

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT**ROUSE AVENUE COURTS , NEW DELHI****LC No.- 3398/2016 (Direct Industrial Dispute)****INDUSTRIAL DISPUTE BETWEEN :-**

Shri Pardeep Dahiya S/o Sh. Rajbir Singh Dahiya

Dr.B No:26233, P.T. No:68236, V.P.O. Thana Khurd,

Tehsil Kharkhoda, District Sonapat, HaryanaWorkman

VERSUS

Delhi Transport Corporation,

I.P. Estate, I.P. Head Quarters,

New Delhi-110002Management


Date of Institution	:07-06-2016
Date of Final Arguments	:16-07-2020 Through VC.
Date of Award	:24-07-2020

AWARD**Version of the claimant:**

- 1) The Workman has filed the present statement of claim (Later on Amended statement of claim filed which was allowed vide order dated 03-08-2016) under Direct Industrial Dispute Act. 1947, against the management-herein on 07-06-2016. The facts of the case as stated by the workman in his Amended Statement of claim is that he was appointed in DTC as a driver by DSSSB and on being found medically fit by medical Board of DTC vide Sr. No:/Roll No:1119/06538312, dated 02-05-2011 vide letter No:2056 w.e.f. 05-05-2011 on monthly rate as a regular/permanent employee of the Corporation and had completed 3 years and 5 months and 9 days. During the course of service when the workman completed one year, 9 months and 8 days he was directed to fulfil CVR Form and Form No:17 and as per direction the workman fulfilled both forms under the guidance of the Depot Authorities and the same was duly checked by the official/officer of the unit concerned properly.
- 2) On 04-07-2013 a show cause was served upon the workman with the following allegations that the claimant-herein
 - (i) left the column No:12 of the CVR Form blank thus concealing the required information
 - (ii) In head quarter the claimant had given undertaking that no court had punished him;
 - (iii) In form No:17, column no:21 the claim ant-herein endorsed that no case is registered in any court.

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24.7.2020*

- 3) In regard to the above charges, the workman has clarified that the column no:12 was not left blank knowingly or deliberately, in fact, it was left blank under the impression that this information pertained to the job of the workman prior to this job as mentioned in Sr. No:11. and secondly, in reply to the query mentioned against sub para (ii) it is submitted. The claimant-herein clarifies that although the above said cases were lodged against the workman, they were of petty offence in nature and have been compromised and disposed of. In regard to para no:21 of Form No:17, the workman stated that present position of his cases on the date of filing the form no:17 – that no case was registered in any court – was correct. On receipt of show cause notice, the workman stated to have obtained a detailed report from the Superintendent of Police, Sonapat, Haryana regarding pendency/nature of cases and furnished the said report to Depot Manager concerned in order to prove his innocence. As per the said report received by workman from Superintendent of Police, Sonapat, Haryana neither any case was pending nor was it of a major nature. Despite the said report the Depot Manager without considering the factual position of the cases and also without giving any observations on the said information of Sonapat Police, disposed off the same on the basis of false information earlier sent by the office of the Superintendent of Police, Sonapat. The services of the workman-herein was terminated without giving him the opportunity of being heard, the Depot Manager terminated the services of the workman. According to workman this action of the Depot Manager was pre-planned, malafide, arbitrary, unilateral discriminatory, misconceived, contrary to the rules of the management and was against the principles of natural justice.
- 4) It is further averred by the workman that he was involved in the nature of petty offence cases and for the minor nature of cases. The management have already issued departmental circulars/office order that the criminal cases where the employees was acquitted or fined for petty offences prior to his appointment in DTC may not be treated suppression of material information or concealment of facts. This as made be applicable only in those cases which did not fall under the category of heinous crime such as rape, murder, dacoity and dowry death etc. These guidelines came into force from the date of issuance of this circular, which was issued with the approval of the competent authority and was also circulated to all Depot of the management. The workman also stated to have attached the copy of the court judgments along with his reply to the show cause notice.
- 5) It is further averred by the workman in his statement of claim that other drivers who had endorsed "No" against the column no:12 and had concealed the facts, they were considered to be continued in service on the basis of petty offence and are still working with the management. The records of such persons like Sh. Rajender Singh-Driver, Sh. Braham Pal-Driver was obtained by workman-


24.7.2020

herein through RTI Act 2005. The Depot Manager acted on his own rules and regulations and it seems that Management had no control / supervision over such Depot Manager, despite the facts that Management-DTC had issued time and again circulars to unit authorities to take lenient views in the matters of petty offence. Nonetheless, the Depot Managers paid no heed to the said circulars/office orders and the CMD too, had shut their eyes towards the illegal actions of the Depot Managers. While deciding the issue of concealment the Hon'ble Supreme Court of India in the matter of Commissioner of Police & ors Vs. Sandeep Kumar in Civil Appeal No:1430 of 2007 was pleased to deliver its valuable opinion that there should be a modern approach to reform a person instead of branding him as a criminal all in his life. As per the version of workman the facts of the case were similar to the facts of his case.

- 6) It is further averred by the workman that the show cause notice/letter of termination issued to him by the management are illegal and unjustified, without conducting any kind of inquiry, unheard, arbitrary, based on malafide intention, unilateral, misconceived, perverse, vexatious, contrary to the circulars, office orders / directions and rules and regulations of the Corporation as well as the rules of law against the articles 14, 15, 16, 309 and 311 of the Constitution of India and disproportionate to the gravity of offence. The procedure under CCS(CCA) disciplinary rules 1965 has not been followed. Therefore, the workman prayed to set aside the punishment of termination from the services of the corporation alongwith full back wages and other consequential benefits i.e. increments for the intervening period, bonus, washing allowance, medical allowance for which the workman has been deprived due to this termination and also with interest and further prayed to fix the responsibility for recovery from the salaries of the officers who knowingly violated its own circulars, office orders, rules and regulations of the corporation, over sighted the directions and citation laid down by Hon'ble Supreme Court of India.

VERSION OF THE MANAGEMENT-DTC:

- 7) Notice of statement of claim was issued to the management. In his statement of claim, it is stated by the management that the claim of the workman is not justified and not as per the rules and regulations of management and same is based on false grounds and there is no merit in the same and same is liable to be dismissed. It is stated that paragraph of statement of claim regarding appointment of workman is matter of record. It is stated that the workman had fulfilled CVR Form on 27-01-2013 and filled the Form No:17 on 18-02-2011 i.e. before joining the DTC. The forms were scrutinized on later stage for the purpose of verification of declaration made by the workman. As per DTC it is wrong to say that column no:12 is not the part of the column no:11. It is submitted that in fact the workman intentionally concealed the fact in the CVR Form because the workman knew

Devi Sen
24.7.2020

it very well that the criminal cases were pending against him but the workman did not mention the same in the CVR form. Thus the action of termination of services under clause 9 (a)(1) of D.R.T Act taken by the management is correct, legal and justified.

- 8) It is further stated by the management that the circular issued by the DTC/Management clearly states that "The criminal cases where the employee was acquitted or fined for petty offence prior to his appointment in DTC may not be treated supersession of information or concealment of facts. Petty offence is normal course for the driver will be section 323/34 IPC. It is stated that after thorough consideration with legal expert action of termination of services has been taken as per rules and regulations of the DTC-Management. It is submitted that the Depot Managers are fully empowered and competent to take action against the employees working under their control as per rules and regulations of the Corporation.
- 9) It is further stated by the management in their written statement that the workman was provisionally considered by DSSSB for selection to the post of Driver and his name was referred to the DTC alongwith other selected candidates which was considered for appointment to the post of Driving in 2011 subject to completion of pre-recruitment formalities like medical examination, acceptance of offer of appointment and training etc. The workman was initially appointed on 02-05-2011 on probation for a period of two years, however, disciplinary case was initiated against the workman on the report of the DVR received from the office of District Magistrate, Sonapat, Haryana dt. 15-04-2013 vide which it was intimated to the Management that the applicant-workman-herein was involved in case FIR no:124 dt. 17-07-2005 under section 452/34 IPC registered in Police Station Kharkhoda, Sonapat, FIR No:14 dt. 27-01-2011 u/s 279/133 IPC of P.S . Naib Sarai, Delhi and case bearing FIR No:197 dt. 24-07-2006 under Section 379 IPC, of PS Civil Lines, Sonapat. This crucial information was concealed by the workman in CVR form. It is further stated by the management that during his service with the management the workman was also involved in another fatal accident in case FIR No:255/12 dt. 02-09-2012 under Section 279/337/304-A IPC and the workman was placed under suspension and said case is still pending against the workman. It is submitted that the action taken by the DTC-management by terminating the services of workman is correct, legal and justified. Management prayed for dismissal of the claim of the workman.

REJOINDER OF THE CLAIMANT

- 10) In his rejoinder to the written statement of the DTC, the workman has reiterated the version of his statement of claim and controverted the averments made by the management in the written statement.


24.7.2020

11) From the pleadings of the parties the following issues were framed on 30-11-2016:-

(1)-Whether termination of service of the claimant by the management is illegal and/or unjustifiable ? OPW

(2)-Relief

12) In order to prove his case the workman has filed his evidence by way of evidentiary affidavit Ex.WW1/A bearing his signature at point A & B. He has relied upon documents which were exhibited as Ex.WW1/1 to Ex. WW1/29.

13) The workman did not examine any other witness and closed his evidence on 19-02-2018.

14) On the other hand the management has examined MW1-Sh. Avinash Kumar S/o Sh. M. S. Raghuvanshi, Aged-33 years, Depot Manager, Vasant Vihar Depot, DTC On oath, who tendered his evidence by way of evidentiary affidavit which is Ex.MW1/A, which bears his signatures at point A and B. He has also relied upon all the documents exhibited and marked in my evidentiary affidavit which are Ex.MW1/1 to Ex. MW1/10. He was cross examined by Sh. Jagdish Tyagi, counsel for the workman.

15) I have heard the final argument on behalf of both the parties through Video Conferencing due to prevailing situation of Covid-19. I have perused the records and my findings on the issues are as under:-

ISSUE NO:1 "Whether termination of service of the claimant by the management is illegal and/or unjustifiable ? OPW

16) The onus to prove the issue is on the workman and defence of the workman-herein brings out the following aspects of his version:

- i) The FIR No:14 dt. 27-1-2011 was registered u/s 279/133 IPC at PS Neb Sarai Delhi was not u/s 279/133 IPC.
- ii) Both the FIR cases were disposed off by the concerned court before filling of the Form No:17 and the copies of the same have been submitted to the DM, Sukhdev Vihar Depot, along with reply dt. 15-07-2013.
- iii) The appointment of the workman-herein was through DSSB Board and appointment letter was issued by personal department, DTC (HQ). The said appointment of the workman was


24.7.2020

purely temporary and on probation for a period of 2 years from the date of temporary appointment.

iv) The show cause notice was based on the false information given to the Depot Manager and after receiving the show cause notice the workman obtained the actual position of the case and also submitted the same along with the reply to the depot manager.

17) The workman has raised two fold arguments :

- ✓ Firstly, that the Depot Manager was not competent to remove / dismiss / terminate the workman-herein.
- ✓ Secondly, that the allegations in his two FIRs related to "petty" offenses thus the same ought not to have been material to his service despite concealment.

ASPECT OF COMPETENCE OF DEPOT MANAGER:

18) Now coming to the aspect of the competence of the Depot Manager. In his cross examination MW1 has stated that the Depot Manager was not the appointing authority of the present workman. The appointment letter Ex. MW1/1 was signed by Manager Personal of DTC. The depot manager was not involved in the appointment of the workman-herein. The document Ex.MW1/2 dt. 11-2-2011 was issued by the Personal Department and depot manager had no role in issuing the Ex.MW1/2. However, the management maintains that the powers had been delegated to Depot Manager under supervision, control and revision of the Chairman-cum-CMD. The relevant portion of the cross-examination of MW-1 is thus:

"... I have already filed the document which is Ex.MW1/9 wherein I have been authorized to take disciplinary action against the workman. It is correct that these powers have been delegated to Depot Manager under supervision, control and revision of the Chairman-cum-CMD. I did not send the file of the workman to the Chairman-cum-CMD. Vol. Since the powers have been delegated to Depot Manager for taking disciplinary action against the class 3rd and class 4th employee, therefore, there was no need to send the file to Chairman-cum-CMD.

Q: *Whether the approval against this employee has been obtained from the CMD as per this delegation of power?*

Ans. *Already powers have been delegated to Depot Manager by the CMD so there is no requirement to obtain approval from CMD.*

Devesh
24.7.2022

It is correct that disciplinary powers had been delegated to Secy. DTC Board in the year March-1993, as per office order No:7 which is already Ex.WW1/21. It is correct that disciplinary powers had been further delegated to Regional Manager concerned on 15-04-1997, as per office order No:4 which is already Ex.WW1/22 (5 pages). It is wrong to suggest that I am not fully empowered to take disciplinary action against the workman as per the above mentioned office orders. It is correct that the affidavit Ex. MW1/A is a legal document. It is correct that as per office order dt. 11-3-1997 Ex.MW1/M1 the Regional Manager is authorized to sign legal documents, however, it may be possible that further other circular have also been issued by the management. It is correct that circulars regarding the signing legal documents by the Depot Manager are not on court file but I can bring the same if directed by the court. It is correct that as per office order Dt. 8-11-2005, Ex. MW1/M2, the powers to sign the legal document have been assigned to Dy. CGM Traffic. It is wrong to suggest that I am not competent to sign and file my evidentiary affidavit Ex. MW1/A. It is correct that para no:4 of the annexure of office order no:11 of 29-5-1989 which is already Ex.WW1/20 have not been brought by the management on record. It is correct that Depot Manager is not the appointing authority of the present workman. It is correct that appointment letter Ex. MW1/1 is signed by Manager Personal of DTC. There is no requirement of approval of Depot Manager for the appointment of every category employees. Vol. The appointment has to be done by the Personal Department. It is correct that depot manager is not involved in the appointment of the present employee. It is correct that Ex.MW1/2 dt. 11-2-2011 has also been issued by the Personal Department and depot manager has no role in issuing the Ex.MW1/2...."

19)The points raised during the course of the cross-examination of the Depot Manager are:

- a) The disciplinary powers had been delegated to Secy. DTC Board in the year March-1993, as per office order No:7 {Ex.WW1/21}.
- b) The disciplinary powers had been further delegated to Regional Manager concerned on 15-04-1997, as per office order No:4 {Ex.WW1/22 (5 pages)}

Devi
24.7.2020

- c) The Depot Manager was purportedly authorised delegation vide Ex.Mw1/9 to take disciplinary action against the workman. However, these powers had been delegated to Depot Manager under supervision, control and revision of the Chairman-cum-CMD. Admittedly the Depot Manager did not send the file of the workman to the Chairman-cum-CMD. The version / argument of the management is that since the powers had been delegated to Depot Manager for taking disciplinary action against the class 3rd and class 4th employee, therefore, there was no need to send the file to Chairman-cum-MD (CMD).
- d) The affidavit Ex. MW1/A is a legal document and as per office order dt. 11-3-1997 Ex.MW1/M1 the Regional Manager was authorized to sign legal documents;
- e) The circulars regarding the signing legal documents by the Depot Manager are not on court file;
- f) As per office order Dt. 8-11-2005, Ex. MW1/M2, the powers to sign the legal document have been assigned to Dy. CGM Traffic.
- g) Depot Manager is not the appointing authority of the present workman.
- h) The appointment letter Ex. MW1/1 is signed by Manager Personal of DTC.

20) As per office order No:7 {Ex.WW1/21} the disciplinary powers had been delegated to Secy. DTC Board in the year March-1993. As per office order No:4 {Ex.WW1/22 (5 pages)}. The disciplinary powers had been further delegated to Regional Manager concerned on 15-04-1997. As far as the

21) The argument of the workman is that since the depot manager was not the appointing authority of the workman therefore, he was not competent to take disciplinary action against the workman. I find force in the contention of the AR for the workman-herein inasmuch that the delegation / sub-delegation of the powers of the Depot Manager suffers from the principle of DELEGATUS NON POTESTS DELCGARE which means that a delegated power cannot be further delegated. As a proposition of law there cannot be; two opinion about the same that there cannot be sub-delegation or further delegation of the delegated powers.

22) The objection of the workman-herein regarding Ex.MW1/9 is that the amended scope of powers regarding Disciplinary proceedings / actions of termination etc. are delegated only by the appointing authorities. In the present case the Depot manager is admittedly not the appointing authority and had role whatsoever in the appointment of the workman-herein. Moreover, the powers of the Depot Manager are under the supervisory control of the Chairman-cum-MD (CMD). In the present case no sanction / approval / consultation has been taken by the Depot Manager.


24.7.2022

23) The above-said objection of the workman-herein regarding the competence of the Depot Manager regarding competence of the Depot Manager to pass the impugned order of removal against the petitioner is concerned, has been dealt with by the Division Bench of the Hon'ble Delhi High Court in the case of Raghunandan Sharma Vs. Delhi Transport Corporation & Anr. reported as 54(1994) DLT 370 (DB) wherein it was held as under:-

"(21) ...The authorisation under section 12(1)(c) became necessary in order to see that the Depot Managers are able to deal with the affairs of their respective Depots as efficiently as possible. Unless the power of the Depot Managers had teeth, they would have been mere heads of the Depots, with no effective control over the employees. Even otherwise in such a big organisation like the D.T.C. having thousands of employees, if for everything the General Manager was required to take action, it would be impracticable. In this connection we find support from the judgment of the Division Bench in L.P.A. No.6 of 1976 'with which we are in respectful agreement. The power vested in the D.T.C. Board under Section 12(1)(c) is independent of Section 12(1)(b). When the statute has conferred both the powers on the Board which can be exercised independently of each other, it cannot be said that one is subject to the other. The choice is left to the Board which is the apex body to manage the Corporation and is supposed to know what is best in the interest of the administration of the organisation."

24) The view taken by the Division Bench in the aforementioned judgment has been followed by another Division Bench of the Hon'ble Delhi High Court in the case of Prem Chand Vs. Delhi Transport Corporation & Ors. 59 (1995) DLT 502 (DB). This was followed by many subsequent judgments of the Hon'ble Delhi Court.

25) In the light of the citations it is clear that the Depot Manager was competent to take action against the workman-herein.

ASPECT OF PETTY OFFENSES

26) As far as the aspect of "petty" offence is concerned it revolves around the aspect related to the policy of the management as to what matters are considered "petty" so as to escape the harshness of concealment. The details of the two FIRs against the workman-herein are:

- i) FIR No. 14/11 was lodged u/s 279/337/338 IPC.
- ii) FIR No. 124 u/s 452/34 dated 17.07.2005

27) The workman-herein has not denied the FIRs in his cross-examination about the above-said FIRs:
"It is correct that a case FIR No:124 dt. 17-7-2005 , u/s 452/34 IPC was registered against me in PS- Kharkhoda, District Sonipat and also an FIR No:14 dt. 27-1-2011, u/s 279/133 IPC at PS Neb Sarai Delhi was pending against me. Vol. That the said case no:14 was not u/s 279/133

Devi
24.7.2021

IPC. Both the cases were disposed off by the concerned court before filling of the Form No:17 and the copies of the same have been submitted to the DM, Sukhdev Vihar Depot, along with reply dt. 15-07-2013."

28) The workman has been cross examined by Sh. Jeet Kumar, Advocate/ARM of the management and in his cross examination the workman-WW1 has stated as under:-

"I am aware of the contents of my evidenciary affidavit. I am graduate. I can understand the English Language. It is correct that I have fulfilled CVR form on 27-01-2013. It is also correct that I have fulfilled form No:17 on 18-02-2011 before joining DTC. These forms have been fulfilled before joining DTC. Vol. CVR form was fulfilled after joining and I have fulfilled form No:17 before joining. It is correct that I have written in column no:21 of form no:17 that "no any case is registered against me of any nature". Vol. At the time of filling of this form no case was registered of pending against me. It is correct that the column no:12 of CVR form has been left blank by me. Vol. I presumed that the column no:12 pertains to the status of the service mentioned in para no:11. It is wrong to suggest that intentionally concealed the fact regarding case registered against me in CVR form and I left blank the column no:12 of CVR form. Vol. If I left the column no:12 blank then I would not have write in para no:17 that at that time no case is registered in any court. It is wrong to suggest that at the time of joining DTC any criminal case was pending against me. It is correct that show cause notice 4-7-2013 was served to me. It is correct that the services of workman has been terminated on 14-10-2014."

29) The workman has further admitted in his cross-examination:

"It is correct that my appointment was purely temporary and on probation for a period of 2 years from the date of temporary appointment. Vol. My appointment was through DSSB Board and appointment letter was issued by personal department, DTC (HQ). Vol. That the show cause notice was based on the false information given to the Depot Manager and after received the show cause notice I obtained the actual position of the case and also submitted the same along with the aforesaid reply to the depot manager...."

30) Per contra the version of the management-DTC is reflected from the WS and the cross-examination of the management witness MW-1 :

i) The workman intentionally concealed the fact in the CVR Form;


24.7.2020

- ii) The circular issued by the DTC/Management clearly states that "The criminal cases where the employee was acquitted or fined for petty offence prior to his appointment in DTC may not be treated supersession of information or concealment of facts.
- iii) The Depot Managers are fully empowered and competent to take action against the employees working under their control as per rules and regulations of the Corporation.

31) The witness MW1-Sh. Avinash Kumar S/o Sh. M. S. Raghuvanshi, Aged-33 years, Depot Manager, Vasant Vihar Depot, DTC has stated in his cross-examination:

"...It is correct that petty offences comes under section 323/34 does not come under the Concealment of facts. The case of the workman herein does not fall u/s 323/34 IPC. I do not remember which offences falls under the category of petty offences. It is correct that management also issued office dt. 8-7-2014 which is available on court record as Ex.WW1/5(2). It is correct that the show cause notice was issued on the basis of 2 cases vide FIR No:123 dt. 17-5-2005, u/s 452/34 IPC and FIR No:14 dt. 27-1-2011 u/s 279/133 IPC. Show cause notice was issued on the basis of report of Superintendent of Police, Sonapat dt. 29-3-2013. It is correct that the case vide FIR No:255/12 dt. 2-9-2012 u/s 279/337/304 (A) IPC was happened after joining of duty by the workman. It is correct that this case also does not pertain to the show cause notice issued to the workman. It is correct that I issued the show cause notice Ex.MW-1/7 on the basis of the two cases pertaining to u/s 452/34 IPC and u/s 279/133 IPC. I do not know in which cases the Section u/s 133 is applied... It is correct that the management issued Circular on 10.09.2013 pertaining to the criminal cases which comes u/s 323/34 IPC should not be considered as concealment of facts. It is correct that to follow up the circular dated 10.09.2013, management had also issued another circular dated 04.02.2014 which is already on record as Ex.WW-1/5 (1), vide which the management has issued directions to the disciplinary authorities to obtain advice from the Standing Counsel Mrs. Avnish Ahlawat.It is correct that vide Circular dated 08.08.2014, instructions/guidelines were issued to the disciplinary authority to treat the cases as concealment of facts pertaining to heinous crime such as rape, murder, dacoity and dowry death.It is correct that the workman had submitted reply dated 12.07.2013. It is correct that the workman had enclosed the judgments of the criminal courts of both of the cases i.e. u/s 452/34 vide FIR No. 124 dated 17.07.2005 and vide FIR No. 14/11 u/s 279/338 IPC.it is correct that I issued show cause notice treating the offence of concealment of fact as misconduct. I have read over the DRTA. The copy of DRTA received through RTI is Ex.MW-1/WX. ..."

24.7.2014

32) The management witness MW-1 has clearly admitted the following:

- i) The case vide FIR No:255/12 dt. 2-9-2012 u/s 279/337/304 (A) IPC happened after joining of duty by the workman. This case did not pertain to the show cause notice issued to the workman.
- ii) The petty offences comes under section 323/34 did not come under the Concealment of facts.
- iii) The case of the workman herein does not fall u/s 323/34 IPC.
- iv) The management issued office dt. 8-7-2014 {Ex.WW1/5(2)}.
- v) As per Circular on 10.09.2013 the allegations u/s 323/34 IPC should not be considered as concealment of facts.
- vi) Vide another circular dated 04.02.2014 {Ex.WW-1/5 (1)} the management issued directions to the disciplinary authorities to obtain advice from the Standing Counsel Mrs. Avnish Ahlawat.
- vii) Vide Circular dated 08.08.2014, instructions/guidelines were issued to the disciplinary authority to treat the cases as concealment of facts pertaining to heinous crime such as rape, murder, dacoity and dowry death.
- viii) The workman had enclosed the judgments of the criminal courts of both of the cases i.e. u/s 452/34 vide FIR No. 124 dated 17.07.2005 and vide FIR No. 14/11 u/s 279/338 IPC.

33) In **Commissioner of Police & Others v. Sandeep Kumar: (2011) 4 SCC 644**, the candidate was asked whether he had been arrested, prosecuted, kept in detention or bound down, fined or convicted by Court of law for any offence. To this the candidate replied in the negative and was alleged to have made a false statement in the application form. The candidate in that case had applied for the post of Head Constable (Ministerial) in 1999. He had already been acquitted on 18.1.1998, pursuant to his compromise with the injured in the case which was registered against him under Section 325/34 of Indian Penal Code. However, while filling up the attestation form, after he had qualified for the post, the respondent disclosed his involvement in the criminal case, as also his acquittal based on the compromise. The candidature of the respondent having been cancelled he filed an OA before the Tribunal, which was dismissed. The Writ Petition filed by him was allowed by this Court. Dismissing the appeal filed by the Commissioner of Police and Others, it was held by the Supreme Court that cancellation of the candidature of the respondent was illegal. The Hon'ble


24.7.2022

Supreme Court noted that the incident had happened at a time when the respondent would be about 20 years old and observed that at that age young people often commit indiscretions, such indiscretions can often be condoned and therefore the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. The Court felt that probably while filling up the application form the respondent had not disclosed his involvement in the criminal case out of fear that if he did so, he would automatically be disqualified. The Court was of the view that since the offence alleged against the respondent was not a serious offence like murder, dacoity or rape, a more lenient view should be taken in the matter. In that case the applicant had not disclosed about a criminal case against him in which he was ultimately acquitted. The Hon'ble Supreme Court took a very lenient view in the light of the acts of the said case and found in favour of the said applicant.

34) In Commissioner of Police v. Naveen Kumar Mandiwaandl WP(C) 7808/2011 decided on 2.11.2011, the respondent before this Court was appointed to the post of Constable (Executive) Male in Delhi Police. While he was working with Delhi Police, it came to the knowledge of the department that he was facing trial in a case registered under Section 143/341/323 IPC and this information had not been disclosed by him while submitting the application for appointment to the aforesaid post. Consequently, his services were terminated by the Commissioner of Police, Delhi. The OA filed by him, having been allowed by the Tribunal, the matter reached this Court by way of a Writ Petition filed by the Commissioner of Police, Delhi. It was noted by the Court that the case against the petitioner had resulted in a compromise leading to his acquittal. Considering that the offence alleged against him was not serious nor had he been convicted for that offence and following the decision of Supreme Court in Sandeep Kumar (supra), the Writ Petition challenging the order of the Tribunal was dismissed.

35) In GNCT of Delhi And Another v. Dinesh Kumar WP(C) 5510/2010 and GNCT of Delhi And Another v. Subhash Chand WP(C) 5510/2010 decided on 11.11.2010, one of the respondents was issued a letter of appointment to the post of Constable (Executive) whereas the other respondent was issued a letter of offer for appointment to the post of Sub-Inspector (Executive). The final appointment however, was denied to both of them on the ground that one of them viz. Dinesh Kumar was an accused in a case registered under Section 307/323/324/34 IPC whereas the other one was accused of having committed offence punishable under Section 321/341 IPC. Dinesh Kumar, FIR against whom was registered on 4.7.2006 was acquitted on 15.9.2008 whereas Subhash Chand one FIR against whom was registered in the year 1999 and the other in the year 2003 was acquitted


24.7.2022

pursuant to a compromise with the complainant. Relying upon its earlier decision in Robin Singh (supra), this Court held that as far as Subhash Chand was concerned, considering the nature of the offences alleged to have been committed by him, coupled with his young age at the time of the alleged commission of offences, he would not be barred from getting public employment. Regarding Dinesh Kumar noticing that two witnesses had turned hostile and the acquittal was on merits, the Court was of the view that the order passed by the Tribunal directing Commissioner of Police to give employment to him called for no interference.

- 36) In Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450, Supreme Court reiterated that an accused is presumed to be innocent until proven guilty. It was observed that an acquittal in the criminal trial only bolsters the presumption of innocence which is available to every person accused of committing a criminal offence. The Hon'ble Delhi High Court in Devender Kumar Yadav vs Govt. Of Nct Of Delhi And Anr. In W.P.(C) 8731/2011 (30 March, 2012) has taken a lenient view with regard to the applicants applying and not disclosing about their criminal cases. The Hon'ble Delhi High Court took a lenient view in some of the cases where the applicants had applied in Delhi Police.
- 37) After introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing. (Mahindra and Mahindra Ltd. v. N.B. Narawade SCC p. 141, para 20). In the present case the acquittals of the workman-herein is a great mitigating factor in favour of the workman-herein.
- 38) In G.B. Gupta (supra) while referring to scope of judicial review in the matter of punishment, reference was made to State of Gujarat v. Anand Acharya alias Bharat Kumar Sadhu, (2007) 9 SCC 310, where the Apex Court has held;-

"The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would

Devendra
24.7.2020

appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof"

39) If the punishment is harsh, albeit a lesser punishment may be imposed but such an order cannot be passed on an irrational or extraneous factor and certainly not on compassionate ground. As held in Hombe Gowda Educational Trust & Anr. (supra), the Tribunal's jurisdiction is akin to one under Section 11(A) of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt, it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

40) After considering the various facts of the present case and particularly the fact that this tribunal is of the view that a lenient view is possible and would be in the interest of justice. The version of the workman is clearly in line with the policy of the management-herein so far it relates to the "petty offenses" not considered as concealment. The cases of the workman have been disposed of by the competent courts.

41) After weighing the evidence / documents and after duly considering the Written Arguments given by both the sides it is held that the workman has been able to discharge his onus. Accordingly the ISSUE No.1 is decided in favour of the workman and against the management-DTC.

42) RELIEF: The termination of the workman-herein is found unjustified therefore the Management-DTC is directed to reinstate Shri Pardeep Dahiya S/o Sh. Rajbir Singh Dahiya with full back wages alongwith the consequential relief w.e.f 14-10-2014.

43) Reference answered accordingly in above terms/directions. Matter disposed of.

Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through Video Conferencing.

Dated:24-07-2020


24.7.2020
(VEENA RANI)

Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS , NEW DELHI
LC No.- 3398/2016 (Direct Industrial Disput)**

INDUSTRIAL DISPUTE BETWEEN :-

Shri Pardeep Dahiya S/o Sh. Rajbir Singh Dahiya
Dr.B No:26233, P.T. No:68236, V.P.O. Thana Khurd,
Tehsil Kharkhoda, District Sonapat, HaryanaWorkman

VERSUS

Delhi Transport Corporation,
I.P. Estate, I.P. Head Quarters,
New Delhi-110002Management

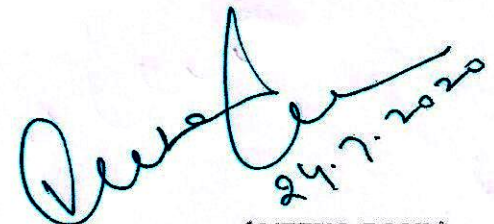
24-07-2020

Present : Sh. Jagdish Kumar, AR of the workman through VC.
Sh. Jeet Kumar, AR of the management through VC.

Vide my separate detailed AWARD the award is passed in favour of the workman Shri Pardeep Dahiya S/o Sh. Rajbir Singh Dahiya. A copy of the award be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced in the open court.

Dated:24-07-2020



{ VEENA RANI }
Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271