

Central Administrative Tribunal
Principal Bench: New Delhi.

OA NO.868/2015

Reserved on: 19.04.2016
Pronounced on: 04.05.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Smt. Rajo Devi wd/o Sh. Ramesh
Ex-Driver, B.No.10526,
Token No.31300
R/o Village & PO Juan Mahra
Distt. Sonepat (Haryana)Applicant
(By Advocate: Sh. J.C. Kundla)

Versus

Chairman-cum-Managing Director,
Delhi Transport Corporation
Govt. of NCT of Delhi, IP Estate,
New Delhi-110 002. ...Respondents

(By Advocate: Sh. Abhay N Das)

O R D E R

The short issue involved in the instant OA relates to grant of pension to the applicant after the demise of her husband – an employee in the respondent corporation.

2. It is an admitted fact that the husband of the applicant was proceeded against for unauthorized absence and removed from service under Clause 15(2)(iv) of DRTA (Conditions of Appointment and Services) Regulations, 1952 [Regulations of 1952 in short]. The husband of the applicant, she claims, expired on 13.08.2012, soon after his removal due to shock. The applicant has assailed the removal order dated 21.06.2012 on the grounds of the punishment being

disproportionate to the gravity of the offence, which was mere absence from duty; he was given no chance to improve upon by awarding some minor punishment. The applicant further submits that DTC Pension Scheme, which should have been at par with CCS (Pension) Rules, 1972, is in fact in lieu of employer's shares of EPF i.e. the employees, who get pensionary benefits, shall have to forego the employer's share of EPF and this fund shall have to be transferred to the DTC Employees Superannuation (Pension) Fund corpus and those who are not given pension under the DTC Pension Scheme shall be given/released their management share of provident fund in their accounts. It is the case of the applicant that in the instant case neither the respondent commenced her pension/family pension in lieu of employer's share of EPF of her husband nor released the employer's share of EPF in her favour. It is further the case of the applicant that the respondent has retained the employer's share of EPF in respect of the applicant to the tune of Rs.2,52,435.22 upto October, 2009 and interest thereon for the purpose of pension/family pension and only the amount of own share of EPF of the applicant's husband was released and credited to her account.

3. The late husband of the applicant was removed under Clause 15(2)(iv) of the Regulations of 1952 and the applicant

was to be granted family pension at par with Rule 54 of the CCS (Pension) Rules, 1972 in lieu of employer share of EPF. It is the case of the applicant that she was suffering from cancer and could not avail the opportunity of filing an appeal against the impugned order vide which her husband was removed from service.

4. The applicant has prayed for the following relief(s):-

- (i) *The Hon'ble Tribunal calls for the relevant record relating to the case from the end of the respondent.*
- (ii) *Hon'ble Tribunal may quash and set aside the letter No.BBMD-I(AIT)/CS-25/12/1783 dated 21.6.2012 issued by the respondent and orders that the employee may stands retired from the service of corporation.*
- (iii) *Direct the respondent to grant pension/family pension to the applicant in terms of their office order No.16 dated 27.11.1992 as the employer's share of EPF has been retained by the respondent for the purpose of pension/family pension.*
- (iv) *Direct the respondent to pay interest @ 18% p.a. of the total arrears of family pension due to the applicant.*
- (v) *Award the cost of the litigation in favour of the applicant and against the respondent.*
- (vi) *Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts of the case and in the interest of justice."*

5. The respondents have filed their counter affidavit wherein the averments of the applicant, save for those which are within the factual matrix, have been denied. The respondents have pleaded the ground of limitation. The applicant was admittedly absent for 566 days on the ground of illness of his wife but produced medical certificates only for 54 days. The explanation furnished in this regard was

not found satisfactory and, hence, the deceased was removed from service of the Corporation. He had also not deposited the DTC article amounting to Rs.8549/- paid in excess and, therefore, a sum of Rs.9383/- was required to be deposited by the employee/deceased husband of the applicant with the Cashier of BBM Depot-1, which he failed to do so.

6. During the course of the arguments, my attention was brought to paras 3 & 4.1 of the counter affidavit, which are being extracted hereunder for the sake of better clarity:-

“3. The contents of this para are wrong and the same are denied. The OA was filed on in January, 2013. The applicant was reinstated in service on 29.10.2001 with the condition that the applicant will have to refund the money received by him on removal from service on 4.11.1987 on account of Gratuity and Provident Fund before joining on reinstatement otherwise he will not be given the benefit of service of the intervening period. The applicant did not refund the money that he had received on account of gratuity and provident fund when rejoined the service in compliance of the Award. Since the applicant rejoined the service on reinstatement without depositing the requisite payment as directed vide order of reinstatement dated 29.10.2001 hence the matter is badly barred by limitation.

4.1. The contents of this para are not as stated and hence they are denied. The applicant was appointed as Retainer Crew Conductor on 31.08.1979. He was brought on monthly rates of pay on 29.02.1980.”

7. The learned counsel for the respondents fairly admitted that the above paragraphs have been inserted inadvertently and do not relate to the instant case. Learned counsel for the respondents, however, submitted that the enquiry has been conducted keeping the principles of natural justice in mind, and was totally commensurate with the gravity of offences;

the applicant failed to submit the certificates in support of her illness and making use of specialized facilities.

8. The applicant has filed a rejoinder application wherein attention has been drawn to the fact that the contents of para 4.1 to 4.4 are totally misplaced and do not relate to the facts of the instant case. She has additionally submitted that if any amount was adjustable, the same should have been adjusted from the payables to the applicant.

9. I have carefully gone through the pleadings available on record as also the documents so adduced and the decisions relied upon by either side. I have patiently heard the oral arguments advanced by the learned counsels for both the parties.

10. I take note of the fact that departmental proceedings have been conducted keeping the principles of natural justice in mind while framing of charges, issuance of show cause etc. Therefore, charge of there being any procedural irregularity fails to stick. However, what attracts to my mind is the quantum of punishment. The charge against the deceased employee primarily related to absence for a period of 566 days. For the sake of better clarity, I reproduce the charges as under:-

“You remained absent from duty without information/prior permission of competent authority for 566 days as mentioned below:-

<u>Period</u>	<u>Unauthorized absent days</u>
August' 09 to March' 10	201 days
April' 10 to March' 11	305 days
Total	566 days

This shows your negligence on the part of your duties and lack of interest in authority's work.”

11. The executive instructions on the procedure regarding disciplinary action and appeal provide guidelines for the authorities exercising powers of punishment. The basic and the guiding principles have also been recorded in this to the effect that employee should be given a chance to reform himself. For the sake of clarity, relevant portion of the Guidelines is being extracted as under:-

“While imposing penalty, the competent officer will bear the following points in mind:-

- a) *Although, the penalties specified in clause 15(2) of the D.R.T.A. (Condition of Appointment and Service) Regulations, 1952 can be imposed for any good and sufficient reasons of giving a chance to an employee to improve himself by the following methods should be adopted, particularly in case of inefficiency, dereliction of duty, carelessness, habitual unpunctuality, negligency or breach of orders, insubordination and absence without leave:-*
 - (i) *Verbal caution.*
 - (ii) *Caution in writing*
 - (iii) *Verbal warning*
 - (iv) *A copy of the adverse remarks, if any, made in his confidential report.”*

12. I also take note of the fact that the Circular dated 08.04.1968 reiterates this issue by undertaking recourse to omission, commission and codification of punishment. For

the sake of greater clarity, the said order is being reproduced hereunder:-

“With a view to achieving some measure of uniformity in the imposition of penalties on the employees for misconduct and other irregularities, the question of categorization of acts of omission and commission and codification of punishments has been engaging the attention of Management.

2. *While each case will have its distinctive features which will be duly considered by the disciplinary authority before determining the quantum of punishment. It is, however, intended that the following guiding principles should be strictly observed:-*

- (a) *The offences/irregularities which could be termed as misconduct within the meaning of Clause 15 of the DR TA (Conditions of Appointment & Services) Regulations, 1952 have been divided into two heads (i) Minor and (ii) Major.*
- (b) *The cases relating to offences/irregularities and listed in annexure (A) under the head ‘Minor’ may, as far as possible, be disposed of either by taking corrective measures or by imposition of penalties of warning or reprimand or censure as laid down in Memorandum No.ADM-3(13)/54 dated 9.12.55.*
- (c) *The cases relating to offences/irregularities under the head ‘Major’ may as far as possible, be disposed of by imposing penalties as indicated in Annexures ‘B’ ‘C’ and ‘D’.”*

I also extract the four categories of offences along with punishment prescribed in a representative order:-

<u>Offence</u>	<u>Quantum of Punishment</u>
<u>Annexure ‘A’</u>	
1. Attending late, un-authorises Absence from place of work Malingering or idling.	Corrective measures or by imposition of warning, Reprimand or censure
2. Irregular attendance	-do-
3. Negligence of duties of carelessness In the discharge of duties.	-do-
4. Lack of proper interest In the work allotted.	-do-
8. Leaving station without permission	-do-
11. Making representations to Higher Authorities directly without Exhausting the channel at the Lower level.	-do-

Annexure 'B'

3. Habitual irregular attendance	Stoppage of increment Without/with cumulative Effect.
4. Habitual absence from duty Without intimation or prior Permission of the competent Officer and leaving station without Permission.	-do-

Annexure 'C'

1. Tempering with official documents With malafide intention.	Stoppage of increment With cumulative effect Reducing to lower post or Time-scale or lower stage in Time-scale removal or Dismissal.
2. Habitual breach of instructions, Rules or office orders.	-do-
3. Taking part in politics by subscribing In, aiding of, or assisting political Movement.	-do-
4. Theft, dishonesty, fraud, forgery Or misappropriation including cheating And non-issue of tickets after Collecting fare, in connection with the Cash, property or business of the Undertaking.	-do-
5. Accepting or giving illegal gratification (other than articles or trifling value)	-do-
6. Indecent, rude, intemperate, Quarrelsome or insolent behaviour Towards official superiors etc. in The premises of the undertaking or With the public while on duty.	-do-

Annexure 'D'

1. Striking work or inciting others Strike work in contravention of Labour Laws.	Removal or dismissal from the service.
2. Connivance or concerned action of an Employee with a view to causing Deliberate loss to the undertaking, Undermine the interest of the undertaking Or making wrongful gain out of it."	-do-
13. From the above, it is very much evident that punishment of removal from service can only be inflicted upon where an employee strikes work or incite others to	

strike in contravention with the Labour Laws or in connivance with such action as to cause deliberate loss to the Undertaking or undermining the interest of the Undertaking for making wrongful gain out of it. It is also quite clear that the punishment was totally disproportionate to the gravity of offence and the disciplinary authority has not even cared to go through its own instructions in this regard. It is also to be borne in mind that the applicant was fighting with her own problem of illness, who subsequently suffered with cancer. The basic principle of punishment is that the same should be reformative and not excessively punitive otherwise the whole idea of bringing about improvement in the conduct of an employee becomes a kaput. The moment an officer is removed from service or dismissed, he becomes beyond salvage. Such cases are to be resorted to as an exceptional measure and not as a matter of routine. Therefore, I have no hesitation in concluding that in the instant case, there has been over kill in punishment.

14. In totality of facts and circumstances of the case, the instant OA stands disposed of with the following directives:-

- (i) Order of removal dated 21.06.2012 is quashed and set aside. The applicant's deceased husband shall be deemed to have been reinstated in service from the date of the order, though no arrears of

service are to be paid to him. The respondents are directed to grant family pension to the applicant with interest on delayed payment at the rates being paid on GPF;

- (ii) The exercise, as ordained above, shall be completed within a period of three months from the date of receipt of copy of this order;
- (iii) There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

/Ahuja/