



2024:DHC:9058-DB



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

+ **W.P.(C) 1212/2020 & CM APPL. 4050/2020**

DELHI TRANSPORT CORPORATION AND ANR.

.....Petitioners

Through: Mr. Abdul Wahid, Advocate.

versus

RAJENDER PRASAD

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER (ORAL)

20.11.2024

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1. The impugned order dated 29 August, 2019 passed by the Tribunal reads as under:

“Heard Mr N. Gautam learned counsel for applicant and Mr. Karunesh Tandon, learned counsel for respondents.

2. In the first round of litigation, the applicant challenged the penalty order and the appellate order by filing OA No. 3603/2015 on various grounds. By order dated 29.09.2015, this Tribunal set aside the appellate order dated 05.01.2016 and directed the appellate authority to pass a detailed speaking order. Accordingly, a speaking order was passed on 05.01.2016.

3. This is the second round of litigation. The relief prayed in this OA are as follows:

"a) Set-aside the Impugned illegal and arbitrary Speaking Orders dated 05.01.2016 issued by the Appellate Authority rejecting the appeal of the applicant;

b) set-aside the Impugned illegal orders of Removal from services dated 09.01.2015 besides setting aside the previous orders of rejecting the appeals as informed vide memo dated 19.03.2015 and 07.07.2015 of the Appellate Authority and CMD respectively;

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c) direct the respondent no. 1, Managing Director of the DTC to reinstate the applicant in service to the post of driver with all consequential benefits;

d) pass such other and further order as this Hon'ble Tribunal may deem fit in the interest of justice.

4. The relevant facts of the case are that a departmental enquiry was initiated against the applicant on the allegation that he, being a Driver, drove the DTC bus in negligent manner and the bus ran over a cyclist, who was killed on 21.03.2013. The detailed charge-sheet is extracted below:

"CHARGE SHEET

You are required to explain as to why disciplinary action under clause 15(2) of the D.R.T.A. (Conditions of Appointment & Services) Regulation, 1952 read with Delhi Transport Laws (Amendment) Act) 1971 should not be taken against you on the following charges:

That on 21.05.13 you were deployed on duty No. 450/25-A, Bus No. 6794. That when you reached at PS Paharganj, the police stopped the bus and told that at about 19:35 hrs. one cyclist has been killed by your bus at Jhandewalan. Your bus was also detained by the police and a case/FIR No. 136/12 has been registered against you under Sections 279 and 304-A by the PS Paharganj.

1. Driving the bus negligently
2. Violation of the Traffic Rules
3. Dismal the reputation of the Corporation
4. Causing financial loss to the Corporation

Your above act tantamount a misconduct within the meaning of para (19) (f), (h) & (m) of the standing orders governing the conduct of D.T.C. employees. The copy of the Report of the Reporter whereupon charges are based, is attached.

Your past record will be taken in to consideration at the time of passing the final orders in the case. If you desired to be heard in person, a request to this effect be made in your reply. Your reply should reach this office within 10 days of

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the receipt of the chargesheet. You will be permitted to see any relevant document available in the record for which you have to report to the undersigned with in a period of 24 hours after receipt of the said Memo.

In case after reporting the undersigned with in a period of 24 hours and after 10 days you failed to submit your clarification beyond this period, it will be assumed that you are not interested to get the benefits of this opportunity and neither willing to give the clarification in response to the said Charge-sheet, the case will be decided on its merits without any further reference to you."

5. At the time of hearing, learned counsel for respondents submits that along with charge-sheet, no other documents was supplied to the applicant. On perusal of the documents produced by both the parties, it is clear that no list of witness has been served on the applicant. From the perusal of the concluding para of the enquiry report, it is evident that the Enquiry Officer submitted the report mainly on the basis that the applicant - delinquent official did not disprove the charge. The conclusion of Enquiry Officer is extracted below:

"On the contrary, the deposition of the charged employee as per his reply is that his bus was stopped at Red Light of Paharganj Police Station on a PGR Call, though no such accident was occurred from his bus. But this version of the charged employee is not acceptable, since, the he has not adduced any eye witness of the spot nor any statement of passenger of his bus has been produced in support of his say. With regard to deposition of the defence witness Conductor, it appears that it also not give any support to the deposition of the charged employee. It is clarified that the defence witness conductor had deposed his deposition before the departmental accident team after the occurrence of incidence is not new one, rather it is a simply concurrence on the written statement of the charged employee but refused the same during the enquiry proceedings. Besides this, the written statement of the charged employee is also differ from his complimentary statement, since in the written statement dated 21.05.213 (sic. 21.05.2013) the charged employee had submitted that his bus was stopped by the police after the roundabout of. Jhandewalan whereas, in complimentary statement he had deposed that passengers alighted and boarded and thereafter near the Red-light of PS Paharganj his bus was stopped on receipt of PGR message. Both these aspects are different. In the investigation report of the police, the bus



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was found parked at about 25- 30 mts. ahead from the spot of the incident CR- 16 Marked-B), hence, the contention of the employee is not fit on the basis of the evidence. In the MLC report, lodging FIR and occurrence of culpable homicide is proved. These all proves against the driving negligently and violation of traffic rules on the part of the charged employee, which violate the executive directions. As such, the allegations in the charge sheet against the employee are proved."

Thus, the enquiry report is arbitrary and not sustainable and, hence, the same is quashed and consequently, the punishment order dated 09.01.2015 passed by the disciplinary 'authority is set aside and the order of the appellate authority dated 05.01.2016 is also set aside.

6. Accordingly, OA is allowed with all consequential benefits. No order as to costs."

2. We are of the opinion that the impugned order was required to be more appropriately reasoned. At the very least, the contention of the petitioner ought to have been recorded.
3. Such an order is unsustainable in law. It is, accordingly, quashed and set aside.
4. OA 1021/2016 is remanded to the tribunal for decision afresh, uninfluenced by the order under challenge.
5. Both sides are directed to appear before the Tribunal on 3 December 2024.
6. We request the Tribunal to decide the matter as expeditiously as possible.



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7. The writ petition stands allowed accordingly.

C. HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 20, 2024/sn

Click here to check corrigendum, if any

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