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

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Decided on: 21.04.2017

+ **W.P.(C) 3377/2017**

DELHI TRANSPORT CORPORATION & ORS Petitioners
Through: **Ms. Avnish Ahlawat, Advocate.**

versus

NARESH KUMAR Respondent

Through: **Mr. Sunny Choudhary, Advocate**
along with **Mr. Manoj Kumar** and **Mr. Abhimannu Singh, Advocates** with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (OPEN COURT)

Caveat No.379/2017

Since the caveator has put in appearance, the caveat stands
discharged.

W.P.(C) 3377/2017 & C.M. No. 14762/2017 (for stay)

1. Vide present writ petition the petitioners have assailed the order
dated 20.12.2016 of the Central Administrative Tribunal, Principal
Bench, New Delhi in O.A.1597/2017.

2. The brief facts of the case are that the respondent had applied for the post of driver with the petitioner corporation in the year 2008. Since he cleared the written test, trade test and was declared medically fit, he was offered appointment to the post of driver on the basis of selection done by DSSSB. On his acceptance of the offer, he was sent for training for four weeks at DTC Training School. After completion of his training, he was appointed as a driver with effect from 14.07.2010 vide order dated 12.07.2010. He was again asked to appear for his medical examination vide communication dated 19.10.2010 and was declared “unfit” due to left elbow defect and was terminated from service on the ground of his being medically “unfit” vide order dated 20.05.2011. The respondent challenged his termination order before the Tribunal in O.A.2693/2011. Vide the order dated 22.02.2012, the Tribunal had directed the petitioners to medically re-examine the respondent (applicant therein). This order was assailed by the petitioners before this court in W.P.(C) 3078/2012, which was dismissed by this court vide order dated 13.08.2013. The respondent was thereafter medically re-examined and was declared medically fit. However, instead of reinstating the

respondent, the petitioners issued an order dated 05.08.2014 stating that though the respondent was medically fit yet since his driving license was “Not valid for National Capital Territory”, he could not be reinstated into service as a driver. The respondent thereafter applied for the renewal of his driving license on 27.07.2014 and he was issued a new computerized license valid in Uttar Pradesh and National Capital Territory. The respondent has assailed the order dated 05.08.2014 of the petitioners before the Tribunal and the Tribunal after hearing the parties directed the petitioners to reinstate him in service from the date he was originally appointed with consequential benefits, such as back wages, promotion, seniority etc. along with an interest @ of 9 %.

3. The petitioners have assailed the impugned order on the grounds that the Tribunal has failed to appreciate that the respondent did not possess a valid license at the time of termination of his service and that the Tribunal has not properly appreciated the findings of this court in case of **Rajeev Awasthi vs. Union of India & Ors.**, CW No.3436/1998 dated 09.12.2002 wherein this court has held that any heavy vehicle transits through Delhi or being driven in Delhi will be

driven by a person who has undergone training and refresher course prescribed by the Transport Department of the Government of NCT of Delhi and shall possess a certificate to that effect from the Training and Driving Institute, Loni or any other institute specified by the concerned authorities and the fact that the respondent did not have any such certificate. It is further contended that the Tribunal has failed to appreciate that as per Rule 14 of Central Motor Vehicles Rules, 1989, the respondent ought to have undergone four weeks training. It is further argued that the respondent had not worked with the petitioners and yet the full back wages have been awarded. It is also contended that the Tribunal has failed to appreciate the fact that the petitioners had already paid salary to the respondent from the date of his appointment till 20.02.2011 i.e. the date of termination as per the directions of the Tribunal.

4. We have heard the arguments and given thoughtful consideration to the contentions of the petitioners.

5. It is apparent from the contentions of the petitioners that upon termination of his appointment by the petitioners, the respondent had challenged the order vide O.A.2693/2011. The said termination was

on the ground that the respondent was found medically unfit. During the trial in the said O.A. the petitioners had also taken the stand that the respondent was also not in possession of a valid driving license. While disposing of the said O.A., the Tribunal passed the following order:

“5. In the facts and circumstances of the case, we deem it appropriate to dispose of the present Original Application with a direction that the application should be medically examined again in some well equipped hospital of choice of respondents No. 1, 3 and 4. If in such re-examination it is again found that applicant is medically unfit for driving heavy vehicle, the copy of medical of medical board report and also the details of material/information on the basis of which the respondent arrive at a conclusion that the applicant is in possession of invalid license shall be communicated to applicant. It is made clear that the opinion of medical board and the material/information to be communicated to applicant in support of his invalid driving license would not be considered casting any stigma on applicant and would not be considered as a ground available to applicant to assail the termination order as stigmatic. Respondents shall also pay salary to applicant till 20.5.2011, i.e. when order terminating his services was passed. OA is disposed of with no orders as to cost.”

6. Subsequent to this, the respondent was medically re-examined and he was found fit. However, he was not reinstated into service on the ground that his driving license was not valid. This communication was challenged by the respondent. The tribunal has

relied on the judgment of this court in the case of **Rajeev Awasthi** (*supra*). This court in this case had issued following directions, which are reproduced as under

"Even if, Section 13 allows a driving licence issued by any authority in India to be effective throughout India, yet keeping in view the peculiar traffic conditions prevailing in Delhi stringent conditions on permit-holders of heavy transport vehicles need to be imposed which will ensure that heavy vehicles transiting through Delhi or being driven in Delhi conform to road safety norms. A compulsory condition which needs to be incorporated is that in case a heavy vehicle transits through Delhi or is being driven in Delhi it will be driven by a person who has undergone training and refresher course prescribed by the Transport Department of the Government of NCT of Delhi and shall possess a certificate to that effect from the Training and Driving Institute, Loni or any other institute specified by the concerned authorities."

7. The Tribunal had also noted that after this, the Ministry of Road Transport and Highways had issued a letter for implementation of the order of this court. Relying on the reply received on the RTI application of respondent, explaining the circumstances necessitating the stamping on the license of the respondent "Not valid for National Capital Territory", which the authority said was done in compliance of the directions of this court in **Rajeev Awasthi's** case (*supra*), the tribunal held that it only meant that after getting a certificate from an

authorised driving training institution situated in National Capital Territory, a driver could be permitted to drive in the region of NCR.

8. The petitioners have not disputed the fact that the respondent had undergone two days training for PSV badge in the Institute of Driving Training and Research managed by Maruti Udyog Limited, Loni which is an authorized training institute of Transport Department, N.C.T. of Delhi and was in possession of this certificate on 12.05.2010 i.e. before his appointment to the post of Driver. The Tribunal had also relied on the certificate issued to the respondent by petitioners and Tata Motors Ltd. certifying that the respondent had undergone five days training programme on driving for 1623 CNG Low Entry Bus and had acquired adequate knowledge on vehicle, driving controls, safety and driving skills dated 23.07.2010. Relying on these two certificates and also on the fact that the respondent had also completed four weeks training by DTC Training School, Nand Nagri Depot Complex and on the letter dated 01.12.2014 issued by Transport Authority, Baghpat explaining the reasons of the endorsement “Not valid for National Capital Territory” noted that

14. Therefore, in our view, there is no doubt at all that the applicant is fully trained and equipped to drive DTC buses

in the NCT of Delhi. Even if, for arguments sake, we were to consider the contention of the learned counsel for the respondents that the applicant may be entitled to drive all-over India and anywhere in NCR other than in NCT, the applicant having completed the training and refresher course, nothing can be held against him. We would like to clarify that letter dated 01.12.2014 of Transport Authority, Baghpat clearly states that this certificate is no longer required as Baghpat is now within the NCR region and no distinction between the NCR and NCT has been made out in this letter.

9. The arguments of the petitioner that the respondent had to undergo four weeks training as per the requirement of Section 14 of the Central Motor Vehicles Rules, 1989 before he could be considered eligible to drive in the National Capital Territory pursuant to the directions by this court in **Rajeev Awasthi's** case (*supra*) . This argument has been rejected by the tribunal observing as under:

13. Learned counsel for the respondents tried to rely on Section 14 of the Central Motor Vehicles Rules, 1989 and the website of Institute of Driving, Training & Research to assert that the applicant has not undergone the 4 weeks' training. As regards the refresher course, there is no dispute as the applicant has done 2 days' refresher course in Public Service Vehicle from a recognized institute of Loni. In fact, he has also done 5 days' course to drive low entry bus from another recognised institute of Govt. of NCT of Delhi and Tata Motors. Regarding the 4 weeks' training, as is clear from the training programme and Rule 14, the 4 weeks' training is for those candidates, who are applying for a licence and have a learner licence. In the case of the applicant, since he already has a valid licence, this

requirement of 4 weeks' training is not made out. In any case, he has undergone the 4 weeks' training from the DTC Training School, before he was formally appointed on 14.07.2010.

10. Learned counsel for the petitioners has failed to point out any illegality in the reasoning given by the Tribunal. They have also failed to point out any error in the order of the tribunal on this point.

10. The petitioners have challenged the grant of back wages to the respondent on the ground that he has not worked with the petitioners during these years and also argued that full salary from the date of appointment till the date of termination has already been paid as per earlier order of the tribunal and yet the tribunal has directed to pay back wages from the date of original appointment with interest. It is argued that the tribunal has totally ignored the principle of 'No work no wages'. The order of the tribunal for grant of back wages needs to be set aside. We have given thoughtful consideration to this aspect. It is apparent that vide the order dated 22.02.2012, while dealing with the issue of illegal termination of the respondent, in the previous O.A.2693/2011, the Tribunal had directed the petitioner to pay salary to the respondent from the date of original appointment till the date of his termination i.e. 20.05.2011. The tribunal seems to have ignored

this order while granting the back wages from the date of his original appointment along with 9 % interest vide impugned order.

11. It is a well settled principle of the law that the entitlement of the back wages on reinstatement is not automatic. The Court has to exercise its judicious discretion. The Supreme Court in ***PGI of Medical Education and Research, Chandigarh vs. Raj Kumar*** 2000 (8) SCALE 469, ***Chairman-cum-Managing Director, Coal India Ltd. & Ors. vs. Ananta Saha & Ors*** (2011) 5 SCC 142 & ***Ranchhodji Chaturji Thakore vs. Supreintendent Engineer, Gujrat Electricity Board, Himmatnagar, (Gurarat) and Another*** (1996) 11 SCC 603 has observed that the court has to exercise its power to grant back wages keeping in view the facts of the case in entirety and no straight jacket formula can be evolved for universal application. Each case requires to be considered in the backdrops of its own facts.

12. The respondent who is present in the court has also agreed to the modification of the order of the Tribunal to the extent that he will not be entitled to arrears of salary. Admittedly, the respondent has not worked for a single day after 20.05.2011. In view of the facts and circumstances of this case and also the submissions of the respondent

and the fact that the respondent has already received his salary till the date of his termination, we are of the view that the order of the tribunal granting back wages from the date of his appointment along with interest is erroneous. We uphold the order of the Tribunal to the extent that the petitioner shall reinstate the respondent in service immediately with all consequential benefits such as promotion, fixation of pay, granting seniority from the date of his initial appointment. The order is modified to the extent that the respondent is not entitled to the back wages. The respondent is directed to join the duties and report to the headquarters of Delhi Transport Corporation on 26.04.2017.

13. The writ petition along with pending application stands disposed of in these terms with no orders as to cost.

14. Copy of the order be given dasti under signatures of the Court Master.

DEEPA SHARMA, J

VIPIN SANGHI, J

APRIL 21, 2017

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