

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.09.2014

+ **W.P.(C) 8135/2006**

RAJINDER SINGH

..... Petitioner

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Pawan Sharma & Mr Ankit Sharma.

For the Respondent : Mr U.N. Tiwary.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an award dated 28.01.2006 passed by the Labour Court (hereinafter referred to as the 'impugned award') whereby the disputes referred to the Labour Court were decided against him.

2. The services of the petitioner had been terminated by the respondent (hereinafter referred to as the 'DTC') on account of a fatal accident that had occurred on 31.03.1986, while the petitioner was driving a bus and an FIR was lodged with respect to the said incident. The proceedings that ensued thereafter, culminated in the petitioner being convicted for offences under Section 279 and Section 304A of the Indian Penal Code (in short 'IPC'). On 23.01.1999, the Trial Court sentenced the petitioner to one year and three months of rigorous imprisonment and a fine of ₹4,500/-.

3. In view of the petitioner being convicted by the Trial Court, the DTC dismissed the petitioner from its services by a letter dated 09.02.1999, w.e.f. 23.01.1999.

4. The petitioner raised an industrial dispute challenging his dismissal from services and the following question was referred by the Government of NCT of Delhi to the Labour Court:-

“Whether the punishment imposed vide order dated 9.2.99 on Sh. Rajinder Singh, S/o Sh. Mehar Singh by the mgt. Is illegal and/or unjustified and if so, what sum of money as monetary relief alongwith consequential benefit in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

5. The Tribunal answered the reference in favour of the DTC and upheld the order dismissing the petitioner from services of the DTC.

6. The petitioner has challenged the impugned award and the order of his dismissal, principally, on the ground that it is contrary to the DTC's Office Order dated 24.11.1954. In particular, the petitioner has referred to paragraphs 4 and 5 of the said Office Order which read as under:-

“(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 organization during the period between the decision of the Lower Court and the Appellate Court, he will be put on such duties as might e

constituted 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.”

7. The petitioner has further contended that in similar cases, the DTC has shown a lenient view and has permitted the employees to serve in the establishment despite being convicted of similar offences. The petitioner has also referred the decision of the Central Administrative Tribunal in **Jaipal Singh v. Delhi Transport Corporation**: TA No. 1314/2009 decided on 31.08.2009 in support of his contention that a conviction in a criminal Court would not automatically involve removal or dismissal from service.

8. The learned counsel for the respondent has contested the submissions made on behalf of the petitioner and supported the impugned award. The learned counsel has referred to the decision of the Supreme Court in **State of Haryana & Anr. v. Rattan Singh**: (1997) 2 SCC 491 and a decision of this Court in **Jage Ram v. DTC**: (2013) 2 LLN 365 (Del.) in support of his contention that Office Orders are merely guidelines for departmental action

and cannot be considered as binding so as to denude the DTC of its discretion, as an employer, to dispense with the services of an employee for sufficient reason.

9. I have heard the learned counsel for the parties at length.

10. It is not in dispute that the petitioner was dismissed from services with the DTC on account of the petitioner being convicted for rash and negligent driving (offence under Section 279 of IPC) and for causing death by negligence (offence under Section 304A of IPC). The incident for which the petitioner was convicted occurred during the course of his employment and discharge of his duties as a driver. It is not in dispute that an offence of rash and negligent driving would amount to misconduct. Admittedly, in the event an employee's services are terminated, in terms of Clause 15(2)(vii) Delhi Road Transport Authority (Conditions of Appointment and Service) Regulation, 1952, the DTC is required to hold a proper inquiry except where disciplinary action is taken on the basis of facts placed before a Criminal Court. Undeniably, the petitioner's dismissal from service is based entirely on his conviction for offences under Sections 279 and 304A of IPC and, therefore, the DTC was not required to hold any further inquiry. The petitioner's contention that the DTC, in similar cases, had taken lenient view and therefore, the punishment of dismissal ought not to be imposed on the petitioner, cannot be accepted for the following reasons:

10.1. First of all, it is not in dispute that, there are twenty six adverse entries in the service record of the petitioner. The Labour Court took note of the same, and in my view rightly so, in

answering the reference against the petitioner. The said adverse entries include damage to road and misbehaving in an intoxicated state. The petitioner had been repeatedly warned and censured in the past in respect of his misconduct.

10.2. Secondly, it is indisputable that an offence of causing death by rash and negligent driving is a serious one and cannot be underplayed. Thus, in the given circumstances, the decision of the DTC to dismiss the petitioner from its services cannot be described as unreasonable or arbitrary.

10.3. Thirdly, even if the DTC had taken a lenient view in other cases that would not necessarily lead to a conclusion that the penalty imposed by the DTC in the present case is unwarranted. In my view, the DTC was well within its rights to be cautious and dispense with service of a bus driver who had been found to be criminally negligent.

11. The petitioner's contention that since the petitioner's offence (for which he was convicted by the Trial Court) was committed for the first time, no action for termination of its service could be taken in terms of paragraph 5 of the Office Order dated 24.11.1954, is also without merit. Office Orders and circulars issued by the DTC are internal guidelines for the purposes of its functioning. The DTC was well within its rights to take the serious note of the petitioner's conviction and remove him from services. Such Office Orders/circulars issued by the DTC for its internal functioning, cannot be read as statutes or as rigid doctrines which do not

permit any leeway to the DTC. Paragraph 5 of Office Order dated 24.11.1954 only indicates that serious departmental action of termination of services should not be taken against a driver if he is convicted by a court for an offence which is committed by him for the first time during his service with the DTC.

12. Plainly, the Office Order dated 24.11.1954 is only to provide broad guidance to the DTC. The offences may be of varying degrees and while inflicting disciplinary action, the DTC must, undoubtedly, take into account whether its employee is a first time offender. However, the said Office Order cannot be read to mean that in no case of a first time offence, a serious view cannot be taken by the DTC.

13. I find it difficult to agree with the view taken by the Central Administrative Tribunal in ***Jaipal Singh*** (*supra*) that an employee cannot be dismissed on account of being convicted for an offence which had been committed by him for the first time. In my view, this decision is erroneous and contrary to a later decision of this Court in ***Jage Ram*** (*supra*).

14. This Court in ***Jage Ram*** (*supra*) has rejected the contention that the aforesaid Office Order dated 24.11.1954 was binding. The relevant extract of the said decision is quoted below:-

“10. The Petitioner does not dispute his conviction for offence under Section 279/304A Indian Penal Code, 1860 and the dismissal of the appeal by the learned Sessions Judge. His case is that the revision was still pending. On a specific query put by this Court, the Petitioner has not been able to reply about the outcome of the revision pending before the Punjab and Haryana High Court. Thus, the

Respondent/ management was justified in removing the Petitioner on the proven misconduct by way of a criminal trial.

11. As regards the contention of the learned counsel for the Petitioner that in view of the office order No. 201 no punishment should have been awarded on the first conviction, the Hon'ble Supreme Court in State of Haryana & Anr. Vs. Rattan Singh (1997) 2 SCC 491 has held that non-compliance of the departmental instructions that the statements of the passengers should be recorded is a rule of prudence and is not a rule that binds or vitiates for violation. In the present case, the misconduct of the Petitioner is very serious. The Petitioner was highly rash and negligent in driving inasmuch as due to the accident 5 lives were lost and 17 persons were injured. Each case has to be considered in the light of the facts therein.”

15. The Supreme Court in the case of ***Rattan Singh*** (*supra*) had also held that instructions given in respect of domestic inquiries were instructions of prudence and merely because the same were not followed would not render an inquiry invalid. Whilst the said Office Order would certainly guide the DTC in taking disciplinary action, it cannot be stated that management of the DTC is divested of its discretion, in independently evaluating different cases. In the present case, it is an admitted fact that there are 26 adverse entries and the offence for which the petitioner has been convicted is a serious one; the negligence on the part of the petitioner resulted in a road fatality. The proportionality of the punishment imposed on the petitioner has to be viewed in the perspective of the offence for which the petitioner has been held guilty as well as his past conduct.

16. The Labour Court considered the totality of the circumstances and held as under:-

“18. Taking all these facts into consideration including the seriousness of the charge for which workman was convicted i.e. relating to a fatal accident where a person dies, merely because in one or two cases a different stand has been taken by the management while dealing with the concerned workman, it cannot be said, that the workman would also be entitled for a lenient punishment. In this regard, it may also be observed that presently there is an increase in the road side accident and it is heard that one or other has succumbed to death having met to an accident having sustained injuries in a road side accident it stand consistently by the court that in such like matters lenience should not be done while awarding the punishment. Moreover, in this case the order of conviction of the workman passed by Khanna Court was also confirmed in appeal by the Sessions Judge. Taking all these facts into consideration it is not a fit case where any indulgence should be granted by this tribunal by exercising its power as stated under Section 11-A of the I.D. Act.”

17. The view taken by the Labour Court is neither patently erroneous nor uninformed by reason. The present petition is bereft of any merit and is, accordingly, dismissed. The parties are left to bear their own costs.

SEPTEMBER 11, 2014
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VIBHU BAKHRU, J