

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **+W.P.(C) No. 6215/2007**

% Date of Decision : January 27, 2009

Delhi Transport Corporation ...Petitioner

Through Mr. Abhinav Prakash with Mr. Manish
Kumar, Advs.

Versus

Om Parkash ...Respondent

Through : Nemo.

COARM:-

* **HON'BLE MR. JUSTICE KAILASH GAMBHIR**

1. Whether reporters of local paper maybe allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

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By way of this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the impugned Award dated 10.11.2006.

Nobody is appearing on behalf of the respondent. Counter affidavit has also not been filed by the respondent despite opportunities granted by this Court. Brief facts of the case relevant for deciding the present case are:-

The respondent/workman was working as a conductor with the DTC/management. He was deputed on a bus running between Delhi and Bullandshehar. On the night of 9.8.95 at about 8 p.m., while the bus was going from Delhi to Bullandshehar, the headlights of the bus developed some problem and the bus had to be stopped at a distance of about 2 KM before Secunderabad. The driver started repairing the headlights. Some passengers and the conductor got down from the bus to ease themselves. While the conductor had gone to some distance to find a secluded place to ease himself some unsocial elements snatched his bag containing tickets worth Rs. 21,781/-, ticket book containing tickets bearing Nos. 97171-97199 (29) and 53100-53199 (100). The bag also contained the complaint book, way voucher, way bill etc. A FIR bearing No. 393/95 under Section 356 IPC was registered with PS Bullandshehar. The management conducted a preliminary enquiry against the workman and found that the workman had been negligent in performing his duties and because

of his negligence he had caused loss of Rs. 21,781/- to the management. A regular departmental enquiry was initiated. The workman was found guilty and was awarded the punishment of warning besides holding him liable to pay an amount of Rs. 21,808.80 vide order dated 8.6.1998. The workman challenged the order of recovery of the amount from him by raising an Industrial dispute. The Learned Presiding Officer, Industrial Tribunal -II, Karkardooma Court, Delhi passed the impugned Award dated 2.11.2006 against the petitioner Corporation, hence the present petition.

I have heard learned counsel for the petitioner and gone through the record.

Counsel appearing for the petitioner submits that the respondent/workman had misappropriated the amount of cash collected by him as well as bus tickets which were in his possession. Counsel further submits that there is no clear evidence produced on record that the bag of the respondent was snatched by some anti social elements at the time when he went to ease himself after the bus had halted at about 2 kms before Sikandrabad. Counsel further submits that even the evidence given by the two passengers before the enquiry officer cannot be given any credence as the same are

contradictory to each other. Counsel thus submits that the Tribunal has not appreciated the entire gamut of facts and has given a wrong finding by holding that the respondent workman was not at fault and his bag was allegedly snatched by the anti social elements.

It is not in dispute that bus had developed some fault and due to that the driver had stopped the same at the distance of about 2 km before Sikandrabad. The driver started repairing the head lights while the conductor and some other passengers got down from the bus to ease themselves. The respondent conductor had gone to some distance so as to find secluded place to ease himself where some anti social elements snatched his bag containing tickets worth Rs. 21,781/- besides ticket book containing tickets bearing Nos. 97171-99 (29) and 53100-99 (100), complaint book, way voucher, way bill etc. It is also not in dispute that FIR bearing No. 393/95 under Section 356 IPC was registered at the instance of the respondent/workman with P.S. Bullandsheher. Two passengers and the driver appeared before the enquiry officer. The driver Tejpal Singh in his statement clearly stated that he heard from one passenger that few anti social elements had snatched the cash and ticket bag from the conductor. He also stated that the conductor shouted and few passengers chased the anti social

elements but could not catch them. On the similar lines the statements were made by two other passengers although with minor variations. It is a settled legal position that in the enquiry or departmental proceedings the case is not required to be proved beyond reasonable doubt as it is required before a criminal Court. In this regard, the Hon'ble Apex Court in **Workman Vs. Balmadies Estattes – (2008) 4 SCC 517** observed as under:-

10. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a civil court could do when a lis is brought before it. The Evidence Act, 1872 (in short "the Evidence Act") is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

Also, minor variations in the statement of the witnesses will be of no help to the petitioner when main incident and its narration is not much in dispute. The said bus abruptly got stranded due to the head lights of the bus having gone out of order and therefore, it cannot be

said that the respondent/workman had planned something in advance to stage manage the snatching of his bag. It was at 8.00 p.m. in the late evening and snatching of his bag by the anti social elements at the time when he had gone to a little distance to ease himself cannot be ruled out. I, therefore, do not find any infirmity in the impugned Award passed by the Tribunal. The petitioner has not made any ground to satisfy this Court that there is any perversity or illegality in the said findings arrived at by the Tribunal.

There is no merit in the present petition.

Dismissed.

JANUARY 27, 2009

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KAILASH GAMBHIR, J.