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

+ WP (C) No. 6678/2004

% Judgment delivered on: 30th April, 2009

Delhi Transport Corporation ..... Petitioner

Through: Mr. U.N. Tiwari for the petitioner.

versus

Ram Kumar & Ors. ..... Respondents

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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 way of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner management seeks to challenge the order dated 17/8/2001 passed by the Industrial Tribunal whereby the domestic enquiry held against the respondent was held to be perverse and vitiated. The

petitioner also seeks to challenge the final award dated 15.1.2005 passed in I.D. No. 268/96, whereby the Tribunal held the order of punishment passed against the respondent workman was illegal and unjustified.

2. Brief facts of the case are as under:

The respondent who was employed with the petitioner management as driver missed the trip of 16.49 on 17.2.94 and came at the time of trip of 19.10. The Time keeper asked him to go on the trip of 19.30 and he was given the time of 19.25 for the trip, but the respondent driver instead of taking the trip pretended to have received injuries and demanded the bus for taking him to the Hospital. The respondent again came from the hospital and told himself to be in a position and took the trip of 21.36 at 21.50, causing loss to the petitioner Corporation.

3. On 18.3.94, the respondent was charge sheeted for the commission of misconduct in violation of paras 2.19(a), (b), (h) and (m) of the Standing Orders and Clauses 6,9,20 and 22 of the Code of Duties of the Drivers. On 14.7.94 the Disciplinary Authority in terms of the enquiry proceedings and taking into consideration the past record of the respondent proposed the punishment of reduction of pay to the initial stage of pay scale

for five years with cumulative effect and called upon his comments on the same. On 10.10.95 the respondent served the demand notice to the petitioner after confirmation of the said punishment and at the same time filed a second appeal against the said order of punishment dated 29.7.94, after rejection of his first appeal vide letter dated 14.12.94. The conciliation proceedings initiated after service of the said demand notice culminated into order of reference passed by the Secretary (Labour) which was adjudicated upon by the learned labour court. The learned labour court vide order dated 17.8.2001 gave findings against the inquiry conducted by the petitioner management. The learned labour court passed final award dated 15.1.2003 holding the said punishment as illegal and unjustified and allowed the respondent to the consequential relief. However, The respondent was removed from services in another disciplinary case initiated against him.

4. Nobody has been appearing in this matter on behalf of the respondent. In fact the respondent workman has already expired and his legal representatives were brought on record but the legal heirs were proceeded ex-parte vide order dated 21.1.2008.

5. Counsel for the petitioner submits that the learned labour Court while deciding the preliminary issue failed to appreciate that the evidence of the complainant Babu Ram was sufficient enough to prove the charge against the respondent workman. Counsel further submits that as far as the plea of the respondent that he had suffered injury on the relevant date due to which he could not report at the Depot was to be proved by the respondent workman and not by the petitioner management. Counsel thus states that the learned labour Court fell in grave error by drawing adverse inference against the petitioner for not proving the sickness of the workman before the enquiry officer. The contention of the counsel for the petitioner is that onus to prove the sickness or the injury alleged to have been suffered/sustained by him was on the respondent workman and not on the petitioner management. Counsel further submits that even the learned tribunal failed to take into consideration the entire charges as set up against him vide charge sheet dated 18.3.94. Counsel thus urges that the impugned order dated 17.8.2001, whereby the enquiry was held to be perverse and vitiated is liable to be set aside and the final award dated

15.1.2003 which is based on the findings of the order dated 17.8.2001 also deserves to be set aside on the same grounds.

6. I have heard learned counsel for the petitioner.

7. There is none to refute the submissions made by the counsel for the petitioner. I find merit in the submissions made by the counsel for the petitioner that to prove the fact that the respondent had received injury on 17.2.94 when he missed the first trip and for the second time when he made the excuse of receiving injury, the onus was on the workman and not on the petitioner management. Since no such evidence was led by the respondent management before the enquiry officer, therefore, the learned Industrial Tribunal fell in grave error by holding that the enquiry report was found to be perverse or vitiated on the said ground. I also find that the learned tribunal has not gone into the entire charges leveled by the petitioner against the respondent and wrongly came to the conclusion that the petitioner failed to establish the charges before the enquiry officer. It is a settled legal position that the case before the enquiry officer is not to be proved beyond reasonable doubt and if there are some evidence which clearly shows misconduct on the part of the delinquent officer, the same would be sufficient

to prove the misconduct on the part of such an employee. In this regard, the Hon'ble Apex Court has observed as under in **Workmen v. Balmadies Estates,(2008) 4 SCC 517.**

> **"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."

8. The evidence was led by Mr. Babu Ram complainant who had proved his complaint as MW1/1 on the basis of which the charge sheet was issued against the respondent workman and coupled with the fact that the respondent workman failed to prove the fact of his sustaining any injury, I therefore, hold that the finding given by the learned tribunal is perverse and illegal. The same is accordingly set aside. The order dated 17.8.2001 is

based on the order of the preliminary enquiry and since the same is being set aside, therefore, the final award dated 15.1.2003 will also not sustain, the same is also accordingly set aside.

9. The present petition is allowed accordingly.

April 30, 2009 **KAILASH GAMBHIR, J.**
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