

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

+ **W.P.(C) No.7015/2010**

% **Date of Decision: 10.03.2011**

Delhi Transport Corporation Petitioner

Through Mr. J.S. Bhasin, Advocate.

Versus

Sh. Milap Chand Grover Respondent

Through Mr. Anil Mittal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

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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 |

ANIL KUMAR, J.

1. The petitioner, Delhi Transport Corporation has challenged the order dated 2nd June, 2010 passed by the Central Administrative Tribunal, Principal Bench in TA 1370/2009 titled as “Milap Chand Grover, Conductor Vs. Delhi Transport Corporation” allowing the original application of the respondent and directing the petitioner to pay full back wages to the respondent for the period from 8th March, 1996 to 16th October, 2002 and consequently to pay 75% of the wages to the respondent and to also consider this period for

seniority, promotion and other benefits of the respondent, which were disallowed by the petitioner by order dated 4th August, 2006.

2. Brief facts to comprehend the controversy between the parties are that a complaint was made against the respondent and other employees by a Ticket Inspector for assaulting him. The departmental inquiry had been ordered. Thereafter, charge sheet dated 17th January, 1992 was issued against the respondent on the ground of misconduct, on account of the incident of 12th December, 1991 in which the respondent had allegedly assaulted the Ticket Inspector.

3. The disciplinary authority pursuant to the inquiry report where the charges against the respondent were made out, passed the Order dated 5th October, 1992 removing the respondent from the service. The order of removal dated 5th October, 1992 was challenged in a writ petition being WP(C) No. 3623/1992 which was disposed of by order dated 6th February, 1995. While quashing the removal order dated 5th October, 1992, this Court also directed the petitioner to provide the respondent with a copy of the inquiry report. The respondent was further permitted to make a representation to the show cause notice and the petitioner was directed to take appropriate action after considering the representation of the

respondent in accordance with law. In addition the respondent was reinstated with back wages.

4. On 8th March, 1996, the petitioner again passed the order of removal of respondent from service. The order of removal was passed after giving the copy of inquiry report and considering the representation of the respondent. The order of removal from service of the respondent after considering his representation was challenged by him by filing another writ petition being WP(C) No. 305/1997.

5. The writ petition being WP(C) No. 305/1997 was allowed by order dated 23rd April, 2002 and the show cause notice issued to the respondent dated 22nd September, 1992 and the order of removal dated 8th March, 1996 passed after giving copy of inquiry report to the respondent were quashed. The petitioner was, however, given liberty to issue a fresh notice to the respondent incorporating the reasons for disagreeing with the report of the inquiry officer and calling upon the respondent to show cause as to why the disciplinary authority is entitled to differ from the inquiry report and thereafter the petitioner was directed to proceed in accordance with law against the respondent. By order dated 10th May, 2002, the request of the

petitioner to carry out certain corrections in the order dated 23rd April, 2002 was allowed.

6. Thereafter, the petitioner was reinstated by communication dated 17th October, 2002. Another corrigendum dated 6th August, 2003 was issued intimating the respondent that he would be entitled for all the consequential benefits for the period 17th October, 2002 to 6th August, 2003. The respondent was, however, communicated specifically that he would not be entitled to back wages for the period of 8th March, 1996 to 16th October, 2002.

7. The respondent challenged the corrigendum dated 6th August, 2003 whereby it was held that the respondent shall not be entitled to back wages for the period of 8th March, 1996 to 16th October, 2002 by filing another writ petition bearing WP(C) No. 7221/2004. The respondent had also filed a contempt petition being C.C.P No. 318/2002. However, in view of the communication dated 17th October, 2002 and corrigendum dated 6th August, 2003, the contempt petition was disposed of by order dated 17th September, 2003. The respondent had also filed a Letters Patent Appeal being LPA No. 43/2003 titled as “Milap Chand Grover Vs. DTC and Ors.” which was dismissed as withdrawn by order dated 27th January, 2004.

8. Pursuant to the order dated 23rd April, 2002, disposing of the writ petition in WP(C) No. 305/1997 wherein the order of removal was set aside and the petitioner was permitted to issue a fresh notice to the respondent stipulating the reasons for disagreeing with the report of the inquiry officer, a show cause notice dated 25th November, 2002 was issued, which was duly replied by the respondent. After considering the reply filed by the respondent, by communication dated 1st February, 2005 the punishment of reversion of respondent to the initial stage from Rs.4030/- to Rs.3050/- in the time scale of pay for a period of three years w.e.f. 1st February, 2005 instead of punishment of removal of respondent from the service was imposed. The punishment imposed on the respondent was not challenged by him. Another writ petition being WP(C) No. 7221/2004 which was filed against the corrigendum dated 6th August, 2003 was disposed of by the order dated 29th March, 2006 directing the petitioner to determine the quantum of back wages for the period of 8th March, 1996 to 16th October, 2002.

9. Pursuant to the order dated 29th March, 2006, a speaking order dated 4th August, 2006 was passed by the petitioner. By this order the respondent was awarded 25% back wages for the period of 8th March, 1996 to 16th October, 2002. The Court also discharged

the notice issued in another contempt petition being C.C.P No. 865/2006 by order dated 16th November, 2006 on account of communication dated 4th August, 2006 communicated to the respondent awarding 25% of back wages for the period 8th March, 1996 to 16th October, 2002.

10. The respondent, thereafter, challenged the order dated 4th August, 2006 awarding 25% of back wages for the relevant period by filing another writ petition being writ petition being WP(C) No. 1569/2007 titled as “Milap Chand Grover, Conductor Vs. Delhi Transport Corporation” and sought direction to the petitioner to grant the respondent full back wages and consequential benefits from 8th March, 1996 till 16th October, 2002 with interest @ 18% per annum.

11. The said writ petition was transferred to Central Administrative Tribunal and was renumbered as TA No.1370/2009. The Tribunal allowed the writ petition of the respondent and set aside the order dated 4th August, 2006, whereby 25% of the back wages were awarded to the respondent for the period 8th March, 1996 till August, 2002 and directed the petitioner to pay full back wages for the period 8th March, 1996 to 16th October, 2002 and as 25% of the back wages had already been paid, directed the petitioner to pay balance 75% of

the back wages within a period of two months from the date of receipt of copy of the order.

12. The Tribunal relied on UOI Vs. Madusudan Tushar (2004) SCC (L&S) 29 holding that when a dismissal is held bad for want of following the principles of natural justice, back wages cannot be denied. The Tribunal further held that the wrongful act of the petitioner, which has been declared in judicial review as not sustainable and the respondent had been kept away from the duty and he was incapacitated to perform duties on that account and since the respondent was not employed for the period 8th March, 1996 to 16th October, 2002 on account of act imputable to the petitioner, therefore, the respondent is entitled for back wages and consequential benefits. The Tribunal also held that the reason detailed by the petitioner in order dated 4th August, 2006 about long period of litigation and financial position of the petitioner, do not obviate or obliterate claim of the respondent.

13. The Tribunal also held that allowing only 25% of back wages without giving any apt reasons, is not sustainable in view of the ratio of Union of India Vs. Kuldeep Singh, AIR 2004 (SC) 827.

14. The petitioner/DTC has challenged the order of the Tribunal dated 2nd June, 2010, primarily on the ground that pursuant to the disciplinary proceedings and the litigation between the petitioner and respondent, ultimately the respondent had been awarded punishment of reduction of the pay of the respondent to the initial stage for a period of three years in the time scale of conductor. Since the order dated 1st February, 2005 had not been challenged by the respondent, therefore, the respondent could not invoke that he has been completely exonerated and he was not found blameworthy and he would be entitled for the benefit of entire salary. The learned counsel for the petitioner has relied on State of Uttar Pradesh & Ors. Vs. Rajpal Singh (2010) 5 SCC 783 where the Supreme Court had set aside the order of the High Court awarding 50% of the back wages taking into consideration the nature of charges against the delinquent and had declined to award any back wages. Reliance is also placed on (2007) 11 SCC 632, UOI Vs. B.M. Jha, where it was held that on account of notional promotion, the employee would not be entitled for emoluments from the retrospective date.

15. The learned counsel for the petitioner has also referred to (2009) 15 SCC 194 Upekshit Samaj Kalyan Samiti, Ballarpur Vs. Education Officer (Secondary) & Ors., where the direction of the Courts below to grant full back wages were modified and the

employee was granted only 50% of the back wages since the employee had not worked for the disputed period. The reliance has also been placed by the learned counsel for the petitioner on (2004) 1 SCC 43 =Manu/SC/0884/2003 holding that when a reinstatement is ordered in appeal or review the authorities, the specific order regarding the pay and allowance to be paid to the govt. servant for the period of his absence from duty preceding the dismissal, removal or compulsory retirement, as the case may be, is to be passed by the authorities. But whether the employee would be entitled to back wages and other benefits from the date of his dismissal to the date of his reinstatement, it ultimately ordered, should invariably be left to be decided by the Authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. In the case relied on by the petitioner, the employee was found guilty after an inquiry but the copy of the report was not furnished to the employee and the show cause notice was also not served. The order reinstating the employee but holding that he would not be entitled to back wages, was upheld by the Supreme Court and it was held that he would not be entitled for back wages for the period he was out of service. The learned counsel for the petitioner has also relied on (2007) 9 SCC 63 Vijay Singh Vs. UOI & Ors., where the employee, a police personnel was held not entitled to back wages for the period

between the dates of order of dismissal and reinstatement in service on the principal of “no work no pay”.

16. The petitioner, in the circumstances, has contended that the Disciplinary proceedings against the respondent ultimately culminated in reduction of pay scale whereby the respondent was reverted to the initial stage from Rs.4030/- to Rs.3050/- in time scale of pay for a period of three years w.e.f. 1st February, 2005 which order was not even challenged by the respondent and therefore, consequent thereto if the petitioner has granted 25% of the back wages to the respondent for the period 8th March, 1996 to 16th October, 2002, the respondent cannot contend that the order is vitiated on the grounds as alleged by the respondent.

17. The learned counsel for the respondent/employee Mr. Mittal has very vehemently contended that order of removal were passed against the respondent which were set aside. The order of removal was first set aside as the copy of the inquiry report was not provided and thereafter again the punishment was awarded without giving an appropriate notice by the disciplinary authority communicating the reasons for dis-agreeing with the report of the inquiry officer. Mr. Mittal, learned counsel for the respondent, has contended that in the circumstances, penalty had been imposed by the petitioner on the

respondent in complete denial of principles of natural justice and therefore, for the said period, if the petitioner had not been able to work depending that the petitioner did not want to work but because of the order of removal passed, which could not be sustained by the petitioner before the High Court, the respondent was prevented from doing any work and therefore, the petitioners are not justified in awarding only 25% of the back wages pursuant to order dated 4th August, 2006 for the period 8th March, 1996 to 16th October, 2002.

18. This Court has heard the learned counsel for the parties in detail. Though the orders of removal passed against the respondent were first set aside, first on the ground that the respondent was not given the copy of the inquiry report, and thereafter, again on the ground that an appropriate notice disclosing the reasons by the Disciplinary Authority, was not given. However, consequent to setting aside of orders of removal passed against the respondent, the petitioner was allowed to pass an appropriate order considering the representation filed by the respondent to the fresh notice, which was to be given by the Disciplinary Authority to the respondent disclosing the reason for disagreeing with the report of the inquiry officer. After considering the pleas and contentions of the respondent, disciplinary authority had finally passed an order dated 1st February, 2005 imposing a punishment of reduction of pay whereby the respondent

was reverted to the initial stage from Rs.4030/- to Rs.3050/- in the time scale of pay for a period of three years w.e.f. 1st February, 2005. This order of punishment reverting the pay scale of the respondent to the initial stage was not challenged. Mr. Mittal, learned counsel for the respondent, therefore, cannot contend that the disciplinary proceedings initiated against the respondent had resulted in complete exoneration of the respondent. If the disciplinary proceedings have resulted in some sort of punishment against the respondent/employee and if he was under suspension for certain period whether he would be entitled for full back wages or not.

19. This Court, in such proceedings including the contempt proceedings, which were initiated against the petitioner had allowed the petitioner to pass a speaking order regarding the back wages and consequently, the order dated 4th August, 2006 was passed holding that the respondent shall be entitled for 25% of the back wages for the period 8th March, 1996 to 16th October, 2006, which wages were paid to the respondent and were accepted by him.

20. The respondent had filed the writ petition being WP(C) No. 1569/2007 titled as Milap Chand Grover, conductor Vs. DTC, which was later on transferred to the Tribunal and registered as TA 1370/2009 on 18th February, 2007 almost after a year after he had

received 25% of the back wages. If the disciplinary proceedings initiated against the respondent had resulted into punishment awarded to him, whether the respondent shall be entitled for any back wages despite no work done by the respondent during the period 8th March, 1996 to 16th October, 2002.

21. The learned counsel Mr. Mittal has not cited any precedent that despite having not worked for said period and disciplinary proceedings initiated against him resulting into punishment of reversion of the pay scale of the respondent, he would be entitled to full back wages. Rather in *UOI & Ors. v. K.V. Janaki Raman*, (1991) 4 SCC 109, the Court had held that normal rule of “no work no pay” is not applicable to the cases where the employee although willing to work, is kept away from work by the authorities for no fault of his but to a case where the employee remains away from the work for his own reasons. It was held that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, where the disciplinary proceedings results into punishment or where the non-availability of the employee is attributable on account of his

acts and conduct, in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Relevant para 26 of K.V. Janaki Raman (supra) is as under:-

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual

promotion”, we direct that in place of the said sentence the following sentence be read in the Memorandum:

“However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

22. By order dated 4th August, 2006, the petitioner had considered the facts and thereafter on the basis of facts and the legal opinion and considering the long period of litigation, the financial position of DTC and other relevant issues had awarded 25% of the back wages for the period 8th March, 1996 to 16th October, 2002. The relevant order dated 4th August, 2006 is as under:-

“Shri Milap Chand, Conductor was removed from DTC on 5.10.1992 since he manhandled an ATI. Aggrieved with the decision of management the employee approached to the Court. On 06.02.1995 the employee was reinstated as per the direction of High Court with full wages. He was again removed from the service on 08.03.1996 after supplying the copy of the enquiry findings. There was prolonged litigation on the issue. On 23.04.2002 Hon’ble high Court set aside the removal order and employee was reinstated w.e.f. 17.10.2002 without back wages. The workman was issued fresh show-cause notice on 25.11.2002 and punishment of removal dated 08.03.1996 was reduced to initial stage for three years w.e.f. 01.02.2005. The employee approached to the Court for back wages from the period from 08.03.1996 to 16.10.2002. Finally Court directed

on 29.03.2006 to decide about the quantum of back wages.

Whereas after examining the material facts on record and keeping in view the legal opinion and in pursuance of directions of Hon'ble High Court dated 29.03.2006 and after considering the long period of litigation, the financial position of DTC and other relevant issues, it is concluded that 25% back wages for the period from 08.03.1996 to 16.10.2002 be paid to Shri Milap Chand Grover. It is ordered accordingly. This issues with the approval of the competent authority."

23. Since the respondent was not completely exonerated and the disciplinary proceedings because of which he could not work for the period 8th March, 1996 to 16th October, 2002 had resulted in punishment imposed on him. In circumstances awarding only 25% of the back wages had by the respondent cannot be termed to be illegal or unsustainable or contrary to any rules and regulations and the order of the petitioner cannot be held to be vitiated on any of the grounds raised by the respondent.

24. In the circumstances for the forgoing reasons the writ petition is allowed and the order of the Tribunal passed by the Central Administrative Tribunal in TA 1370/2009 dated 2nd June, 2010 awarding full back wages for the period 8th March, 1996 to 16th October, 2000 is set aside and the TA 1370 of 2009 filed by the respondent is dismissal. The respondent was awarded 25% of the back wages for the period 8th March, 1996 to 16th October, 2002

which has already been received by him, therefore, the respondent shall not be entitled for any more back wages for the said period from the petitioner. With these directions the writ petition is allowed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

MARCH 10, 2011
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VEENA BIRBAL, J.