present case are:-

That the respondent was employed as a conductor on 19.5.1984, having badge No. 21243, T.No. 47043. On 5.6.1992 the respondent was on duty driving bus No. 9007 which was on route from Delhi to Shimla and was intercepted at Pipli 13:15 hours by checking staff consisting of Ved Prakash A.T.I. and Jai Bhagwan, A.T.I. They found four passengers boarded the bus from Panipat to Pipli to whom the respondent charged Rs. 58/- but issued only three tickets of Rs. 43 and thus committed misconduct as envisaged under para 19(h),(b) and (m) of the standing orders governing the conduct of the DTC employee. On the basis of report of the checking staff the respondent was suspended on 11.6.92. The respondent was issued the chargesheet dated 17.6.1992 and thereafter the order for detail inquiry was passed. The inquiry officer examined the case thoroughly by examining the checking staff whose statement was recorded and the respondent was given full opportunity who cross examined the witnesses during the inquiry. The inquiry officer gave his findings and held him guilty of the charge and submitted his report to the authority. The depot manager on the basis of the inquiry and the detailed investigation conducted in the case issued the show cause notice dated 31.7.92 as to why the respondent should not be

punished for his misconduct. The respondent was given due opportunity to defend himself and therefore as per the petitioner principles of natural justice were duly observed by the Enquiry Officer. The depot manager found reply of the respondent not satisfactory and after considering the case of the respondent and his past record, imposed punishment of reduction in initial stage in time scale of conductor vide NO. BBMD-1/AT(T)/92/3273 dated 12.8.92. The respondent aggrieved with the punishment awarded by the depot manager filed an appeal to the regional manager on 1.9.92. The regional manager after perusing the inquiry report, past record and the reply filed by the respondent dismissed the appeal on 28.10.92. The respondent filed another appeal to the Chairman of DTC on 9.11.92. The Chairman not agreeing with the plea of the respondent dismissed the appeal on 22.1.93. The respondent filed a petition to the labour commissioner, who forwarded the same to the labour court. The Labour Court passed the order dated 1.8.02 in favour of the respondent and against the petitioner thereby setting aside the punishment. and also directed the petitioner to pay the differences in wages within one month of the publication of this award otherwise the management will be liable to pay interest @ 9% per annum. The

respondent filed the execution to claim the arrears of the pay scale from the beginning as he was not punished by the Labour Court. The S.D.M. Darya Ganj gave directions to recover the execution amount by way of attachment. Aggrieved by the said order the petitioner preferred the present writ petition.

3. Counsel for the petitioner submits that respondent had cheated the petitioner as he had taken Rs. 58 from the group of passengers of four persons but he had issued tickets only to three persons for Rs. 43.50 and the tickets were issued from Pipli to Shahabad though the same should have been issued from Nilokheri to Shahbad. It is further case of the petitioner that the respondent workman did not permit checking officials to record the statement of the concerned passengers. Counsel further submits that due to the said misconduct of the respondent the enquiry was conducted against him in which the respondent did not lead any evidence in defence and on the completion of the enquiry a show cause notice was issued to him proposing the punishment of reduction of the respondent to the initial stage at the time scale for the post of conductor. Contention of counsel for the petitioner is that the said punishment was imposed upon the respondent keeping in view his serious misconduct of

cheating the petitioner by deliberately not issuing the tickets to the four passengers and also for issuing the ticket from Pipli instead of Nilokheri. Counsel further contends that due opportunity was granted to the respondent workman during the enquiry proceedings and the guilt of the respondent workman was duly established by the enquiry officer, but still the Tribunal ignored the findings of the enquiry officer and the punishment imposed upon him and interfered with the order of the punishment by setting aside the same without there being any justifiable reasons. Counsel thus submits that the impugned order passed by the Tribunal is illegal, perverse and the same is liable to be set aside.

4. Refuting the submissions of the counsel for the petitioner, counsel for the respondent submits that finding of the fact as arrived by the Tribunal need not be interfered with by this Court. Counsel for the respondent further submits that the Tribunal has reached to the conclusion that there was no deliberate attempt on the part of the respondent workman to cheat the petitioner. Counsel further submits that even the enquiry officer has not given any finding that fourth ticket was deliberately not issued by the respondent workman.

5. I have heard learned counsel for the parties and perused the record.

6. It is not in dispute that as per the past record there was no other case in which the respondent was found to have been involved and that was the first case and as per the circular of the petitioner dated 4th March, 1997 in the case of commission of irregularity in the case of cheating for the first time the enquiry officer was required to take corrective action so as to avoid any kind of reoccurrence of such nature in future. The Tribunal after taking into consideration the report of the enquiry officer came to the conclusion that the case of the respondent was not a case of deliberate cheating and, therefore, as per the guidelines issued by the petitioner itself the said punishment could not have been imposed upon the workman. Taking into account the said finding of the Tribunal, I do not find that there is any illegality and perversity and, therefore, I am not inclined to interfere with the impugned order.

7. Dismissed.

March 18, 2009
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KAILASH GAMBHIR, J.