

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1373/2013

Order Reserved on: 07.11.2016
Order pronounced on 13.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Lakhpat Singh
S/o Sh. Hukum Singh
R/o S/2, 12A, Budh Vihar
Phase-I, Delhi 110086. Applicant

(By Advocate: Sh. H.S.Dahiya)

Versus

1. The Chairman
Delhi Transport Corporation
I.P.Estate, New Delhi.

2. The Depot Manager
Delhi Transport Corporation
Rohini Depot-I
Delhi – 110 085. Respondents

(By Advocate: Sh. Manish Garg)

O R D E R

By V. Ajay Kumar, Member (J):

Brief facts, as narrated by the applicant, are that the applicant was appointed as Driver in the Respondent-Delhi

Transport Corporation (in short, DTC) w.e.f. 27.07.1988 and retired on 31.12.2013, on attaining the age of 60 years.

2. The applicant, while on duty in Rohini Depot-I, while driving Bus No.DLP-1260 on route No.9990 met with an accident on 16.12.1990 resulting in the death of two scooter riders, namely, Smt. Shiya Devi and Shri Mukhand Singh.

3. A criminal case was registered against the applicant under Sections 279/337/304A IPC. The competent criminal Court vide its Judgement dated 06.10.2005 convicted the applicant under Sections 279/337/304A IPC. The applicant was sentenced to simple imprisonment for a period of six months under Section 279 IPC, and was also sentenced to simple imprisonment for a period of six months under Section 337 IPC. He was also directed to undergo simple imprisonment for two years under Section 304A IPC. Additionally, the applicant was directed to pay Rs.10,000/- as compensation to each set of the legal heirs of the two deceased victims of the accident. However, the sentences were directed to run consecutively.

4. On dismissal of the Criminal Appeal No.34 of 2006 filed by the applicant against the aforesaid sentence and conviction, by the Court of Additional Sessions Judge vide Judgement dated 15.04.2010, the applicant filed Criminal Revision Petition No.224/2010 before the Hon'ble High Court of Delhi.

5. In the said Criminal Revision Petition No.224/2010, the applicant represented by his counsel, prayed for granting of benefit of probation under the Probation of Offenders Act, 1958 to him, and also volunteered to pay an additional sum of Rs.30,000/- each to both the sets of the legal heirs of the two victims of the accident. After considering the submissions of both sides, the Hon'ble High Court of Delhi disposed of the said Criminal Revision Petition on 10.03.2011, as under:

"7. In view of the aforesaid facts and circumstances, the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 is granted to the petitioner, while maintaining the order on conviction. The petitioner is granted probation, upon his furnishing a personal bond for the sum of Rs.20,000/-, with one surety in the like amount, to the satisfaction of the trial court, for maintaining good conduct till he completes his remaining service with his employer, DTC, which is stated to be for a period of approximately 2 years. Counsel for the petitioner has handed over Rs.30,000/- to each set of the legal heirs of both the deceased victims, along with the Rs.10,000/-, which remained payable to the legal heirs of Late Shriya Devi through their common counsel. It is directed that the petitioner shall be released only after orders are passed by the trial court accepting the bonds of probation and surety.

8. The petitioner is disposed of."

6. On departmental side, the applicant was placed under suspension on 17.12.1990, in view of the involvement of the applicant in the aforesaid fatal accident on 16.12.1990, and a chargesheet was issued on 04.01.1991 and after conducting a detailed inquiry whereunder the charge of negligent driving was proved, and after issuing a show cause notice, a punishment of stoppage of next due two increments with cumulative effect, was imposed on the applicant on 26.04.1991. Though, it is not forthcoming from the pleadings of either side, but it appears that

the applicant was removed from service, after his conviction in the criminal case.

7. Further, in the Motor Vehicles Accident Claim filed by the legal heirs of the victims of the said accident, since the rash and negligent driving of the applicant was proved, the competent Court under the Motor Vehicles Act, granted compensation to the legal heirs of the victims. The respondent-DTC being the employer has paid Rs.1,80,000/- as compensation, to the said legal heirs of the victims.

8. The applicant vide his applications dated 28.07.2011 and 01.08.2011 requested the respondent-DTC for his reinstatement, by giving the consent that the said amount of Rs.1,80,000/- paid by the respondent-DTC to the legal heirs of the victims of the accident, may be deducted from his salary at the rate of Rs.5000/- per month by way of 36 installments.

9. The respondents vide Annexure A1-Order dated 01.08.2011 considering the representation of the applicant and other facts as stated above, allowed him to join duty with immediate effect on the probation of two years. It was further ordered in the said proceeding that as per the written consent of the applicant, a sum of Rs.5000/- per month may be deducted from his salary for three years.

10. Accordingly, the applicant was allowed to join into service on 01.08.2011. The applicant's appeal dated 09.02.2012 and 29.03.2012 against imposition of the punishment and recovery of Rs.1,80,000/- were dismissed by the respondent-DTC, vide Orders dated 20.03.2012 and 14.05.2012 respectively.

11. Questioning the Annexure A1-Order dated 01.08.2011, whereunder while allowing the applicant to join duty, the respondent-DTC ordered for deduction of Rs.1,80,000/- from his salary by way of 36 monthly instalments of Rs.5000/- each and Order dated 14.06.2012 in rejecting the appeal of the applicant, the present OA has been filed.

12. Heard Shri H.S.Dahiya, the learned counsel for the applicant and Shri Manish Garg, the learned counsel for the respondents, and perused the pleadings on record.

13. The learned counsel appearing for the applicant while submitting that the alleged consent letter dated 01.08.2011 agreeing for recovery of Rs.1,80,000/- from his salary on installment basis, was obtained by the respondents under coercion, stated that the respondent discriminated the applicant taking advantage of his helpless condition. It is his specific case that every year number of accidents were occurring in the hands of various DTC Drivers and that in many of those cases, the DTC was paying the compensation amount awarded under the Motor Vehicles Act, to the victims therein, though the finding of the

Motor Accidents Claims Tribunal was that the accident occurred due to rash and negligent driving of a particular Driver of the DTC, no recovery was ever made from the salary of any of such Drivers of the DTC. Hence, the action of the respondents in recovering compensation amount paid by the DTC to the legal heirs of the victims of the accident, from the salary of the applicant, is illegal, arbitrary and discriminatory.

14. The learned counsel for the applicant further submits that since the applicant was extended the benefit of Probation under Section 4 of the Probation of Offenders Act, 1958, by the Hon'ble High Court of Delhi in Criminal Revision Petition No.224/2010 dated 10.03.2011, no punishment can be imposed on the applicant and that no recovery can be made from him.

15. The applicant, placed reliance on Annexure A6, which is the information obtained under RTI Act, with regard to the involvement of the Drivers of the DTC in accident cases from 1990 to 2012, Depot wise, to show that recoveries were not made from any of the Drivers though the DTC paid compensation to the victims.

16. The respondents not disputed the aforesaid facts, but denied, the contention of the applicant that they obtained the consent letters for recovery from the applicant, under coercion and that they have no right to recover the compensation amount

paid by them due to the proved negligent driving of the applicant.

17. It is submitted on their behalf that the applicant in view of his proved negligent driving causing the death of two innocent persons, though did not deserve to be allowed to join duty, the competent authority, by taking a lenient view, allowed him to join into service.

18. The learned counsel for the respondents placed reliance on a decision of the Hon'ble High Court of Punjab & Haryana, in **Jagir Singh v. State of Punjab & Others** [decided on 29.05.2003], (2004) ACJ 787, and Regulation No.15 (2)(iv) of the DRTA (Conditions of Appointment & Service) Regulations, 1952, in support of the action of the respondents.

19. The contention of the applicant that the letter dated 01.08.2011 consenting for recovery was obtained under coercion, is unacceptable as it is clear that the same is an afterthought. The applicant having got allowed to join service, though the charge levelled against him was proved even in the departmental inquiry, created the said ground for the purpose of the present OA.

20. Admittedly, the rash and negligent driving of the applicant and the death of two persons due to the same, was proved before the Motor Accidents Claims Tribunal, and in pursuance of

the said award the respondent-DTC, as the employer of the applicant, paid the compensation of Rs.1,80,000/- to the legal heirs of the victims in the said accident.

21. It is also admitted that even the conviction imposed by the competent criminal Court with regard to the offences under Sections 279/337 and 304A IPC was upheld both in appeal and in revision, by the Criminal Appellate Court and the Hon'ble High Court, respectively. The Hon'ble High Court in its order dated 10.03.2011 in Criminal Revision Petition No.224/2010 categorically stated that the conviction of the applicant is maintained, though granted the benefit under Section 4 of the Probation of Offenders Act, 1958. Therefore, it cannot be said by any stretch of imagination that the applicant was exonerated either under the provisions of the Motor Vehicles Act or under the provisions of Indian Penal Code. Equally, it also cannot be said that the respondent-DTC cannot take any action on the applicant, on the departmental side.

22. In **Sushil Kumar Singhal v. The Regional Manager, Punjab National Bank**, (2010) 8 SCC 573, the Hon'ble Apex Court held as under:

"28. In view of the above, we reach the conclusion that once a Criminal Court grants a delinquent employee the benefit of Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in Section 12 of the Act, 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the Representation of the People Act, 1950 etc. The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the

provisions of Act, 1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act, 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal. "

23. In **Jagir Singh** (supra), the petitioner, a Constable (Driver) in the Punjab Police, questioned the authority and jurisdiction of the Director General of the Police, Punjab to order and direct recovery of half of the compensation amount paid to the claimants in terms of the award of the Motor Accidents Claims Tribunal, Hoshiarpur, dated 07.01.1997 on the ground that he was driving the vehicle negligently. Examining the same, the Hon'ble High Court of Punjab and Haryana, held as under:

"8. Though ancillary but the pertinent question that arises for our consideration now is:-

Whether the alleged loss suffered by the department, as a result of payment of compensation, can be wholly or partly recovered by the employer from his employee on the plea that the employee was negligent?

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12. Under Section 146(1) of the Motor Vehicle Act, a vehicle, as a principle of necessity, must be insured at least third party. Sub-section (2) of the Section 146 of the Act requires that any vehicle owned by the Central Government or the State Government and used for the government purpose unconnected with any commercial enterprises would not be governed under the provision of Sub-section (1). Certainly, the vehicle in question is a government vehicle used for government purpose i.e. the Police Department of the State of Punjab and is not connected with any commercial activities or enterprise. The provisions of Sub-section (3) of Section 146 would not come into play.

13. We are unable to appreciate the contention of the petitioner that in the face of the provisions of Section 146, the respondents-authorities would have no jurisdiction to pass any order of recovery. We also find no merit in the contention that once the government creates a fund or head to such expenditure i.e. for payment of compensation awarded by the Tribunals in cases of accident of government vehicle, third party will absolve to any other

responsibility or liability under the provisions of any other rules of law. The Punjab Financial Rules clearly postulate that all expenditure of the State has to be incurred under a major head or minor head. Selection of such head is primarily intended to comply with the statutory rules framed in that behalf. It does not stand to any reasoning that creation of such funds or head would per se estops the government from taking recourse to any other provisions under law for recovery of the amount/loss suffered by it as a result of negligence of the employees. The provisions of Motor Vehicle Act places a prohibition on any person, who drives a vehicle without obtaining proper licence for that purpose from the competent authority. Such provision has an implicit obligation and duty on the part of the licence holder to be careful and take all caution while driving so as to avoid any untoward incident or accident as a result of carelessness or negligence on his part. In support of the impugned order, the State has placed reliance upon Rule 2.33 of the General Principles of Rules Volume-I of the Punjab Financial Rules, which read as under:-

"2.33 Every Government employee should realise fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any of the Government employee to the extent to which it may be shown that he contributed to the loss by his own action or negligence. [See Rule 2.10(1) (1)] A memorandum regarding (1) general principles to regulate the enforcement of responsibility for losses sustained by Government through fraud or negligence of individuals, (2) the procedure to be followed in prosecutions in respect of the embezzlement of Government money and, (3) the procedure to be observed for conducting departmental enquiry, is given in Appendix 1 to these rules."

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15. The above provisions cannot be equated to the provisions relating to imposition of penalty under the service rules. It is a provision to recover losses suffered by it as a result of fraud or negligence of the employees primarily founded on a finding of negligence. In the present case, we have already noticed that the Tribunal has recorded in unambiguous terms that the petitioner was negligent as a result of which compensation has been awarded to the claimants against the Government. The recourse by the State to this provisions would not amount to double jeopardy or lack of inherent jurisdiction in the authority to take such action. To further smoothen out the duty, functioning of the State by this provision, guide-lines and memorandum have been issued to enforce such liability including the procedure to be adopted by the concerned authority.

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19. The impugned order has to be examined in light and ambit as explained above and the fact that the Motor

Accident Claims Tribunal has already held in unambiguous term that the driver (petitioner) was negligent. The said judgment, as already noticed, has attained finality. The driver of a vehicle is granted a licence upon completion and satisfaction of the pre-requisite, stated under the relevant law. A driver is expected to be trained to drive the vehicle carefully and cautiously so as to avoid an accident. The expected degree of care and caution from the driver is certainly higher than an ordinary person. The duties of a driver holding licence provide for minute test, details of duties and obligations which the law imposes upon the driver (Sections 131 to 134 of the Motor Vehicles Act). Despite such duties the legislative intention which are definite and punitive in nature are indicated by the fact that a person, who is guilty of an offence under Section 184 of the Motor Vehicles Act, his licence itself can be suspended or cancelled, as the case may be, under the provisions of Section 121 and 122 of the Motor Vehicles Act. This shows the pervasive veritable legislative approach which unambiguously intends to check and minimize negligent driving by the drivers particularly in causing of fatal road accident.

20. Learned counsel for the petitioner appearing for the petitioner also contended that an order of recovery by the department in face of the proceedings before the Motor Accident Claims Tribunal would attract plea of double jeopardy. This argument is hardly of any consequence. As already stated, the department is vicariously liable and its liability to pay compensation is joint and several with the driver in terms of the award of the Motor Accident Claims Tribunal. Even otherwise, this submission we noticed only to reject, as the question has been completely settled by the Hon'ble Apex Court in the case of State of Haryana v. Balwant Singh, A.I.R. 2003 Supreme Court Weekly 1645, where illustrating the plea governing the double jeopardy and while relying upon earlier judgment of three judges Bench of the Hon'ble Apex Court in the case of Union of India v. P.D. Yadav, (2002)1 S.C.C. 405, the Hon'ble Apex Court held as under :-

"... From the facts that are not in dispute, it is abundantly clear that the order dated 12.3.1990 was passed against the respondent reducing the pay to the minimum of time scale of Driver for a period of four years on account of his causing loss and bringing bad name to the Department in the light of the order passed by the Motor Accidents Claims Tribunal, that too after holding enquiry under the Rules after giving him opportunity. The second order dated 17.9.1992, was passed on the basis of the conviction and sentence passed against him by the competent criminal court for the offence under Section 304-A IPC which was permissible under the Rules. These being the facts, there was no question of prosecuting and punishing the respondent for the same offence twice. The High Court was not right in equating departmental enquiries on different grounds to a prosecution in criminal case. The High Court also has failed to see that the two orders passed against the respondent were on different grounds against the respondents were on differing grounds and were on different cause of actions.

21. Thus, without any hesitation, we reject the contention raised on behalf of the petitioner. In the circumstances, we are unable to find any fault in the action of the respondents in directing the partial recovery of its loss from the petitioner."

24. In view of the above decision, coupled with Regulation 15(2)(iv) of the DRTA (CA&S) Regulation, 1952, we accept the contention of the respondents that they are empowered to recover the loss caused by them due to the negligent driving of its Drivers.

25. With regard to the contention of discrimination and practice of the respondent-DTC, it is relevant to note certain observations of the Punjab & Haryana High Court in **Jagir Singh** itself.

"22. Be that as it may, another very pertinent aspect of such cases relates to the serious consequences and adversities arising for the employee and his family as a direct result of the department passing orders of recoveries. Nothing in the form of instructions or circulars is on record before us and nothing has been brought to our notice which could be the load star for resolving such issues and passing appropriate orders in consonance with the rules and equity. In order to minimise the element of arbitrariness in passing such orders, it is obligatory upon the department to formulate and suffice consistent guidelines controlling exercise of authority as well as the extent of loss which could be recovered from a driver on whose part negligence stands established by due process of law. The Court cannot ignore the fact that employees of the transport particularly the government corporation or transport agency get limited salary and have long hours of duties. In the event, they are directed to pay large portion of their salary towards such recoveries, it will not only result in definite inconvenience to the employee but may also affect their families adversely. The employment itself is a serious problem in our country. There are hundreds seeking for one job and thus State always stand in the commanding position. It will be appropriate for the State to take measure to prevent such accident rather than to recover huge amounts from such class of low paid salaried employees.

23. Where on the other hand, providing of departmental instructions and guidelines, as afore-noticed, may be useful, there on the other introduction of stringent standard in consonance with the provisions of the Motor Vehicles Act, right at the time of initial selection to these posts would result in prevention of accidents. Proper training over a reasonable period before their induction

into service and before they are permitted to drive on the Highways would be another appreciable step, which the State can take. Another factor which we may mention at the cost of repetition and which has persuaded us to record these observations is that the State has exercised its option in availing the benefits of exemption under the provision of Section 163 of the Act and as such has taken the burden on to itself which otherwise could be the liability of the insurance company. That being the approach and creation of the State itself, the action of the State in imposing the entire or major part of its above liability upon its driver(s) can hardly be termed as equitable and fair particularly when the State is a social welfare State and a principal model employer. What should be its policy in that regard and would be the extent of deduction of recovery, are the matters which squarely fall in the domain of the State administration and the Courts would not embark upon such determination. Thus, we leave it for the State to cogitate over various facets of its problems and expected to take remedial, preventive and curative measures in that regard expeditiously."

26. A perusal of Annexure A6 also indicates that out of the 23 Depots of the Respondent-DTC, except in Subhash Place Depot., no recovery from any of the erring drivers was made. Even in Subhash Place Depot, the said recoveries relates to the loss caused due to the damage to DTC buss, but not pertain to Motor Vehicles Act, claims. That means, the respondent-DTC has not made any recovery from any driver, in respect of Motor Vehicle Act, claim as was done in applicant's case. However, in the facts of the present case, where the applicant was responsible for the death of two innocent persons due to his rash and negligent driving, as proved, both before the Motor Accidents Claims Tribunal and the Criminal Court, we are not proposing to issue any direction for refund of the amount recovered from the applicant. This is more so, keeping in view the action of the respondents in allowing the applicant to join duty, even after his conviction, in the criminal case.

27. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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