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

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Date of Decision: 13.08.2019

% **W.P.(C) Nos. 1111/2017, 1989/2019, 2031/2019, 5490/2019, 5886/2019, 1114/2017, 1118/2017, 1119/2017, 1459/2017, 1553/2017, 1554/2017, 2179/2017, 2180/2017, 2211/2017, 2233/2017, 2234/2017, 2653/2017, 2673/2017, 2675/2017, 2678/2017, 2679/2017, 2736/2017, 2743/2017, 2744/2017, 2745/2017, 2748/2017, 2749/2017, 2750/2017, 2751/2017, 2759/2017, 2762/2017, 2763/2017, 2788/2017, 2804/2017, 2887/2017, 2888/2017, 2889/2017, 2892/2017, 2900/2017, 2901/2017, 2902/2017, 2903/2017, 2904/2017, 2905/2017, 2908/2017, 2909/2017, 3305/2017, 3306/2017, 3394/2017, 3395/2017, 3396/2017, 3399/2017, 3633/2017, 3643/2017, 3655/2017, 3785/2017, 3786/2017, 3789/2017, 3790/2017, 3851/2017, 3975/2017, 3977/2017, 3978/2017, 3979/2017, 8216/2017, 3980/2017, 3984/2017, 4068/2017, 4069/2017, 4074/2017, 4158/2017, 4452/2017, 4503/2017, 4504/2017, 4508/2017, 4619/2017, 5050/2017, 5074/2017, 5077/2017, 5104/2017, 5107/2017, 5132/2017, 6041/2017, 8221/2017, 10645/2017, 11133/2017, 11134/2017, 11142/2017, 11172/2017, 11202/2017, 11209/2017, 1172/2018, 1175/2018, 1176/2018, 1177/2018, 1178/2018, 1179/2018, 1180/2018, 1182/2018, 1183/2018, 1184/2018, 5163/2018, 5171/2018, 5176/2018, 6158/2018, 6164/2018, 6222/2018, 7924/2018, 298/2019**

DELHI TRANSPORT CORPORATION & ORS.

..... Petitioner

versus

RAM PHAL & ORS.

..... Respondents

Appearance: Mrs. Avnish Ahlawat with Mr. Nitesh Kumar Singh, Ms. Laveena Arora, Advs. for petitioner in Item Nos. 49,50,51,52,53,54.

Mr. Sarfaraz Khan, Adv. for petitioner in Item Nos. 60-72, 74-89, 19, 148, 149, 150.

Mr. U.N. Tiwary with Mr. Utkarsh Tiwary, Advs. for petitioner in Item Nos. 39,45,55-59, 73,90,91,103-114. 126, 127, 145, 146, 147

Mr. L.K. Passi with Mr. Ravi Kumar, Advs. for the petitioner in Item Nos.

92-102, 120, 121, 122, 123, 124, 125.

Ms. Aditi Gupta, adv. for Petitioner in item Nos. 128-144 and 47.

Ms. Manisha Tyagi, Adv. for petitioner in Item No. 151.

Mr. Chander Prakash and Ms. Archana Punn, officers from DTC.

Mr. R.S. Lathwal, adv. for respondent in Item Nos. 14,51 & 108.

Sh. Aditya Giri, adv. for respondent in Item Nos.49, 50, 54, 51, 105, 111, 114-118, 121-128, 129-130, 133, 134, 136, 138, 140-143, 145, 151,152.

Mr. Sachin Chauhan, Adv. for respondent in Item Nos. 53, 62, 67, 68, 70, 71, 72, 74, 76, 83, 93, 94, 107, 109, 110, 119.

Mr. Anil Mittal with Ms. Komal Aggarwal, Adv. for respondent In Item Nos. 55-59, 65, 66, 78, 85, 95, 96-103, 106, 127, 128, 137.

Mr. F.K. Jha with Mr. Shashank A. Singh, Adv. for respondents in item Nos. 60, 105, 112, 113, 139, 148 & 152.

Mr. G.S. Charya, Adv. for respondent in item nos. 63, 79, 81, 82, 84, 87, 88, 115-118, 120,121, 122, 123, 124, 125.

Mr. Pardeep Dahiya with Ms. Neha Garg, Adv. for respondent in item no. 92.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsels for the parties and proceed to dispose of these petitions. The petitioner Delhi Transport Corporation (DTC) assails the orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in the respective Original Applications preferred by the respondents.

2. The Tribunal initially rendered its decision in a batch of Original Applications, including O.A. No. 100/ 2351/ 2015 dated 26.10.2016, which has been followed in the Original Applications preferred by the other similar

applicants. In this batch of writ petitions, 109 respondents/ Original Applicants are parties, out of a total of 157. The cases of the remaining Applicants are stated to be still pending consideration before the Tribunal.

3. The respondents were appointed as drivers with the petitioner DTC. At the time of their recruitment, they had provided their respective driving licenses. In the appointment offers, clause 13 stipulated:

“In case of finding any information given by him incorrect at any stage, his services are liable to be discharged from the threshold. Thus, he would not be given any service benefit for the period as the initial eligibility/ requirement would not stand satisfied.”

4. The respondents had also submitted their affidavits stating and affirming on oath, that they had understood that their services would be terminated, inter alia, if any of the documents submitted by them are found forged or fictitious.

5. It appears that on a complaint being made with regard to the genuineness of the driving licenses, and with regard to some of the candidates/ drivers being employed despite being colour blind, the petitioner DTC sought to terminate the services of both kinds of appointees, after issuing show cause notices to the employees and after holding an internal enquiry wherein the candidates were found to have either not produced genuine driving licenses, or were found to be indeed suffering from colour blindness.

6. So far as the persons – who were alleged to be suffering from colour blindness were concerned, the matter came to this Court in a batch of petitions, including in the case ***Suresh Chand and Another v. Delhi Transport Corporation***, W.P.(C) No. 4212/2014 along with other connected writ petitions. This Court disposed of the said batch of writ petitions on 14.07.2014. This Court held that it was open to the DTC to initiate and continue with the enquiry into the charges levelled against the petitioners in those cases, after receiving their explanation and thereafter proceed in accordance with law having regard to the final report received from the Enquiry Officer. This court also held that, in case, the DTC proceeds to hold the enquiry, the employees should be placed under suspension, at least, from the date of their first day off, and the concerned rules with regard to payment of subsistence allowance shall be complied with. The Special Leave Petition preferred by the DTC vide SLP CC NO. 361/2015, ***DTC V. Suresh Chand & Anr.*** was dismissed by the Supreme Court on 16.01.2015.

7. In the case of one ***Surender Singh*** – who too was allegedly suffering from colour blindness when appointed as a driver by the DTC, the matter travelled to Supreme Court in Civil Appeal No. 11154/2016. The said Civil Appeal, along with other connected appeals were disposed of by the Supreme Court on 22.11.2016. The operative part of the order passed by the Supreme Court reads as follows:

“7. In this view of the matter, the judgment of the High Court suffers from an error apparent on the face of the record. We, therefore, consider it appropriate in the interest of justice to set aside the impugned judgment and order and direct that in regard to all the 119 employees who were sought to be

terminated, no action for termination shall be taken except in accordance with law, i.e., after an enquiry in which the employees would have an opportunity to show cause that the disability was acquired after their employment.

8. *We make it clear that the DTC shall not be restricted to the usual enquiry but would be entitled to obtain a medical opinion as to whether the employees acquired the disability before or after their employment. We are of this view because the disability in question is a serious disability for a driver of a bus in which many people travel. Such a disability might also endanger the life of other people who are on the road. We also consider it appropriate to direct that there shall be an enquiry through medical board whether the employee acquires disability after his employment and if that enquiry is against the employee then, whether the employee is responsible for using deceitful means or suppressing his disability for seeking employment.*

9. *We further make it clear that this shall not prevent the DTC from terminating the services of the drivers on the ground that they are found to be colour-blind. However, the employees will be entitled for protection of their services under the Act if eligible in law. The appellants shall be treated to have been reinstated for the purposes of the enquiry and shall be entitled to claim consequential benefits at the time of final decision of the enquiry, which shall be completed within a period of six months from the date of receipt of copy of this order. ”*

(Emphasis Supplied)

8. Subsequently, the Supreme Court, vide order dated 27.03.2017 directed that its order dated 22.11.2016 would apply to all similarly placed drivers, who were 119 in number.

9. Mrs. Ahlawat submits that in terms of the aforesaid decisions of the Supreme Court, all the 119 persons were reinstated for the purpose of

holding the inquiry; show cause notices were issued to each one of them; they were also got medically examined and all, but one, were terminated. She submits that in the case of colour blind candidates/ drivers, the Supreme Court did not bind the DTC to hold the enquiry in the usual manner under the Rules, but to proceed on the basis of the medical examination / opinion. She submits that those of the employees/ drivers who were dismissed – following the enquiry conducted in the aforesaid manner, even preferred contempt petitions before the Supreme Court, alleging that the DTC had not followed the procedure prescribed for conduct of departmental enquiry, but the Supreme Court dismissed the contempt petitions.

10. She submits that since the respondents obtained appointments on the basis of false driving licenses, they could not be regarded as employees entitled to protection either under the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 or under Article 311 of the Constitution of India. She places reliance on ***R. Vishwanatha Pillai v. State of Kerela and Others***, (2004) 2 SCC 105.

11. Mrs. Ahlawat submits that there are 157 cases in all, where the employees have claimed to have obtained their respective licenses from the RTOs/ RTAs of various places such as Mathura, Agra, North East, Jharkhand and Bhind. She submits that, prima facie, there is no justification for these drivers obtaining licences from far flung places, to which they did not even belong. She submits that the RTOs/ RTAs from where the respondents obtained their respective driving licences have become suspect of issuing such fabricated licences without following due process.

12. The submission of Mrs. Ahlawat is that the petitioner is willing to follow the same procedure - as followed in the case of colour blind drivers, in the case of the respondents. She submits that in respect of all the suspect drivers/ respondents, including those whose cases are still pending before the Tribunal (totaling to 157 in all), the petitioner had sent teams of its officers to the concerned road transport authorities to verify the genuineness of the driving licenses relied upon by them and they have collected the relevant record. She submits that the petitioner DTC would issue detailed show cause notices to each one of them i.e. the respondents, as well as others whose cases are pending before the Tribunal, and would give them an opportunity to reply to the show cause notices and the petitioner would hold inquiry against those of the employees whose cases call for such inquiries.

13. She submits that the petitioner DTC would also provide opportunity to the respondents, and other similarly situated persons, to lead their defence evidence in compliance of the principles of natural justice on relevant aspects.

14. Learned counsels for the respondents have, however, submitted that unless a formal inquiry is held in accordance with Regulation 15(C) of the Delhi Road Transport Authority (Conditions of appointment and service) Regulations, 1952, the procedure that the petitioner proposes to adopt would be illegal.

15. In response, Mrs. Ahlawat submits that the purpose of holding the departmental enquiry is to grant opportunity to the employees to meet the documentary evidence collected by the petitioner DTC upon the visit of its

officers to the respective RTO's. She submits that in this background, it would become impossible to hold an inquiry, if the DTC were required to hold the enquiry strictly in terms of Rule 15(C), looking to the nature of the charge and the magnitude of the exercise required to be undertaken in respect of all the 157 cases. She submits that it would not be feasible to call for the records from various RTOs/ RTAs to first establish the charge against the respondents. She submits that the reports received from the respective RTOs/ RTAs, and the verification conducted by the officers of the petitioner would be produced in the inquiry proceedings, which would be conducted in accordance principles of natural justice. The said materials would be placed before the enquiry officers and the respondents/ others similarly situated persons, would be confronted with the same and given the opportunity to lead their defence evidence.

16. Regulation 15(C) of the DRTA (Conditions of Appointment and Service) Regulations, 1952, in so far as it is relevant, reads as follows:

*“(c) Without prejudice to the foregoing provisions no order of dismissal, removal, or any other punishment except ensure shall be passed against an employee of the Authority other than an order based on facts before a Criminal Court **unless he has been informed in writing of the grounds on which it is proposed to take action shall be reduced to the form of separate charge or charges which shall be communicated to the person charged and of any other circumstances which it is proposed to take into consideration in passing orders on the case.** The employee shall be required within a specified time to submit a written reply to the charges and to state whether he desires to heard in person also. If he so desires and if the competent authority so directs, an oral enquiry shall be held. The officer conducting the enquiry may record facts brought*

out in such enquiry and may utilize then for coming to a finding on the truth or otherwise or the charge or charges leveled against the employee. The Welfare Officer if any employed with the Authority may attend such enquiry to watch the interest of the employee but shall not intervene or obtrude in proceedings at any stage. The proceedings shall contain a statement of the finding are grounds thereof.

Provided (i) that the provisions of this sub clause shall not apply where the employee concerned has absconded or where it is for other reason impracticable to communicate with him.

(ii) all or any of the provisions of this sub clause may in exceptional cases, for special and sufficient reasons to be recorded may be waived by the competent authority cases falling under provision (ii) shall be reported to the Authority.”
(emphasis supplied)

17. The procedure prescribed by Regulation 15(C), in substance, obliges the DTC to inform the delinquent employee of the grounds on which action is proposed to be taken – which shall be reduced in the form of separate charge or charges; the delinquent employee should be given the opportunity to submit the reply to the charges and, if he desires to be heard in person, to grant him personal hearing. The Enquiry Officer may record facts brought out in the enquiry and utilize the same for coming to a finding of truth, or otherwise, on the charges leveled against the delinquent employee. The proceedings should contain a statement of findings returned by the Enquiry Officer and the grounds therefor. Pertinently, clause (ii) stipulates that in exceptional cases, for special and sufficient reasons to be recorded, the competent authority may waive the procedure prescribed in Regulation 15(C). In case of waiver, such cases would be reported to the authority i.e. the Delhi Road Transport Authority.

18. The procedure prescribed in Regulation 15(C) is not as detailed as prescribed in, say, Rules 14 and 15 of the CCS (CCA) Rules. The gist of Regulation 15(C) is to ensure compliance with the principles of natural justice and to provide a fair opportunity to the delinquent employee to be informed of the charge against him and; to meet the said charge with sufficient opportunity. The Supreme Court, while dealing with the cases of the candidates/ drivers who were allegedly suffering from colour blindness at the time of their appointment by the DTC, consciously, held that the DTC shall not be restricted to the usual enquiry. It was left to the DTC to obtain medical opinions as to whether the employees had acquired the disability before, or after their employment. The Supreme Court also gave its reasons for its said view by observing that the disability in question, namely colour blindness, is a serious disability for a driver of a bus in which many people travel and that such a disability may also endanger the life of other people who are on the road.

19. We are of the considered view that the same principle is attracted in the facts of the present case for the reason that, in case, the respondents and others similarly situated, or any of them, have obtained their driving licences fraudulently, without undergoing the requisite and prescribed driving tests, they may not have the skill to drive public buses on roads which is likely to endanger the lives of the passengers travelling on the bus driven by them, as well as of the other persons on the road. Moreover, fraud vitiates all, and if the respondents and others similarly situated, or any of them, have resorted to fraudulent procurement of driving licences, they cannot be allowed to continue to remain in service even for a day. Pertinently, while obtaining

employment they had been informed by the petitioner DTC that a false declaration made by them would render them liable for termination, and the respondents and others similarly situated had also given their corresponding undertakings.

20. Considering the fact that the purpose of holding departmental inquiry is only to verify the genuineness of the driving licenses, and to establish whether, or not, they have been got issued regularly, in our view, it would not be fair to require the petitioner DTC to undertake the exercise of calling for the records from the concerned RTOs/ RTAs. That would become an unending process, if not impossible. The strict rules of evidence which are applicable to criminal trials are not attracted in cases of Departmental Enquiries. The well settled position in law is that if there is some relevant and material evidence available to prove the charge, and the Disciplinary Authority considers the same to be sufficient to reach its conclusion, the Courts would not interfere with the same.

21. At this stage, it would not be appropriate for us to predicate as to what materials the petitioner DTC proposes to produce in the enquiry proceedings against the respondents, and others similarly situated. Prima facie, it appears strange that the respondents and others similarly situated, or at least some of them, appear to have procured their driving licences from places far away from their respective places of residence, including from the North East; Bhind; Jharkhand; Mathura and Agra. This itself raises doubts on the genuineness of the driving licenses and places the onus upon the

respondents/ drivers to show that they had obtained their respective licences in a regular way.

22. Thus, we are not inclined to direct that the inquiries to be held against the respondents, and other similarly situated, should be strictly in terms of the procedure prescribed in Rule 15(C) looking to the peculiar features of these cases. Since the respondents claim that they had produced genuine driving licenses, really speaking, it is for them to establish the said position.

23. Resultantly, following the decision of the Supreme Court in ***Surender Singh*** (supra), we dispose of these petitions by permitting the petitioner to issue detailed show cause notices to each of the respondents and other similarly situated. The show cause notices shall be accompanied with the relevant documents in respect of each of the respondents on which the DTC seeks to rely, and should set out the specific charge(s) framed against each of them respectively. Two weeks time shall be granted to the noticees to respond to the show cause notices from the date of receipt of the respective notice. Depending upon whether, or not, the responses are received, and if so received, the petitioner shall proceed in accordance with principles of natural justice.

24. The noticees shall co-operate in the inquiries and the inquiries shall not be adjourned unnecessarily. From the date(s) on which the show cause notices are issued, the noticees shall be deemed to have been reinstated for the purpose of the enquiry, and they would be entitled to receive Subsistence Allowance on their deemed reinstatement for the purpose of enquiry, till the

completion of the inquiry. However, in case, it is found that any of the noticees are not co-operating in the inquiry proceedings, or delaying the same unnecessarily – for reasons to be recorded, it shall be open to the petitioner to stop payment of Subsistence Allowance. In case, the respondents/ noticees are aggrieved by any order that may be passed by the Disciplinary Authority on the basis of the enquiry so conducted, it shall be open to them to avail of their rights and remedies.

25. It shall be open to the Competent Authority to decide on the aspect of back wages, etc. depending on the outcome of the disciplinary proceedings.

26. The amount deposited by the petitioner in this Court shall continue to remain in fixed deposit, and the disbursal of the same shall abide by the orders that may be passed depending on the outcome of the Disciplinary Proceedings.

27. The petitions stand disposed of in the aforesaid terms.

28. It shall be open to the petitioner to produce this order before the Learned CAT for adoption of the same directions in the Original Applications pending before it.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

AUGUST 13, 2019/N.Khanna