

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

+ **W.P. (C.) No. 712/2010**

% **Date of Decision: 28.04.2010**

DELHI TRANSPORT CORPORATION Petitioner

Through Mr. Hanu Bhaskar, Adv.

Versus

JAI PAL SINGH Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The order passed by the petitioners dismissing the respondent from service with effect from 18.09.1988 under Clause 15 (2) (vii) of the DRTA (Conditions of Appointment and Service), Regulations, 1952, being contrary to the circulars of the petitioners, was set aside by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as Tribunal) vide order dated 30.08.2009. By the impugned order respondent was directed to be re-employed with continuity in service subject to a fitness test to be undertaken within a period of two months. He has also been granted 25% of the back wages. Liberty, of course,

has been granted to the petitioners to examine the issue and give the matter a finality in terms of Para 8 of the order. Regarding calculation of the back wages, it has been ordered that wages should be calculated on the basis of the wages which the respondent was drawing at the time of his dismissal.

2. The petitioners have assailed the aforesaid order primarily on the ground that the circulars of the Corporations are only instructions for prudence and not rules. They do not bind the competent authority or the instructing officer. The instructions by the Department are only to ensure that the principles of natural justice are complied with but have no legal binding. It is submitted that non-compliance of the same would not invalidate the actions of the competent authority in passing an order of dismissal of the respondent in view of his conviction by Criminal Court and his having undergone the sentence awarded to him. Reliance has been placed upon the judgment delivered by a Division Bench of this Court in LPA No. 289/2007 and LPA No. 2290/2006. Without citing the judgment of the Apex Court it has also been argued that once a person is convicted of criminal charge he should be dismissed or removed from rank and the Government need not wait for the outcome of his appeal. It has also been submitted that respondent has not worked with the petitioners since the date of his removal granting his reinstatement with 25% wages still cast an implication of more than Rs. 2.5. lakh on the petitioner Corporation and would also entail other benefits by increments and ACP etc. which are not

admissible to the respondent. It is also submitted that if the respondent is to be taken back in service subject to his fitness, he is not entitled to any back wages from the Corporation. We have, however, perused the orders passed by the Division Bench of this Court in LPA No. 289/2007 and LPA No. 2290/2006 which goes to show that those judgments has been given on different facts and does not come to the rescue of the petitioners.

3. Briefly stating the facts of this case are that the respondent was appointed as a driver with the Corporation since 06.01.1983. On 18.12.1988 while he was driving a bus belonging to the Corporation he caused an accident due to which a two wheeler scooterist was crushed and subsequently died. An FIR No. 634/88 under Section 279/304A IPC was registered against the respondent. The respondent was tried by a Metropolitan Magistrate for the said offence and was convicted to undergo R.I. for one year and pay a fine of Rs. 4000/- under section 304A IPC vide judgment of conviction dated 27.03.98 and order of sentence dated 30.03.98. The respondent never informed this fact to the Corporation. He filed an appeal against the aforesaid conviction before the Sessions Court which was decided vide order dated 18.09.1998. The appeal was dismissed and the conviction was upheld. Thus, he was taken into custody. At that time the petitioner came to know about this fact as per the information received by the Depot Manager and accordingly the Depot Manager being the disciplinary

authority issued a letter dated 26.10.98 dismissing the respondent from service of the Corporation which was duly served upon the respondent.

4. It is also a matter of record that the respondent also preferred a criminal revision before this Court on 7.12.98 against the order of the appellate authority where also the High Court while dismissing the criminal revision upheld the order of conviction of the respondent but the sentence was reduced to the period already undergone, though the fine was increased from Rs. 4000/- to Rs. 10,000/-.

5. On 14.12.98 respondent made a representation to the Corporation for not being reinstated in service. He also filed an appeal against the order of the Depot Manager which was rejected. Then the petitioner filed a writ petition before this Court which was transferred to Central Administrative Tribunal and was registered as TA No. 1314/2009.

6. In the aforesaid petition it was submitted on behalf of the respondent that in view of the Executive Instructions on procedure regarding disciplinary action to be taken against incumbents like the respondent as appended in circular No. ADMN-3(18)/53 dated 05.08.55 annexed as Annexure E to the petition, the Corporation itself has put an embargo upon itself not to terminate the services of the petitioner. The language of sub rule (5) of Rule 10 was reproduced in that paragraph which reads as under:

THE SERIOUS DEPARTMENTAL ACTION OF
TERMINATION OF SERVICES WILL NOT BE TAKEN
AGAINST A DRIVER IF HE IS CONVICTED BY THE

COURT FOR AN OFFENCE WHICH COMMITTED BY HIM FOR THE FIRST TIME DURING HIS SERVICE IN THIS ORGANIZATION. THIS CONVICTION WILL, HOWEVER, BE TAKEN INTO CONSIDERATION WHILE DECIDING THE NATURE OF DEPARTMENTAL ACTION TO BE TAKEN AGAINST HIM FOR A SUBSEQUENT OFFENCE. NO DEPARTMENTAL ACTION WILL BE TAKEN AGAINST A DRIVER, WHO IS CONVICTED IN AN OFFENCE WHICH IS DUE TO SOME DEFECTS OR LACKS OF SOME EQUIPMENT IN A BUS.

7. In the writ petition examples were also cited where the other persons who were similarly situated but were not dismissed from services. References can be made to paragraph D which reads as under:

D) Because the employees/drivers namely Rajpal Singh Badge No. 4545 (Vasant Vihar Depot), Umed Singh, badge no. 13730 (Kesav Puram Depot), Dharam Singh Huda, Badge No. 8250 (Kesavpuram Depot) were held guilty and convicted by the court for 1-2 years imprisonment but no disciplinary action has been taken against them and they are serving the corporation.

8. In view of the submissions made by the respondent, this Court directed the petitioners to file a detailed affidavit to deal with the charges of discrimination which was filed by Regional Manager (West) DTC in terms of the order dated 24.07.2008. The relevant paragraphs of the said affidavit are reproduced hereunder:

3. That regard the case of Shri Raj Pal Singh, Driver is concerned, was charge sheeted on the ground of leave without pay i.e. he had started absenting from duties w.e.f. 5.3.92 without prior permission or intimation. The charge sheet to this effect was issued and after completing the disciplinary proceedings, a show cause notice was issued to him as to why he should not be removed from the services of the Corporation and in the meanwhile he

appeared and represented that he had been convicted in a case under Section 304A and 338 IPC and the Ld. MM had passed a sentence against him to undergo RI for one and half year and to pay a fine of Rs. 2000/-. Subsequently on his appeal to the Hon'ble Supreme Court, the sentence was reduced. The Disciplinary Authority on the charge sheet issued to him had imposed a punishment of reduction to the initial stage in the time scale of pay attached to the post of Driver on account of unauthorized absence.

It is submitted that the file of Shri Raj Pal Singh suggested that he was punished for the misconduct of remaining unauthorized absent and not for committing a fatal accident.

4. Regarding the case of Sh. Dharam Singh Huda, Driver it is stated that the said workman was involved in a fatal accident on 7.1.83. He was placed under suspension for the same and after completing the Departmental enquiry he was imposed with a punishment of warning. Since the trial of the matter completed after the completion of the departmental enquiry, the Ld. Trial Court sentenced him to RI for once year and six months and a fine of Rs. 5500/-. The appeal of the workman before the Ld. Sessions Judge was dismissed and the workman informed his concerned Depot immediately thereafter. As per the case file the Depot Authority had already completed the departmental action in the said matter and the punishment imposed by the Ld. Court came subsequently.

5. That as far as the case of Shri Umed Singh, Driver is concerned, he was not involved in a fatal accident. A case under Section 279/337 IPC was registered against him and after trial he was sentenced to simple imprisonment for one month and to pay a fine of Rs. 1500/-. The Departmental Accident Committee dealt with the case and found him 'not at fault' and subsequently the Departmental case was closed. In this case the bus driven by him hit the jeep at the back and due to which a minor accident took place. Shri Umed Singh has retired from service of the Corporation w.e.f. 31.10.07.

9. Thus, from the aforesaid affidavit it is apparent that in similar instances the petitioners have not resorted to the extreme penalty of

termination, removal or compulsory retirement of the incumbent and have followed the guidelines mentioned in Annexure E annexed to the writ petition.

10. The Tribunal based upon circular of the petitioners and cases cited on behalf of the respondent did not agree with the petitioners. Some observations made by the Tribunal are reproduced for the sake of reference:

“(5) The serious departmental action of termination of services will not be taken against a driver if he is convicted by the Court for an offence which is committed by him for the first time during his service in this Organization. This conviction will, however, be taken into consideration while deciding the nature of departmental action to be taken against him for a subsequent offence. No departmental action will be taken against a driver, who is convicted in an offence which is due to some defects or lack of some equipment in a bus.”

11. The Tribunal has also taken note of the affidavit filed by the Chief General Manager as quoted above before this Court given on the basis of official records and have taken note of the submissions made by the Chief General Manager of the petitioner that the circulars referred to above are not yet superseded and are still in force. The submissions made by the counsel for the petitioner that the circulars by implication have outlived their life, since such circulars had been issued when the traffic scenario of Delhi was different from what presently is, was not acceded to by the Tribunal primarily because the circulars were still in force and were not withdrawn. The relevant observation made by the

Tribunal in this regard are made in para 5 of the order which is reproduced for the sake of reference:

5. However, whatever may be his personal opinion, since the circulars had not been rescinded or cancelled and there is no plea that they go against the provisions of the statute, obedience thereto required to be given. The action is tested on the touchstone of the date of the order. Counsel for the respondents thereupon submits that the applicant had been guilty of suppression since he had not given any information about the criminal cases for the pendency of the appeal and, therefore, he could not have derived any benefits directly resulting from his default. But we feel that this circumstance should not cloud the basic factors. The question is as to whether any serious departmental action, to wit, termination of service of an employee on the basis of the first conviction can at all be taken. In view of the affidavit which has forth come, the answer can only be in the negative. The applicant is, therefore, to be granted reliefs.

12. The Tribunal has tried to strike a balance in the rights of petitioner and the respondent by directing that respondent be given 25% back wages with subject to fitness.

13. It may be observed here that before us also the petitioner was again asked to file copy of the circulars issued by the petitioner. Circulars support the case of the respondent. Some relevant portion of the circular dated 24.11.1954 are reproduced for the sake of reference:

(4) The question of taking departmental action against an employee convicted by Court will be taken up only after the employee's appeal has been decided by the appellate Court. In cases where the employee does not file an appeal, the question of taking departmental action will be considered on the expiry of the period fixed for filing appeal, If an employee, who has been convicted by a court desires to perform duty in this or ganization during the period between the decision of the Lower Court and the Appellate

Court, he will be put on such duties as might be considered suitable by the General Manager. If, during this period, he is unable to attend duty on account of lock-up, etc. or otherwise desires to take leave, he will be granted such leave including leave without pay as may be due to him in accordance with the provisions of D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952.

(5) The serious departmental action of termination of services will not be taken against a driver if he is convicted by the court for an offence which is committed by him for the first time during his service in this organization. This conviction will, however, be taken into consideration while deciding the nature of departmental action to be taken against him for a subsequent offence. No departmental action will be taken against a driver, who is convicted in an offence which is due to some defects or lack of some equipment in a bus.

14. Even though by way of an affidavit dated 15.04.2010 filed before us the counsel for the petitioner took a stand that in the last three years benefits of these circulars have not been given to any employee but the reason thereof was that there was no conviction in those years against the drivers. However, he has still not been able to tell us as to why circulars were not withdrawn.

15. The learned counsel appearing for the petitioner also tried to submit that the circulars issued by the petitioner are only guidelines and not rules. However, a perusal of Rule 15 of DRTA (Conditions of Appointment and Service) Regulation, 1952 goes to show that the petitioner is authorized under the rules to issue standing orders governing the conduct of its employees, breaching whereof amounts to misconduct. These circulars can be with respect to all the issues

pertaining to conduct of an employee of the Corporation. Therefore, by virtue of Clause 15 of the aforesaid rules the circulars comes in the definition of delegated legislation and thus are binding at least against the petitioner.

16. As such, we do not find any infirmity in the order passed by the Tribunal calling for any interference by this Court under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

17. All the pending applications shall also stand disposed of.

MOOL CHAND GARG, J.

April 28, 2010
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ANIL KUMAR, J.