

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

+ **W.P.(C) No. 3119/2007**

% Judgment delivered on: 16.02.2010

Delhi Transport Corporation Petitioner

Through: Mr. Vinay Sabharwal
Ms. Neha Sabharwal, Advocates

versus

Sh. Jai Pal Singh & others Respondents

Through: Mr. Bandaua Shukla and
Ms. Ruchi Sindhwani, Advocate
for R-2 and Mr. Ranjan Kumar,
Advocate for R-1.

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:

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the award dated 10.08.2006 passed by the Labour Court No. XXI, Delhi, whereby the punishment of termination awarded to the respondent workman was reduced to stoppage of two increments with cumulative effect and grant of 50% back wages with consequential benefits.

2. Brief facts relevant for deciding the present petition are that the respondent no.1 workman was working as a conductor in the petitioner corporation and on 26.3.93 he was on duty in Bus No.6383, Route No. 373/2A where he was involved in eve teasing of a lady passenger because of which he was suspended from duty vide suspension order dated 13.4.93. Thereafter a chargesheet was issued to respondent no.1 on 23.4.93 which was duly replied by the respondent no.1. An enquiry was conducted by the petitioner corporation and the lady passenger, Ms. Rashmi Kataria, appeared as a witness and narrated the sequence of events happened in the Bus. The enquiry officer in his report found the charges leveled against the respondent no.1 to be correct and proved. Thereafter, a show cause

notice dated 15.10.93 was issued to the respondent no.1 proposing to impose the punishment of removal of service to which the respondent no.1 duly replied. Vide order dated 5.7.94 the punishment of removal from service was imposed on respondent no.1 which was challenged by the respondent no.1 by raising an industrial dispute in ID No. 44/06/98. The Labour Court vide order dated 10.8.06 while holding that the enquiry conducted was valid and proper but found the punishment of removal of service as disproportionate to the gravity of misconduct and granted him reinstatement with 50% backwages and consequential benefits with stoppage of two increments with cumulative effect. Feeling aggrieved with the said order, the petitioner has filed the present petition.

3. Mr. Vinay Sabharwal, counsel for the petitioner, strongly contended that looking into the gravity of the charges leveled against the respondent conductor, he deserves no leniency or concession and in any case the interference under Section 11 A of the I.D. Act by the Tribunal cannot be justified unless the punishment is shockingly or grossly disproportionate to the gravity of the misconduct. The contention of the counsel for the petitioner is that the charges against the respondent conductor were grave and serious in nature and

therefore he deserved the maximum punishment and the discretion exercised by the Ld. Labour Court u/s 11 A of the I.D. Act is arbitrary and injudicious and against the well established principles of law. Counsel further submitted that the gravity of the misconduct is not to be measured in golden scales and while deciding on the quantum of punishment it is only the gravity of misconduct which has to be taken into consideration. Therefore, to compare the same with the award of the punishment and interference by the Labour Court would arise only if the punishment awarded is so disproportionate that it shakes the conscious of the court, the counsel contended. In the facts of the present case, the counsel submitted, that the respondent conductor faced a serious charge of outraging the modesty of a lady passenger in the bus and any leniency with such a kind of person would not only further bring disrepute to the petitioner but would encourage such deleterious elements besides rendering travel by females in public transport totally unsafe and insecure. Counsel for the petitioner thus urged that the interference by the Tribunal in reducing the punishment is illegal and perverse and the same cannot stand the test of well established principles of law.

4. Refuting the said submissions of counsel for the petitioner,

counsel for the respondent, on the other hand, submitted that the respondent was falsely charged by the petitioner as he was never involved in outraging the modesty of any female passenger. Counsel further submitted that even the complainant never raised any such allegation against the respondent attributing any such act on his part which could be treated as outraging the modesty of the female passenger. Counsel for the respondent further submitted that no fault can be found with the reasoning given by the Ld. Labour Court as it found that the act of misconduct committed by the driver and the conductor were of similar degree and therefore different punishments could not have been awarded to both of them. It is an indisputable fact, the counsel contended, that Chander Pal, driver of the bus also faced the same charge and was also tried by the Criminal Court for the same offence but was given the punishment of "reduction of two stage lower in time scale of driver for two years" but to the respondent conductor, the punishment of removal was awarded. Counsel further submitted that the respondent workman was also acquitted by the Criminal Court vide order dated 17.01.2001 and this order of acquittal was not before the Disciplinary Authority when the punishment of removal was imposed upon him and therefore also Ld.

Labour Court correctly reduced the punishment similar to the one as awarded to the driver in exercise of its powers under Section 11-A of the I.D. Act.

5. I have heard counsel for the parties at considerable length and perused the records.

6. Before I deal with the rival contentions of both the parties, it would be relevant to reproduce the charges faced by the respondent/workman which are as under:-

“CHARGE SHEET

You are hereby called upon to give you explanation as to whether disciplinary proceedings not be conducted against you under Delhi Road Transport Procedure (Amendment) Regulations 1971 read with Delhi Road Transport Authority (Appointment and Conditions of Service) Rules 1952, Section 15(2), for the following irregularities:

That on 26.03.1993 your duty was on bus No. 6383 Route No. 373/2-A, when you committed the following repeated irregularities:

1. That you indulged in eve teasing with a femal passenger in the bus.
2. You were arrested by the Kalkaji Police Station U/s 354/34 IPC vide FIR No. 117/93 dated 26.03.1993 and the case was registered against you.
3. That you concealed the facts of the aforesaid incident.
4. That you tarnished the image of D.T.C.

Your aforesaid acts amount to misconduct within the meaning Para No. 19(f)(g)(k)(m) of Standing Orders governing the conduct of DTC Workers.

A copy of the report of Reporter sh. Ved Pal Singh, T.I. is enclosed. At the time of taking final decision in the matter your past record shall be kept in view. Your explanation should reach the undersigned within 10 days of the receipt of this letter. In case you wish to inspect any relevant documents relied upon available on record, you should report to the undersigned within 24 hours of the receipt of this charge sheet. In case you fail to report to the undersigned within 24 hours for inspection of documents or in any case fail to submit your explanation to the charge sheet within 10 days thereafter, it shall be presumed that you have no explanation to offer and in the pending matter further proceedings shall take place in accordance with the Rules without any further intimation to you.

Sd/-

Depot Manager.”

7. It is not in dispute that the respondent workman was deployed as a conductor and was on his duty in bus No. 6383 on route No. 373/2A. The complainant of the incident, Ms. Rashmi Katariya appeared as a witness in the domestic enquiry and in her deposition she narrated the incident that on 26.03.1993 at 5.30 p.m. she boarded the said bus from Pragati Maidan and at that time there were 15-20 passengers in the bus. By the time the bus reached Kailash Colony, substantial number of passengers got down and only two girls and three boys were left along with the driver and the conductor of the bus. The boys inside the bus started behaving indecently with the girls and one of the girls jumped out of the bus when the driver had mildly applied the brakes and thereafter despite the girls shouting and yelling, neither the driver of the bus stopped the bus nor the respondent workman came to the rescue of the girls. During the scuffle the complainant gave a bite on the palm of the boy and when the bus slowed down she also jumped out of the moving bus resulting in causing injuries on her right foot. Thereafter, FIR of the incident was lodged by the complainant and she also got herself medically

examined at AIIMS hospital.

8. The respondent workman duly replied to the said charge sheet and fully participated in the enquiry proceedings. Based on the findings of the enquiry officer the punishment of removal was imposed upon the respondent/workman by the petitioner management and the said order of the management was challenged by the workman in the Industrial Dispute bearing no. ID NO. 44/06/98. So far the findings of the Labour Court on Issue No.1 with regard to enquiry are concerned, the Labour Court found that the management conducted a fair and proper enquiry against the workman after due observance of the principles of natural justice. However, on issue No.2, the Ld. Labour Court found the punishment disproportionate to the misconduct and accordingly reduced the punishment of removal to the punishment of stoppage of two increments with cumulative effect and with the award of 50% of back wages with consequential benefits.

9. Although the said incident was of the year 1993 but even today one cannot ignore the reality that an overwhelming majority of women in Delhi do not feel safe. One does not need hard hitting statistics to prove this, but a daily scan of the newspapers would give a reality check as to how many women face violence in the city on roads, buses

or at market places. The core issue that this case has brought forth is the safety of women in public transport. It is common knowledge that most of the women rely on public transport especially buses for day to day travel due to their vast reach. It is often seen that the females feel threatened not only from antisocial and gross elements traveling in the bus but equally from persons manning the bus. The drivers and conductors who are supposed to act as saviours of the passengers are often found themselves indulging in acts of indecency if they get such an opportunity of finding lone female passenger in the bus. Hence, due to such sexual abuse and harassment that is rampant on these buses, their mobility is challenged thus intimidating women transit riders resulting in their avoiding certain transit modes or using them only during specific hours or only when they are accompanied. The menace of eve-teasing is on the rise and it is a typical type of social crime where victims are ordinary females. However, these types of crimes go unreported as women feel embarrassed to report such kind of crimes as the general perception is that there is not much that will culminate by reporting it. Chanakya in the Arthashastra while defending the rule of Chandragupta Maurya wrote:

***"The eyes of the man who accosts a woman with
evil intentions will be extracted"***

And now almost 2000 years later also we find that the woman is not spared the evil intentions of men. The immeasurable damage that eve teasing does to a woman's self-esteem and the subsequent avoidance of public places by single women could hardly take us on the way to achieving gender equality.

10. The case at hand exemplifies the irresponsible and pathetic behaviour of the employees of the public transport department. Had the driver immediately applied the brakes and halted the bus, the entire gruesome situation could have been avoided. The Conductor, who is otherwise considered to be the main person manning the passengers inside the bus, owns a more responsible duty towards the passengers to see that no passenger is unnecessarily harassed, manhandled or coaxed or insulted by the co-passenger and no female passenger is teased by any person or faces any kind of indecency or immorality. But here , in the instant case, both the conductor and the driver not only failed in their duty but were hand in glove with the boys who were indulging in behaving indecently with the female passengers. A civilized society cannot afford to ignore such an

incident and decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the basic right of dignity of women. Hence, award of any lesser punishment to the conductor will be a source of encouragement to such others, and therefore, the respondent conductor does not deserve grant of any lesser punishment than the removal of service and hence looking into the gravity of the misconduct, the punishment awarded to him is neither disproportionate nor imbalanced and rather any reduction in his punishment would shock the conscience of this Court. The only way to eradicate this venomous practice, in my view, is to have an informed and sensitive citizenry. More so, the employees of the public transport corporation, especially conductors and drivers, should be sensitized towards issues relating to gender violence and women security on a regular basis and a periodic monitoring of the behaviour of those employees against whom there are complaints in the nature of eve teasing, sexual abuse or molestation should be done keeping them on check so that women are not harassed by hoodlums ensuring a safe and secure environment in the buses. To avoid recurrence of such incidents in the national capital, let the Principal Secretary, Department of Transport, Government of NCT of Delhi and the

Chairman, DTC file an affidavit spelling out the steps taken by them in this direction and if not, then what mechanism do they propose to have in place to ensure complete safety of female passengers travelling in DTC and other buses under the control of Government of NCT of Delhi. Affidavit be filed within one month from the date of this order.

11. With the above directions, the impugned Award so far it reduced the punishment to stoppage of two increments with cumulative effect alongwith 50% backwages with consequential benefits is set aside and the punishment of removal as directed by the Disciplinary Authority is upheld.

12. It is also directed to the petitioner DTC that it should take steps to revive the case of the driver, Chander Pal, after following due process of law. Affidavit in compliance be filed by the petitioner in this regard within a period of one month.

13. With the above directions, the present petition is accordingly allowed.

14. Copy of this order be sent to the Principal Secretary, Department of Transport, Government of NCT of Delhi and the Chairman, DTC.

15. List the matter for compliance and further directions on 7.4.2010.

February 16, 2010

KAILASH GAMBHIR,J