

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

% Date of decision: May 4, 2023

+ **W.P.(C) 5795/2023, CM APPLs. 22681/2023 & 22682/2023**

DELHI TRANSPORT CORPORATION Petitioner
Through: **Ms. Aditi Gupta, Adv.**

versus

SANT SINGH Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VIKAS MAHAJAN

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 22682/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 5795/2023

1. The challenge in this petition is to an order dated November 1, 2022 passed by the Central Administrative Tribunal ('Tribunal', for short) in the Original Application being OA 2759/2015, whereby the Tribunal has allowed the OA by stating in paragraph 7 as under:

"7. In view of the above, we are of the considered view that respondents do not enjoy any right to withhold the bonafide arrears as admissible to the applicant. Accordingly, the present OA is allowed. The impugned order is set aside and the respondents are directed to release the arrears of MACP to the applicant forthwith, in any case not later than eight weeks from the date of receipt of a certified copy of this order. It is made clear

that in case the arrears are not released within the given time, the applicant shall be entitled for interest at the rate applicable on GPF.”

2. The grievance of the respondent before the Tribunal was an order dated December 1, 2014 passed by the petitioner herein whereby the petitioner has rejected the claim of the respondent for arrears pursuant to grant of ACP. The decision of the petitioner in their impugned order was that the compensation of ₹7,26,300/- awarded by the MACT was to be made jointly and severally by the respondent herein and also the DTC, i.e., the petitioner.

3. There is no dispute that the respondent was entitled to the benefit of MACP and in fact, principally, it was decided to grant the said benefit to the respondent. However, the arrears of the benefits, payable pursuant to grant of ACP, were denied by the petitioner in terms of the impugned communication dated December 1, 2014 which was challenged before the Tribunal.

4. It is a conceded case of the petitioner that the Court of Judicial Magistrate (First Class) has acquitted the respondent in the case being 273/1998. The petitioner DTC had rather relied upon the observation made by the MACT with regard to the negligence of the respondent. Concedingly, no disciplinary proceedings have been initiated by the petitioner DTC against the respondent with regard to the finding of negligence by the MACT. The Tribunal was right in holding in paragraph 6 as under:

“6. However, the DTC i.e. is the respondents in the present OA met the entire liability themselves. There is

nothing on record to indicate that the applicant made any request that his part of the liability be also met by the DTC. In the absence of record indicating such a request of the applicant, we cannot sustain the action of the respondents to now effect such a recovery from the applicant by way of denial of bonafide arrears to him. Further, one noticeable fact is that the applicant was acquitted by the Court of Judicial Magistrate First Class, meaning thereby that he was not held to be guilty of rash and negligent driving. Therefore, it would not be fair to attribute such a liability to the applicant, who was driving the bus not in an individual capacity but as an employee and agent of the DTC. Moreover, there is nothing on record to indicate that the applicant was subjected to any disciplinary proceedings pursuant to this accident.”

5. Surely, the denial of arrears pursuant to grant of ACP shall amount to recovery from the pay of the respondent and as such the impugned action could not have been taken by the petitioner in the facts of this case, moreso, without following due process of law.

6. Accordingly, we do not see any merit in the petition. The same is dismissed.

CM APPL. 22681/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

VIKAS MAHAJAN, J

MAY 04, 2023/jg