

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

88
92

ORIGINAL APPLICATION NO. 722 of 1987

DATE OF ORDER: 15th October, 1990.

BETWEEN:

Mr. A. Gopalakrishna Rao

..

Applicant

Vs.

1. Union of India represented by
its Secretary, Department of Space,
and
Chairman, Indian Space Research
Organisation, Bangalore

2. The Director, SHAR Centre,
Dept. of Space, Sriharikota,
Nellore District (A.P.).

3. The Controller, SHAR Centre,
Dept. of Space, Sriharikota.

4. The Head, Personnel & General Admini-
stration, SHAR Centre, Sriharikota.

Respondents

FOR APPLICANT : Mr. G. Ramachandra Rao, Advocate

FOR RESPONDENTS : Mr. Naram Bhaskar Rao, Addl. CGSC

CORAM: Hon'ble Shri J. Narasimha Murthy, Member (Judl.)
Hon'ble Shri R. Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J. NARASIMHA MURTHY, Member (Judl.)

This is a petition filed for a relief to quash the
orders dated 15.7.1985 passed by the 4th respondent imposing
a punishment on the applicant treating the period of interregnum
as "dies non" as confirmed by the 3rd and 2nd respondents
herein. The facts of the case are briefly as follows:-

The applicant is working as Heavy Vehicle Driver, Sriharikota High Altitude Range, Sriharikota, Nellore District, Andhra Pradesh. It is hereby called as SHAR Centre. In pursuance of an advertisement, the petitioner applied for the post of Heavy Vehicle Driver (Bus). As per the qualifications required, the candidates for the post of Driver must have studied 8th Standard and experience as Heavy Vehicle (Bus) Driver for a period of minimum five years. The applicant was selected for the said post by the Board of Selection on 30.10.1971 and joined the post on 7.11.1972. He successfully completed the probation in the said post on 6.11.1973. The applicant and other employees were given notices for option to continue their services in the reconstituted Indian Space Research Organisation in identical posts with the existing terms and conditions and the applicant had opted for the same. Accordingly, the applicant was issued with an order of appointment as Heavy Vehicle Driver in proceedings dated 1.4.1975. By an order dated 24.7.1979 he was confirmed as Heavy Vehicle Driver in the substantive post with effect from 31.12.1976. The applicant has been working continuously and he has unblemished record of service. The applicant is a holder of valid license under the Motor Vehicles Act, 1939 to drive Heavy vehicles. In view of the amendment to the Act requiring separate licenses to drive heavy passenger vehicles and heavy goods vehicles, the Head, Transport Section, SHAR Centre gave a memo ^{to} the applicant in his proceedings No. SCF/TPT/3 6/80 dated 27.10.1980 calling upon the applicant to obtain a suitable license or licenses to drive both heavy passenger and heavy goods vehicles. Accordingly, the applicant had obtained the license for driving both types of vehicles and he has been driving either heavy passenger vehicle or heavy goods vehicle as per valid licenses possessed by him.

2. While so the concerned Engineer-SD of Transport Section by his order dated 29th January 1981 called upon the applicant to report at Public Health Section to drive tractor with trailer combination with No. APN 6784 from 2.2.1981 to 27.2.1981. Since the applicant is holder of valid license only to drive heavy passenger and heavy goods vehicles, he expressed his inability to drive the tractor trailer combination without a valid license and experience to drive such vehicles and made a representation dated 31.1.1981 and this was followed by other representations. Thereupon, the 4th respondents had kept the applicant under suspension pending enquiry by an order dated 9.2.1981 and issued a charge memo dated 27.2.1981 alleging that the applicant had wilfully refused to perform the duties defying the order lawfully given to him by his superior to drive the tractor trailer combination during the period from 2.2.1981 to 27.2.1981 which would amount to serious misconduct violating Rule 3(1) of the C.C.S. (Conduct) Rules, 1964 and the applicant was called upon to submit his explanation to the same. The applicant was not furnished with copies of all the relevant documents along with the said charge memo. He submitted an ~~application~~ explanation denying the charge levelled against him and maintaining that the orders issued by the Engineer, S.D., Transport Section are not lawful orders and they are in violation of the Motor Vehicles Act, 1939 and the question of disobeying any lawful order of superior does not arise. Without considering the said explanation and without furnishing the required documents, the 3rd respondent had appointed one Mr. Y. Subba Rao, Head, Accounts and I.F.A., as Enquiry Officer and one Mr. A. Unnikrishnan, Administrative Officer as Presenting Officer. Subsequently, the applicant was furnished with the copies of the required documents. The applicant in his letter dated 1.4.1981 requested the 4th respondent to permit him to be represented by a legal practitioner during the enquiry but the said request was arbitrarily rejected vide letter dated 2.4.1981. Subsequently, an enquiry

was held and four witnesses were examined on behalf of the department and 19 witnesses were examined on behalf of the defence. The Inquiry Officer submitted his report on 25.2.1985 holding the applicant guilty of the charge. The disciplinary authority imposed on the applicant a penalty ~~as~~ reducing the pay by three stages in the time scale of pay of Rs.320-6-326-8-390-10-400 for a period of two years with effect from 1.8.1985 and it was further ordered that during the period of punishment, the applicant will not earn increments on pay and on the expiry of the period, the reduction will have the effect of postponing future increments and that the period of suspension and beyond the period of suspension from 9.2.1981 to 1.7.1981 shall be treated as "dies non" for all purposes. Aggrieved by the said order, the applicant filed an appeal on 14.8.1985 to the 3rd respondent and the same was rejected by an order dated 2.12.1985. Against the said order, he filed a review petition to the 2nd respondent on 15.1.1986 and the same was rejected by a letter ~~dated~~ dated 30.11.1986 of the 2nd respondent. So, he filed the present petition to quash the punishment orders of the respondents.

3. The respondents filed a counter with the following contentions:-

They state that the applicant was initially appointed as Light Vehicle Driver on 17.6.1970 and after his probationary period was completed he applied for the post of Heavy Vehicle Driver on 16.8.1971 against an advertisement in the department. He ~~was~~ was subsequently selected for the post of Heavy Vehicle Driver and appointed in the pay scale of Rs.320-400 on 7.11.1972. They admit that the applicant was confirmed as Heavy Vehicle Driver with effect from 31.12.1976. They also state that the petitioner obtained heavy passenger and heavy goods vehicle licence issued by the Andhra Pradesh Government

authorities. The applicant was directed to report to Public Health Section for his duties to drive tractor with trailer from 2.2.1981 to 27.2.1981 vide transport section note dated 29.1.1981. The applicant did not take up his duty on 2.2.1981 and hence the Head, Transport Section has issued a memo on 2.2.1981 directing the applicant to perform the duties assigned to him and informing him that his action in refusing to perform the duties resulted in dislocation of works in Public Health Section and caused lot of inconvenience. All the Drivers including the applicant were informed that in public interest their duties will include driving of all categories of Heavy Vehicles like buses, tractors, trucks etc., and also light vehicles like jeeps, cars etc., depending on the exigencies of work. Inspite of the directions given by his superiors, the applicant did not perform the said duties. The respondents called for an explanation and since the explanation given by the applicant is not satisfactory, a departmental enquiry was ordered on 20.3.1981. They admit that the petitioner asked the department to permit him to engage a professional lawyer to defend his case in the departmental enquiry and that it is negatived. The Inquiry Officer submitted his report holding that the applicant was guilty of the charges framed against him. The disciplinary authority gave the punishment and the applicant has filed an appeal which was negatived by the appellate authority. The applicant filed a revision petition and it was also negatived. The respondents further contend that drivers possessing heavy vehicle licence to drive heavy passenger and heavy goods vehicles are also expected to drive tractor trailer combinations which are considered to be medium motor vehicles. The applicant himself driven a much heavier tractor than the one he was asked to

drive while he was working in SPROB, SHAR Centre. The petitioner can drive tractor trailer combination in public health section but he did not do so. Other drivers possessing heavy vehicle driving licence ~~was not~~ performing the same duties before him ~~was not~~ were also asked to drive tractor trailer combination. The contention of the applicant/assigning that duties on tractor trailer combination are not lawful is not borne out of facts. So, the respondents state that there are no merits in the case of the petitioner and the petition is to be dismissed.

4. Learned counsel for the applicant, Shri G. Ramachandra Rao and the learned standing counsel for the respondents, Shri Naram Bhaskar Rao, Addl. CGSC ~~argued~~ advanced their arguments.

5. The contention of the respondents is that the applicant was asked to drive a tractor trailer combination vehicle in Public Health Section as per the orders of the concerned Engineer and according to him a person who got a heavy vehicle passenger licence and heavy vehicle goods driving licence can also drive a tractor trailer combination vehicle, but the petitioner disobeyed the orders of the respondents. So a charge memo was given, an inquiry was conducted and basing on the inquiry report he was punished accordingly.

6. The contention of the petitioner is that he was selected as a heavy vehicle driver and there was an amendment to the Motor Vehicles Act 1939 requiring separate licence for driving heavy passenger vehicle and heavy goods vehicle and as per that amendment the Head, Transport Section, SHAR Centre gave a memo to the applicant on 27.10.1980 calling upon him to obtain a suitable licence or licence to drive both the

the heavy passenger and heavy goods vehicles. Accordingly, the applicant had obtained licence for driving both types of vehicles. Now, the respondents asked him to drive a vehicle with tractor trailer combination for which he has no licence to drive the same. So, he expressed his inability to drive that vehicle. On that ground, an action was taken and a punishment was imposed on him. The learned counsel for the applicant further contends that the order treating the period of interregnum as "dies non" is illegal and without jurisdiction of the 4th respondent. The 4th respondent has no power to pass such orders. Further, the 4th respondent cannot direct the period of interregnum to be treated as "dies non" without any notice to the applicant. The impugned order is, therefore, illegal. He further states that the applicant cannot be asked to drive vehicle for which he does not hold a valid license under Motor Vehicles Act, 1939 and the applicant was never asked to obtain licences for driving other than heavy passenger and heavy goods vehicles. So, according to him, the order of the respondents asking the applicant to drive tractor trailer combination vehicle is not just and proper and without appreciating properly his reply, the respondents awarded him the punishment and the punishment itself is illegal.

7. Insofar as the first point is concerned, the memo dated 27.10.1980 issued to the petitioner reads as follows:-

"Due to the recent amendment in regards to issue and renewal of heavy vehicle driving licences, it is hereby brought to the notice of all concerned that all our HVDs are directed to obtain both Heavy Passenger and Heavy Goods vehicle licences issued by Andhra Pradesh Government authorities or suitable equivalent issued by other state Government Authorities."

By this memo, the petitioner was asked to obtain both heavy passenger and heavy goods vehicle licence to drive both the categories of vehicles. It means to imply that a person having a licence to drive heavy passenger vehicle cannot drive heavy goods vehicle without proper license. Inspite of the fact that the respondents gave memo ~~to~~ asking the applicant to obtain licence to drive both the heavy passenger vehicle and heavy goods vehicle to drive both the vehicles, they gave him a memo on 22.1.1979 which reads as follows:-

"You are hereby informed that in public interest your duties will include driving of all categories of Heavy Vehicles like buses, tractors, trucks etc. and also Light Vehicles like jeeps, cars etc. In this regard, Head, Transport Section will assign you duties from time to time depending on the exigencies of service."

^{Now}
There is no such rule that ~~who~~ have no licence to drive heavy passenger and heavy goods vehicles can also drive other vehicles without obtaining licence to drive the same. So, the petitioner also told the respondents that he got only licence to drive heavy passenger and heavy goods vehicle but not a tractor trailer combination vehicle. So, he cannot drive the tractor trailer combination vehicle without any licence obtained for this purpose. But inspite of the same, the respondents gave him a memo of charge, conducted an inquiry and punished him for not obeying the orders of his superior authorities. A reply given to the letter from the General Secretary, SHAR Employees, Union, Sriharikota reads as follows:-

"The General Secretary is informed as follows in modification of the letter No. 5831/D1/81 dated 16.2.1981.

According to Sub-Section (7) of Section 7 of the Motor Vehicles Act, the person who passes the test in Driving a heavy goods vehicle or heavy passenger motor vehicle shall be deemed to have passed the test in driving a medium goods vehicle or medium passenger vehicle or a Light motor vehicle. Hence a person having a licence to drive heavy goods vehicle or heavy passenger vehicle should obtain an endorsement from the Licensing Authority concerned specifically authorising him to drive a medium goods vehicle or medium passenger vehicle or a light motor vehicle."

So, without obtaining an endorsement from the licensing authority concerned specifically authorising him to drive medium goods or medium passenger or a light motor vehicle, one should not drive these vehicles though he has got licence to drive heavy passenger or heavy goods vehicles. It is clear that to drive a tractor trailer combination of vehicle, the applicant requires a separate endorsement ^{by} ~~on~~ the licensing authority authorising him to drive the same. So, without any authorisation or obtaining permission from the competent authority, the petitioner is not entitled to drive tractor trailer combination vehicle. The order issued by the respondents to the petitioner to drive tractor trailer combination vehicle is not a valid order and so the petitioner expressed his inability to drive the same vehicle as he has no licence to drive the same. Instead of appreciating the just representation of the petitioner, the respondents took

.. 10 ..

it as denial of the order passed by them and a charge was framed against him, an enquiry was conducted and the petitioner was imposed the punishment which is not legal.

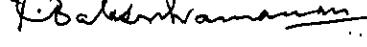
8. Without a valid licence, if the petitioner drives a vehicle, the transport authorities may take action against him and also they may cancel his driving licence also. One must acquaint himself with each vehicle. ~~Demanding~~ Without acquainting himself to drive the same vehicle, if he drives the same and if he commits any accident, the respondents may not come to his rescue and moreover they may take action for imposing punishment. Transport authorities also will take action against him. Lot of risk is involved if the petitioner drives tractor trailer combination vehicle without obtaining proper licence. Though ~~it~~ ^{the same} is represented by the petitioner to the respondents, they are very adamant and moreover they treated it as disobedience and a punishment was imposed on him.

9. It is evident that the petitioner has no driving licence for tractor trailer combination of vehicle and refusal to drive the same without any proper licence is not a disobedience or offence as the respondents felt it. It is only just and proper to state that the order of the respondents to ask the petitioner to drive tractor trailer combination of vehicle is illegal, contrary to the rules and the petitioner did not commit any disobedience for the orders issued by the respondents. The petitioner only made a representation with ^{true} a few facts. So, the punishment imposed by the respondents to the petitioner is not legal and hence it is liable to be quashed.

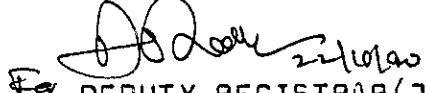
10. There is no need to go into other aspects in the pleadings for the reasons stated above. The order dated 15.7.1985 imposing punishment on the petitioner and treating the period of interregnum as "dies non" is quashed and the petitioner is entitled to all the consequential benefits. The respondents are directed to comply with the order within a period of two months from the date of receipt of this order.

11. The application is accordingly allowed. There will be no order as to costs.


(J. NARASIMHA MURTHY)
MEMBER (JUDL.)


(R. BALASUBRAMANIAN)
MEMBER (ADMN.)

Dated: 17 October, 1990.


For DEPUTY REGISTRAR (J)

To:

1. The Secretary, (Union of India) Department of Space and Chairman, Indian Space Research Organisation, Bangalore.
2. The Director, SHAR Centre, Department of Space, Sriharikota Nellore District (A.P.)
3. The Controller, SHAR Centre, Department of space, Sriharikota Nellore Distt, Andhra Pradesh - 524124.
4. The Head, Personnel & General Administration, SHAR Centre, Sriharikota, Nellore Distt, Andhra Pradesh - 524124.
5. One copy to Mr. G. Ramachandra Rao, Advocate, 3-4-498, vsn Barkatpura Chaman, Hyderabad-27 A.P.
6. One copy to Mr. Naram Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
7. One copy to Hon'ble Mr. J. Narasimha Murthy, (J) CAT, Hyderabad.
8. One spare copy.

• • •
kj.