

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

+ **W.P.(C) 7531/2002 and CM APPL No. 1881/2005**

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Reserved on: 29th August, 2012

Decided on: 12th December, 2012

D.T.C.

..... Petitioner

Through: Mr. Manish Garg and Ms. Shweta
Garg, Advocates.

versus

TARA CHAND & ANR.

.....Respondents

Through: Mr. S.N. Sharma, Advocate for
Respondent No. 1.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner impugns the award dated 18th September, 2000 whereby the enquiry conducted by the Petitioner against the workman Tara Chand was held to be illegal and invalid and the same was set aside. The Petitioner also impugns the award dated 4th January, 2002 whereby it has been held that the removal of the workman from service was illegal and unjustified and thus directed reinstatement of the workman with full back wages and continuity of service.

2. The facts in nutshell are that the workman Tara Chand was appointed as a driver on 21st November, 1980. On 5th December, 1988 his vehicle met with a fatal accident. On 13th December, 1988 a charge sheet was issued to him stating that the act of rash and negligent driving was in violation of Para 24 of the Executive Instructions and Standing Order governing conduct of DTC employees and Clause No. 19 (f) and (m) of the DRTA (Conditions of Appointment and Services) Regulations, 1952 (in short 'the DRTA

Regulations’). After the reply of the workman, the enquiry was conducted and the Enquiry Officer came to the conclusion that the workman had misconducted himself and on 14th February, 1989 a show cause notice was given as to why the workman Tara Chand should not be removed from service and finally on 16th March, 1989 the disciplinary authority passed the order of removal. The workman filed a claim before the Conciliation Officer pursuant to which a reference was made on the following terms:

“Whether the removal from service of Shri Tara Chand is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. A primary issue was framed by the Tribunal as to whether a fair and proper inquiry was held. On the said issue vide its order dated 18th September, 2000 the Tribunal found that the charge in the criminal case and the allegations made in the charge sheet issued to the workman were the same to which the circular dated 19th December, 1973 Ex. WW1/3 clearly applied, thus the Management could not have initiated any disciplinary enquiry in the matter. It was observed that the Management not only initiated an enquiry but also removed the workman from the service after holding him guilty of the charge of which he has been acquitted. This was contrary to Para 5 of the Office order No. 201 dated 24th November, 1954 which stated that departmental action of termination of service will not be taken against a driver if he is convicted during his service in the organization and thus the enquiry was held to be illegal and invalid and the punishment of removal was set aside. Since the Petitioner/Management did not lead any evidence to prove the charges against the workman the issue framed on the basis of terms of reference was also decided against it.

4. Learned counsel for the Petitioner contends that the Circular dated 24th November, 1954 has no application to the facts of the present case as the same only prescribes the procedure for dealing with criminal prosecution/conviction. The charges against the workman in the criminal trial were for causing death by rash and negligent act, that is, for offences under Sections 279/304A IPC whereas in the disciplinary proceedings the workman was charge sheeted for violation of Para 24 of the Executive Instructions for the Driver and clause 19 (f) and (m) of the DRTA Regulations. Thus the finding of the learned Trial Court that the disciplinary proceedings were initiated on the same charge as that of criminal trial is wholly erroneous. In support of this contention it is stated that besides the violation involved, the departmental proceedings considered the past record of the workman, the statement of ATI was also recorded who was cross-examined by the Respondent and the Enquiry Officer has returned a categorical finding that the accident could have been avoided by turning the bus toward the left side. It is next contended that the two circulars are not conclusive and only incorporate a rule of prudence and do not vitiate the inquiry proceedings. Reliance is placed on *DTC vs. Shyam Singh, W.P. (C) No. 1420/2002* decided on 29th September, 2012. It is further contended that pursuant to the order passed by this Court the workman Tara Chand was reinstated on 26th April, 2004 and thereafter the workman superannuated on 3rd June, 2004 at the age of 59 years as he was not found medically fit. Thereafter since he passed away on 26th June, 2007, in the present writ petition the legal heirs of the deceased workman have already been brought on record and thus the only issue surviving is regarding the compensation the legal heirs are entitled to, if any,. Reliance is also placed on *Sajjan Singh*

Grewal vs. DTC and others, 2001 (9) AD Delhi 75, DTC vs. Kishan Lal, Ex. Driver, LPA No. 626/2010 decided on 8th February, 2011. It is further stated that the workman was paid arrears of wages under Section 17B of the Industrial Disputes Act, 1947 on 17th June, 2004 amounting to Rs. 90,875/-, thus no claim on account of back wages remains due towards the workman. Hence the petition be allowed.

5. Learned counsel for the Respondent on the other hand contends that the circular of the Petitioner itself states that if the charges in the disciplinary enquiry and the criminal trial are same then no disciplinary enquiry can be conducted. Thus the Petitioner could not have charge sheeted the workman much less terminated him. Reliance is placed on *Union of India vs. Madhusudan Prasad, 2004 (1) SCC 43* to contend that when principles of natural justice are not followed then the workman is entitled to full back wages from the date of his removal. It is thus prayed that full back wages from the date of removal, that is, from 16th March, 1989 to 3rd June, 2004, pension of the workman from 4th June, 2004 till the date of death, that is, 22nd June, 2007, family pension to the legal heirs and compensation of Rs. 1 lakhs be awarded.

6. I have heard learned counsel for the parties.

7. The issue in the present petition revolves around the Circular dated 19th December, 1973 and Clause 5 of the Office Order No. 201 dated 24th November, 1954 which are reproduced as under:

“DELHI TRANSPORT CORPORATION
I.P. ESTATE: NEW DELHI

No. Adm I-3(18)/73

Dated 19.12.73

ADMINISTRATION & ESTABLISHMENT MANUAL
ORDER NO. 21

Sub: Suspension Issue of charge-sheet.

Instance have come to notice where charge-sheet are issued to the employees placed under suspension irrespective of the fact whether they were placed under suspension as a result of serious criminal charge against them or whether it is as a result of an act connected with their official duties on the basis of Para 4 of the Admn. & Establishment Manual Order No. 7 dated 11.9.73. It is, hereby, clarified that where employees are placed under suspension as a result of serious criminal action against, them, they need not be charge-sheeted and action or removal etc. will be considered on the basis of result of the judicial case without initiating disciplinary enquiry in the matter. In cases, however, where the act of employees for disciplinary enquiry be ordered if the charges are materially different from the Criminal charges.

Sd/-
(S.K. SHARMA)
GENERAL MANAGER

All Officer in the Headquarters, Depots, Central Workshop Depot Scindia House, Stores Deptt.

All office superintendents, Accountants and Asstt. Incharge (in the H.Qrs. Central workshop, sub Depot, Scindia House, Internal Audit Unit.

The file i.e. file of Shri Saroop Singh Driver, B.No. 115 in personnel Deptt.

O.S. (A) with 50 spare copies.”

“DELHI TRANSPORT CORPORATION
SCINDIA HOUSE: NEW DELHI

ADMI-I-B (1)/54

Dated 24th Nov 54.

OFFICE ORDER NO. 201

SUB: PROCEDURE FOR DISPOSAL OF CASES IN WHICH
DTC EMPLOYEES ARE PROSECUTED WHILE ON DUTY.

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5. The serious departmental action of terminating of service 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”

8. At this stage it would also be relevant to reproduce Para 24 of the Executive instructions of the Delhi Road Transport Authority with regard to the duties of driver which reads as:

“24. The driver shall take every precaution to avoid accident either to person or property. He shall always drive carefully and shall take no risks or chances while driving through crowded places or at cross roads or across other vehicles on the road. When approaching a road under repairs or a frightened animal, the speed shall be slackened and, if necessary, the bus stopped. It should not be assumed that the pedestrian or other user of the road is aware of the approaching bus but the driver should make sure of his awareness. If an accident occurs, however small, and it is not attended to by an inspector or checker, the driver shall report to the Traffic Superintendent or

other Officer on Duty in the Depot the accident and furnish full details including names and addresses of any witnesses, etc.”

9. A perusal of the Executive Instructions issued for duties of the driver and Clauses 19 (f) and (m) of the DRTA Regulations show that if a workman is in habitual breach of any rules, law, instructions or orders etc. applicable to the employees of the Authority and is involved in activity detrimental to the activities of the organization, disciplinary proceedings can be conducted against him. In the present case the charge sheet against the workman was not for the criminal offence of causing death by rash and negligent act but for violating the instructions, that is, violating the Executive Instructions that he will make every possible effort to avoid any accident. In the case in hand as per the enquiry proceedings the workman was found to be violating the byelaws and the instructions earlier also. The other imputations against the Respondent were included in setting the bus before the scheduled time, refusing to work upto the remaining period, also misbehaving with the Superintendent, on 19th July, 1985, causing accident wherein the Committee declared the workman to be at fault, did not stop the bus at Om Vihar bus stop on signal given by the checking staff on 6th May, 1987, accident at bus No. 3252 for which he was fined by the Court and then challaned under Section 78/112 of the Motor Vehicle Act on 26th February, 1978.

10. It is thus apparent that the criminal trial of the workman was for a distinct offence and the charge sheet along with the past history was for a different cause of action, that is, for violating the Para 24 of the Executive Instructions for the drivers and the Clause 19 (f) and (m) of the DRTA Regulations. Learned Tribunal only on the basis that the charge in the

criminal proceedings was identical to the charge in the disciplinary proceedings relying on the circulars of the Petitioner came to the conclusion that initiation of enquiry proceedings was not justified. In *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491 it was held that the executive instructions of the Corporation were mere guidelines and instructions of prudence, not rules that bind or vitiate in the violation. In view of the discussion above the finding of the learned Tribunal is wholly erroneous as the charges in the two charge sheets, that is, in the criminal proceedings and in the disciplinary proceedings were for different causes of action. Hence the impugned order dated 18th September, 2000 holding the enquiry to be illegal and invalid is set aside.

11. The next issue that arises for consideration is that for violation of Para 24 of the Executive Instructions for the drivers and clause 19 (f) and (m) of DRTA and the past conduct of the Respondent whether the punishment of removal is justified. In view of the serious lapses in driving and past conduct of the Respondent as stated above, it cannot be said that the punishment of dismissal from service was a disproportionate punishment. The Respondent workman has since passed away on 22nd June, 2007. The impugned awards dated 18th September, 2000 and 4th January, 2002 are thus, set aside.

12. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

DECEMBER 12, 2012
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