

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No. 100/2351/2015
with
O.A. No.100/4358/2014
O.A. No.100/373/2015
O.A. No.100/3501/2015
O.A. No.100/184/2016
O.A. No.100/185/2016
O.A. No.100/1033/2016**

New Delhi this the 26th day of October, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)**

(1) O.A. No.100/2351/2015

Sh. Hari Om Singh, Age-33 yrs.
Ex. Driver, DTC
S/o Shri Bhoop Singh
R/o. V.P.O.-Ladrawan,
District-Jhajjar,
Haryana-124 507.

....Applicant

(Argued by: Mr. Sachin Chauhan, Advocate)

Versus

1. Delhi Transport Corporation,
Through its Chairman, D.T.C.,
I.P. Depot, New Delhi.
2. The Depot Manager,
Delhi Transport Corporation,
Kanjhawla Depot,
New Delhi-81.
3. The Deputy Transport Commissioner,
Transport Authority,
Sikandra, Region-Agra,
Uttar Pradesh-282 007.
4. The Regional Transport Officer,
Jhajjar Licensing Authority,
Bahadurgarh,
Haryana.

....Respondents

(Argued by: Mr. Ajesh Luthra, Advocate)

(2) O.A. No.100/4358/2014

Rajeev Kumar
Age 37,
Post Driver/C
S/o Shri Ram Singh
VPO Badoli,
Tehsil & Distt-Sonepat
Haryana.

....Applicant

(By Advocate: Mr. Anil Sehrawat for Ms. Prabha Sharma)

Versus

Delhi Transport Corporation,
Govt. of NCT of Delhi
I.P. Estate, New Delhi.
(Through its Chairman cum Managing
Director)

....Respondent

(Argued by: Ms. Ruchira Gupta, Advocate)

(3) O.A. No.100/373/2015

Om Prakash
Age 38,
Post Driver, Group - C
S/o Shri Ram Chander
VPO Roorkee,
Distt-Rohtak
Haryana-124 426.

....Applicant

(By Advocate: Mr. Anil Sehrawat for Ms. Prabha Sharma)

Versus

Delhi Transport Corporation,
Govt. of NCT of Delhi
I.P. Estate, New Delhi.
(Through its Chairman cum
Managing Director)

....Respondent

(By Advocate: Ms. Ruchira Gupta)

(4) O.A. No.100/3501/2015

Sh. Amit Kumar Rathi
Age 35 years,
S/o Shri Ram Pal Singh
R/o. F-59, Malka Ganj,
Subji Mandi, Delhi-110 007.
As a Diver

....Applicant

(Argued by: Mr. Mahesh Verma, Advocate)

Versus

1. Delhi Transport Corporation,
Govt. of NCT of Delhi
Through Chairman
I.P. Estate, New Delhi-110 002.
2. Delhi Transport Corporation
Govt. of NCT of Delhi
Through its Depot Manager,
Millennium Depot-II,
New Delhi-110 002.Respondents

(By Advocate: Mr. Mohd. Imran for Shri Manish Garg)

(5) O.A. No.100/184/2016

Shri Ramphal
S/o Shri Ramesh Chander
DTC Driver Badge No. 26181
Token No. 68184 attached to
DTC Shadipur Depot, Delhi.

And R/o. 241-A, Vats Colony,
Line Paar,
Bahadurgarh-124 507,
Distt. Jhajjar (Haryana).

...Applicant

(Argued by: Mr. D.R. Roy, Advocate)

Versus

Delhi Transport Corporation,
(DTC for short)
Through its CMD
I.P. Estate, New Delhi-110 002.Respondent

(By Advocate: Ms. Ruchira Gupta)

(6) O.A. No.100/185/2016

Shri Sandeep Kumar
Aged 34 years,
S/o Shri Dai Ram
DTC Driver Badge No. 26602
Token No. 68606 attached to
DTC Shadipur Depot, Delhi.

And R/o. 750/4,
Ashok Vihar Line Par,
Bahadurgarh-124 507,
Distt. Jhajjar.

...Applicant

(Argued by: Shri D.R. Roy, Advocate)

Versus

Delhi Transport Corporation,
(DTC for short)
Through its CMD
I.P. Estate, New Delhi-110 002.Respondent

(By Advocate: Ms. Ruchira Gupta)

(7) OA No.100/1033/2016

Sh. Sant Ram (Ex-Driver DTC) 37 yrs.
S/o Shri Krishan
Driver Batch No.21785, T.No.63745,
Office At:GTK Depot, DTC, Delhi
R/o H.No.15, Village & P.O. Singhu,
Delhi-110040.Applicant

(Argued by: Mr. Anil Mittal for Shri S.K. Jha, Advocate)

Versus

1. Chairman-Cum-Managing Director,
DTC Head Quarter,
I.P. Estate, New Delhi-110002.
2. Regional Manager-cum-Appellate
Authority (West)
Through CMD-DTC
DTC Head Quarter, I.P. Estate,
New Delhi.
3. The Depot Manager,
Delhi Transport Corporation,
GTK Road Depot, DTC, Delhi-110033.
4. Regional Transport Authority,
Through MLO,
Rohini Zonal Transport Authority (NWZ-II),
Transport Department, Government of NCT of
Delhi, DTC Depot, Rohini-II,
Sector-16.
Delhi-110085.
5. Govt. of NCT of Delhi
Through its Secretary-Cum-Commissioner (Transport),
5/9 Under Hill Road,
Delhi-110054.Respondents

(By Advocate: Mr. Ajesh Luthra)

ORDER (ORAL)**Justice M. S. Sullar, Member (J)**

As identical questions of law and facts are involved, so we propose to decide all the above mentioned Original Applications (OAs), by way of this common decision in order to avoid the repetition of the facts. However, the facts and material have been extracted from main OA titled ***Hari Om Singh Vs. DTC & Others*** bearing ***No.2351/2015*** for convenience and ready reference to adjudicate upon the real controversy between the parties.

2. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OAs, and exposed from the record is that, consequent upon clearing the selection process conducted by Delhi Subordinate Services Selection Board (for brevity "DSSSB"), the applicant, Hari Om Singh (in OA No.2351/2015) was appointed on 18.02.2009 on the post of Driver, in Delhi Transport Corporation (DTC). He was given the offer of appointment in the pay band of Rs.5200-20200 plus Grade Pay of Rs.2000/-, vide order dated 30.12.2008 by DTC. He has also cleared the skill test of Driver conducted by the Respondents. He successfully completed his probation period of 2 years and was confirmed on 19.02.2011 as per Notification dated 18.02.2011 (Annexure A-11). Thereafter, he continuously discharged his duty of Driver for about 8

years efficiently and diligently, till his services were abruptly terminated. It was alleged that all the requisite documents, such as driving licence as well as educational qualification certificates, were submitted by the applicant to DSSSB at the time of recruitment. After routine check/verification of the documents including the driving licence, applicant was given appointment to the post of Driver. He successfully completed his probation period and was duly confirmed by the competent authority.

3. Suddenly, he received the impugned notice dated 17.09.2013 (Annexure A-1), indicating therein, that the Licensing Authority, Agra has apprised that his driving licence is not genuine, as per official records and also to show cause as to why his appointment being *void ab initio*, should not be terminated.

4. In pursuance thereof, the applicant filed the reply, whereby it was averred that the licence of the applicant was genuine and the verification report is erroneous. It was prayed that a proper enquiry be conducted in respect of the genuineness of driving licence of the applicant, but in vain. The applicant was stated to have obtained the verification report dated 29.07.2013 (Annexure A-15) from DTO Bahadurgarh, vide which it was informed that the endorsed D/L No.469/J/07 was issued to the applicant and further on the body of verification report, the Agra Licensing

Authority has also recorded that the DL/384/Ag/99 dated 30.03.1999 of the applicant, was genuine and authentic. The applicant also wanted to bring on record an information dated 10.11.2014 (Annexure A-20), in which it was certified and verified that the Licence No.N-384/AG/99 issued by the competent authority, was valid upto 23.07.2007 (Annexure A-18), but the Disciplinary Authority (DA) did not choose to deal with the issue raised by the applicant in the reply and terminated the services of the applicant, vide impugned order dated 30.06.2014 (Annexure A-2).

5. Thereafter, applicant filed the first appeal dated 23.09.2014 (Annexure A-7), which was rejected without considering all the points raised in the grounds of appeal and by passing a non-speaking order, conveyed to the applicant, vide order dated 26.12.2014 (Annexure A-3) that his statutory appeal has been rejected by the competent authority. Another appeal dated 08.01.2015 was also dismissed, vide order dated 10.02.2015 by the Appellate Authority (AA) and its result was conveyed to the applicant, vide order dated 02.03.2015 (Annexure A-4).

6. It will not be out of place to mention here that the applicants/Drivers, in other connected OAs, were also duly selected through same recruitment process, after verification of documents, driving licences, etc. by DSSSB.

They have also completed their period of probations and were duly confirmed by the competent authorities. Even after confirmation, they served the department as Drivers, for a considerable long time. Their services were terminated on the similar grounds, by passing the identical impugned orders by the competent authorities.

7. Aggrieved thereby, the applicants have preferred the instant OAs, challenging the impugned Show Cause Notices (SCNs), termination orders and orders of the AAs, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. The case set up by the applicants, in brief, insofar relevant, is that, they were duly appointed after following the due procedure and as per Recruitment Rules (RRs), by DSSSB as Drivers in DTC. They produced all the relevant documents/licences at the relevant time of recruitment. An independent agency of DSSSB has checked and after verification of the documents & driving licences, selected them and they were duly appointed as Drivers in DTC. They successfully completed their probation period and were confirmed. Their services were illegally terminated, without conducting any departmental enquiry (DE), as envisaged under Rule 15 of the RR. The procedure adopted by the department, while dispensing with the services of the applicants, is in violation of laid down procedure & rules and against the principles of natural justice. Even the impugned orders were stated to be result of non-application

of mind, non-speaking, stigmatic, punitive in nature as well and were passed in a casual & mechanical manner by the Depot Manager.

9. Sequelly, the applicants have further pleaded that the respondents have not considered any issue raised by the applicants in their reply to the SCNs and grounds of appeals. They have served the department continuously for a long period even after confirmation on the substantive posts of Drivers. The applicants have termed the impugned SCNs and orders arbitrary, bad in law, illegal, whimsical, without jurisdiction, against the statutory relevant rules and principles of natural justice. Some of the applicants have also pleaded that even the Depot Manager was not competent to pass the impugned orders, as according to them, the General Manager was the competent authority for the post of Drivers as per relevant rules.

10. Instead of reproducing the entire pleadings of other applicants, and in order to avoid the repetition, suffice it to say that they have also pleaded and urged the similar grounds to challenge the impugned orders in their respective connected cases. On the strength of the aforesaid grounds, the applicants seek quashing of the impugned SCNs and orders in the manner indicated hereinabove.

11. The contesting respondents have refuted the claim of the applicants and filed the replies, wherein it was

acknowledged that the applicants were appointed on the post of Drivers through the recruitment process conducted by DSSSB. They completed their probation period and were confirmed. However, it was pleaded that this Tribunal has no jurisdiction to decide the validity or otherwise of the driving licences of the applicants. In reply to para 4.7 of the **OA** bearing **No.2351/2015**, it was submitted that the Driving Licence No.384/AG/99 submitted by the applicant, Hari Om Singh, at the time of recruitment in DSSSB was verified, vide Office Letter No.KNJD/DM/2014/2436 dated 19.06.2014. However, his services were terminated under Clause 9 (b) of the relevant rules (**learned counsel for the parties are at *ad idem* that clause 9 (b) of the Rules has already been declared *ultra vires* of the Constitution by the Hon'ble Apex Court**) and as per terms and conditions of offer of appointment.

12. According to the respondents, that since the driving licences, subsequently on verification of the applicants, were found to be bogus, so their services were rightly terminated after issuing SCNs and the appeals filed by the applicants were rightly rejected by the AAs. It was averred that mere fact that the applicants were confirmed in service after completion of probation, will not advance their cases as their initial appointments itself were null and void ab initio.

13. Virtually acknowledging the factual matrix and reiterating the validity of the impugned SCNs and orders, the respondents have stoutly denied all other allegations & grounds contained in the OA and prayed for its dismissal.

14. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the OAs, the applicants filed their respective rejoinders. That is how we are seized of the matter.

15. Having heard the learned counsel for the parties at quite some length, having gone through the records with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that the instants OAs deserve to be partly accepted for the reasons and in the manner mentioned hereinbelow.

16. As is evident from the record, that the applicants applied for the post of Drivers in pursuance of the advertisement and submitted all the requisite documents including their respective driving licences. Having successfully completed the recruitment process and after due verification of their documents and driving licences, they were selected by DSSSB. As a consequence thereof, they were duly appointed on the post of Drivers by the DTC, initially on probation for a period of 2 years. They cleared the skill test of Drivers as well. They performed their duties and successfully completed their period of probation.

Consequently, they were confirmed on the substantive posts of Drivers by the DTC. There was no complaint against them in regard to performance of their duties. Not only that, they have served the DTC for a long period as Drivers, after their confirmation.

17. Surprisingly enough, the DTC has straightaway issued the impugned SCNs to the applicants, proposing to terminate their services on the ground of their grave misconduct of producing fake driving licences at the initial stage of recruitment. They filed the replies to the SCNs, raising a variety of grounds mentioned therein, which were not duly considered & negated and impugned termination orders were passed against them by the Depot Manager in a very routine and mechanical manner. Their appeals were also dismissed by the AAs. Thus, it would be seen, that the facts of the case are neither intricate nor much disputed and falls within a very narrow compass.

18. At the very outset, the celebrated arguments of learned counsel for the applicants that the Depot Manager was not competent to issue SCNs and to pass impugned orders as the appointing authority of Drivers is General Manager, is not only devoid of merit but misplaced as well, in view of authoritative decisions of a Division Bench of Hon'ble Delhi High Court in cases ***Delhi Transport Corporation Vs. Surendra Kumar Etc. ILR (1978) I Delhi 785, Vikram***

Kumar Vs. DTC (2015) 222 DLT 438 and ***Raghunandan Sharma Vs. DTC & Another ILR (1995) I Delhi 378***, in which the judgment of Hon'ble Supreme Court in case ***The Management D.T.U. Vs. B.B.J. Hajeley & Others (1972) 2 SCC 744***, relied on behalf of the applicants, was duly considered and then it was held that the power conferred on the Depot Manager by virtue of the Resolutions passed by the DTC Board deriving source from the provisions of [Section 12\(1\)\(c\)](#) of the Road Transport Corporation Act, is valid exercise of statutory powers and the initiation of disciplinary action and issuance of the show cause notices, as the case may be, by the Depot Managers in these very cases, is valid and the Depot Managers is the competent authority to pass the orders in disciplinary proceedings. In this view of the matter, it is held that the Depot Manager was competent to issue impugned SCNs and to pass the impugned termination orders, being DA in the present cases.

19. Such this being the position on record, now the short and significant question, that arises for our consideration in these cases is, as to whether the services of the applicants, confirmed Drivers, can be terminated on the ground of their alleged misconduct for submitting false driving licences at the time of initial recruitment, without holding any regular DE, in the facts and circumstances of the case or not?

20. Having regards to the rival contention of the learned counsel for the parties, to our mind, the answer must obviously be in the negative in this regard.

21. Article 311 (2) of the Constitution postulates that no person who is a member of a civil service and holding a civil post, shall be dismissed or removed or reduced in rank after an enquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

22. Moreover, it is not a matter of dispute that the services of the applicants, who are confirmed employees, are governed by the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952 (hereinafter to be referred as “relevant rules”). Rule 15 postulates the procedure for impositions of penalties of removal and dismissal etc. According to Rule 15(c), no order of dismissal, removal, or any other punishment except Censure, shall be passed against an employee unless he has been informed in writing of the grounds on which it is proposed to take action, it shall be reduced to the form of a separate charge or charges, which shall be communicated to the person charged and of any other circumstances which it is proposed to take into consideration in passing orders on the case by the competent authority. Then the employee shall be required, within a specified time to

submit a written reply to the charges and to state whether he desires to be heard in person also. If he so desires and if the competent authority so directs, an oral enquiry shall be held. The officer conducting the enquiry may record facts brought out in such enquiry and may utilise them for coming to a finding on the truth or otherwise of the charge or charges levelled against the employee. At the same time, if any Welfare Officer is employed with the Authority, may attend such enquiry to watch the interest of the employees. The proceedings shall contain a statement of the finding and grounds thereof.

23. Meaning thereby, a conjoint and meaningful reading of these provisions would reveal that a regular DE is must, before terminating the services of a confirmed employee for his misconduct and in doing so, the enquiring/Disciplinary Authority is required to observe the statutory rules and principles of natural justice as well, which is totally lacking in the present case.

24. However, the main arguments of learned counsel for respondents that since DTC is an Autonomous Body, so the applicants are not entitled to the protection under Article 311 of the Constitution, cannot possibly be accepted and deserve to be ignored for more than one reasons. At the first instance, DTC is a creation of statute created and governed by the provisions of Act of the Parliament, i.e. Delhi Transport Corporation Act, 1950. Secondly, after the

creation of Delhi State, DTC is controlled by the Delhi Government and its employees are getting their pay through Consolidated Fund. Thus, since DTC is a creation of State and an instrumentality of the State, as contemplated under Article 12 of the Constitution of India, so the protection of Article 311(2) is fully available to its employees. Even otherwise, the DTC is required to hold a regular DE under Regulation 15 of relevant rules and by observing the principles of natural justice, before terminating the services of the confirmed employees.

25. Likewise, the next contention of the learned counsel for the respondents that this Tribunal has no jurisdiction to decide the validity of the driving licences of the applicants, and no DE is essential, is neither tenable nor the observation of Hon'ble High Court of Delhi in case of ***Manoj Kumar Vs. The Commissioner of Police, Delhi Police & Others W.P. (C) No.5987/2014***, decided on 09.09.2014, is at all applicable to the facts of the present cases, because this Tribunal is not going to decide the validity, genuineness or otherwise of respective driving licences of the applicants.

26. On the contrary, it was the mandatory duty of the competent authority to follow the procedure of regular DE before imposing any punishment on the applicants for their alleged misconduct of submitting false information/driving licences, at the time of initial recruitment. Above all, in

Manoj Kumar's case (supra), the respondents sought verification of the driving licences of the Drivers (therein), **before their appointments**, which were found to be false.

On the peculiar facts and in the special circumstances of that case, it was observed that at the stage of securing employment, the candidates had to disclose all particulars truly and faithfully. Any cloud of suspicion over such candidature, would disentitle him the right to be appointed.

27. Possibly, no one can dispute with regard to the aforesaid observation, but the same would not come to the rescue of the respondents because in the present cases, in the wake of initial verification, their licences were found to be genuine and they were confirmed employees. Hence, this contrary arguments of the learned counsels for the respondents have no legal force at all.

28. Therefore, it is held that indeed the services of the applicants, who were the confirmed employees of DTC, could not legally be terminated without holding a regular DE, which is totally lacking in the instant cases. This matter is no more res integra and is now well settled.

29. An identical question came to be decided by Hon'ble Apex Court in case **Kamal Narayan Mishra Vs. State of M.P. (2010) 2 SCC 169**. Having considered the rights of an employee, on probation and confirmed employee, it was ruled that a confirmed Government servant is the holder of

a civil post entitled to the benefits of safeguard provided by Article 311 of the Constitution.

30. Again, a three Judge Bench of Hon'ble Supreme Court, has recently reiterated the same view in a celebrated judgment in case ***Avtar Singh Vs. U.O.I. & Others in SLP (C) No.20525/2011*** decided on 21.07.2016. Having considered the distinction of status of the probationer & confirmed employee and various previous judgments, it was authoritatively ruled that in case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal/dismissal on the ground of suppression of submitting false information in verification form and before the person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributed to such confirmed employee.

31. This is not the end of the matter. A similar question came to be considered by the Hon'ble High Court of Delhi in a bunch of Writ Petitions decided on 14.07.2014 along with main case ***Suresh Chand and Another Vs. DTC W.P. (C) No.4212/2014***. That was also a case of recruitment of post of Drivers in a selection process conducted by DSSSB in the year 2008. All of them underwent medical examination. Consequently, appointment letters were issued and the petitioners (therein) took charge of the post of Drivers. They were confirmed after completion of the probation

period by DTC. Subsequently, they were directed to report to an independent Medical Board constituted by GNCTD. After receipt of the reports, presumably adverse to the petitioners (therein), show cause notices were issued asking the drivers as to why their appointments should not be terminated. In the backdrop of these facts, it was held as under:-

“6. It is evident that certain facts are undeniable - (i) the petitioners were appointed through properly constituted recruitment process and underwent the procedure in accordance with the prescribed rules; (ii) they were medically examined and also subjected to further medical examination by Guru Nanak Eye Centre, GNCTD in 2009 itself; (iii) there are no allegations against the petitioners of dereliction in duty, or causing any accident and, most important, (iv) all of them were confirmed in the service for the post of driver after successfully completing their period of probation. In these circumstances, the appropriate method of terminating the petitioner's/employee's services will be after conclusion of duly constituted disciplinary proceedings through departmental enquiries. In the present case, the petitioners, or at least some of them, were issued show cause notice in that regard. There is no formal enquiry as to their alleged misconduct involving fraud till date. In these circumstances, the respondent's submissions that the initial appointments were void because the petitioners, or some of them, were guilty of practising fraud is meritless. In order to detect fraud, it is essential for the respondent - the employer, to allege the elements of fraud, call upon the delinquent or such of the petitioners which are culpable to answer the charges and after examination of the materials placed on record as well as the defence, ensure that the enquiry report is made based upon which any penalty order, including that of dismissal, can be made. There is no shortcut for such procedure. Once the employer alleges misconduct - even though it relates to the initial stage of appointment - departmental proceedings are mandatory. The course suggested by the DTC of presuming that the subsequent medical report obtained in 2013, in effect, establishes the charge of fraud against the petitioners and others cannot be accepted. The sequiter, therefore, is that the respondents have to necessarily hold an enquiry into the allegations against the petitioners - both in respect of the fraud allegedly played on them, as well as the alleged participation or complicity of the petitioners in it. It is only thereafter that the question of penalty can arise.

8. In view of the above, respondents may, if they so choose, initiate and continue with the enquiry into the charges alleged against the petitioners in the show cause notice after receiving their explanation and thereafter W.P.(C)4212, 4214, 4237, 4240, 4243 & 4244/2014 Page 6 proceed in accordance with law, having regard to the final report received from the Enquiry Office. However, it shall not be open to the respondent DTC to terminate or dismiss the petitioners on the basis of the alleged fraud, merely by giving a show cause notice and calling for a reply.”

32. Still DTC did not feel satisfied and the ***Special Leave to Appeal (C) No.361/2015*** titled ***DTC Vs. Suresh Chand and Another*** filed by it was dismissed on 16.01.2015 by the Hon'ble Supreme Court. Thus, the said judgment of the Hon'ble High Court has already attained the finality.

33. The matter did not rest there. The learned counsels for the applicants have vehemently urged and pointed out that the DTC is adopting a pick and choose policy. It has issued regular charge sheets and conducting regular DEs for the same very misconduct against some of similarly situated Drivers. But in the present cases, respondents (DTC) have adopted a novel method and terminated the services of the applicants, without holding any such regular DE for the reasons best known to it. The learned counsels for the respondents have fairly acknowledged this factual matrix. In this manner, the DTC cannot discriminate and adopt a pick and choose policy in this regard. The applicants are also legally entitled to the same very treatment and parity in the similar circumstances of the case under Articles 14 & 16 of the Constitution and in view of law laid down by Hon'ble Apex Court in cases ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481*** and ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120*** wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend

to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

34. There is yet another aspect of the matter, which can also be viewed entirely from a different angle. The impugned termination order dated 30.06.2014 (Annexure A-2), passed in case of applicant ***Hari Om Singh*** in ***OA No.100/2351/2015*** reads as under:-

“DTC KHANJAWLA DEPOT: DELHI-81

No.KNJD/PFC (Dr.)/14/2510

Dated:30.06.2014

The reply submitted by Shri Hari Om Singh. Dr. No.23392, P.T. No.65356 in response to SCN No.KNJD/PFC(Dr.)/13/340 dated 17.09.2013 issued to him was thoroughly considered by the undersigned and found not satisfactory. As he produced bogus driving licence No.N-384/Ag/99 at the time of his appointment in DTC. Re-verification of said driving licence was made vide this office letter No.KNJD/2436 dated 19.06.2014. The licensing Authority Agra has informed vide their letter No.213 dated 26.6.2014 that the licence No.384/Ag/99 has not been issued by the Agra Authority. Hence the services of Shri Hari Om Singh. “Dr. B No. 23393, P.T. No. 65356 are hereby terminated under clause 9 (b) with immediate effect i.e. 01.07.2014 of the DRTA (Conditions of appointment and services) Regulation, 1952 as per terms & conditions of his appointment circulated by letter No. PLD-3(DSSSB)/Dr./OtherState/2009/293, dt. 24.01.2009 and letter No. PLD-3/DSSSB/Dr./OtherState/2009/0647, dt. 18.02.2009 respectively.

He has not opted DTC Pension scheme as per record.

He is required to deposit all the DTC articles in his possession with the office of the undersigned within 24 hours of the receipt of this memo, not deposited of the DTC Articles by him in accordance with the instructions (part-i) as contained in O.O.03, vide letter No. Adm.I-7(42)/2013/109 dated 08.09.2013 will render him liable to pay a penalty of Rs.50/- per day for the days he keeps any of the DTC articles in his possession after the specified period of 24 hours. In case of Police Report lodge on the date or after termination regarding loss of any returnable articles, a penalty of Rs.5000/- will be imposed upon him at the time of settlement of the dues in accordance with the instructions (part-ii) as contained in O.O.3 No. Adm.I-7(42)/2013/109 dated 08.02.2013.

DEPOT MANAGER”.

35. Similar impugned termination orders were passed by the Depot Manager in cases of other applicants in connected cases.

36. A bare perusal of the record would reveal that the services of the applicants were terminated only on the grounds of their misconduct of producing false driving licences at the time of their initial recruitment. Not only that, the respondents have specifically admitted in their replies and took the same very stand that their services were terminated on account of the alleged misconduct on their part.

37. Therefore, even if the contents/substance of the impugned orders, indicating attending circumstances pleaded in the written statements and the basis of termination orders are taken into consideration and put together, then no one can escape to come to a definite conclusion, not only that the impugned termination orders are smeared with stigma, but also passed on the alleged misconduct of the applicants. Thus, the impugned termination orders are held to be stigmatic and punitive in

nature. Naturally, such stigmatic and punitive orders should not have been passed by the competent authority without following the due procedure of holding regular DEs as per statutory rules and by observing the principles of natural justice. The Hon'ble Apex Court in case **Anoop Jaiswal Vs. Government of India and Another (1984) 2 SCC 369** has ruled that even in case of a probationer, court can go beyond the formal order of discharge to find the real cause of action. Simple order of discharge of probationer on ground of unsuitability passed before his completion of the probation period, which is based on report/recommendation of the concerned authority, indicating commission of alleged misconduct by the probationer, then order is punitive in nature, which in the absence of any proper enquiry amounted to violation of Article 311(2) of the Constitution of India.

38. Again, the same view was reiterated by Hon'ble Apex Court in case **Andhra Pradesh State Federation of Company Operative Spinning Mills Ltd. and Another Vs. P.V. Swaminathan JT 2001(3) 530** wherein it was held that the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out as to whether the alleged misconduct really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the

order was, in fact, stigmatic and punitive in nature, then it must be interfered with since the procedure has not been followed.

39. Therefore, once it is proved on record that the services of the applicants were terminated for the above mentioned misconduct by virtue of the impugned stigmatic and punitive orders, then the protection under Article 311 of the Constitution of India is available to them and their services cannot be terminated on speculative grounds, without holding an enquiry.

40. An identical question recently came to be decided by the Hon'ble Apex Court in case **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363**, wherein having considered the previous judgments of Hon'ble Supreme Court, it was ruled that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, a show

cause notice was required to be issued and opportunity of being heard has to be provided to such employees in departmental enquiry before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law.

41. Sequelly, the same view was followed by this Tribunal in case ***Jaibir Antil Vs. Director, Department of Women and Child Development, Govt. of NCT of Delhi and Others*** in ***OA No.100/1232/2014*** decided on 10.08.2016 and ***Mahavir Singh Vs. DTC & Others in OA No.100/2903/2013*** decided on 08.09.2016.

42. Therefore, such impugned stigmatic and punitive orders of termination, passed on account of indicated misconduct against the applicants by the competent authority would be inoperative and cannot legally be sustained. Thus, the contrary arguments of the learned counsel for the respondents *stricto sensu* deserve to be and are hereby repelled. The ratio of law laid down in the indicated judgments of Hon'ble Apex Court, Hon'ble High Court and this Tribunal is *mutatis mutandis* applicable in the present controversy and is a complete answer to the problem in hand.

43. It is not a matter of dispute that the respondents have issued impugned SCNs and terminated the services of the applicants on the ground of misconduct of providing fake driving licences at the time of initial appointment based on

alleged verification reports. On the contrary, the applicants claim that their driving licences were valid and genuine. As to whether the applicants have committed any indicated misconduct only based on verification reports (which require proof and are not per se admissible in evidence) and whether these reports are actually based on the record of the respective driving licensing issuing authorities or not, inter alia, would be the moot points to be decided during the course of enquiry by the competent authorities. Such intricate questions can only effectively be decided by holding regular DEs and not otherwise. Above all, the statutory rule and natural justice require that adequate opportunity should be granted to the applicants to prove their innocence before snatching their livelihood by means of impugned termination orders. Even if the charge is proved against the delinquent officials during the enquiry, they would have an opportunity to plead for proportionality of the punishment vis-à-vis the charge of misconduct.

44. This is not the end of the matter. The impugned orders of termination passed by the Depot Manager and Appellate Authorities are sketchy. As mentioned hereinabove, the applicants have raised very important issues of genuineness of their driving licences in their respective replies to the SCNs. Even they have reiterated all the grounds and pleaded important points in their grounds of appeals. Strangely enough, the Disciplinary Authorities did not adhere to, have

not considered a single point/issue raised by the applicants in their respective replies and passed the impugned orders in a very casual manner without assigning any cogent reason. The same very error was committed by the AAs as well. Such authorities exercise quasi judicial functions and are required to consider the entire matter in right perspective and then to pass speaking and reasoned orders to decide the matter in dispute between the parties, which is totally missing in these cases.

45. What cannot possibly be disputed here is that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

“Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one

case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

46. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*** (2009) 4 SCC 240 has in para 8 held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. **Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation**".

47. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others*** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that **"recording of reasons in support of a decision on a disputed claim by a quasi-judicial**

authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim.

If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just". It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhu Sudan Rao JT 2008 (2) SC 253.***

48. Thus, seen from any angle, indeed impugned SCNs and orders are sketchy, non-speaking, arbitrary, discriminatory, against the statutory rules & principles of natural justice, smeared with stigma, punitive, deserve to be set aside and cannot legally be sustained in the obtaining circumstances of the case.

49. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

50. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of regular DEs, the OAs are hereby partly accepted. The impugned SCNs, termination orders and orders of AAs are set aside. The applicants are ordered to be reinstated in service forthwith with 50% of back wages, in view of judgment of Hon'ble Apex Court in **Ratnesh Kumar Choudhary's case** (supra). However, it is made clear that nothing observed hereinabove, would reflect on merits, in regular DEs as the same has been so recorded for a limited purpose of deciding the pointed limited controversy involved in the OAs. The parties are left to bear their own costs.

51. Needless to mention, the DTC would be at liberty to initiate and conduct regular departmental enquiry against the applicants for their alleged indicated misconduct, in accordance with law, before imposing any punishment on them. At the same time, since the validity & genuineness or otherwise of the driving licences of the applicants are very much in dispute, so the DTC would be at liberty to suspend them in contemplation of the regular Departmental Enquiry, subject to the payment of admissible subsistence allowances. In case it (DTC) chooses not to suspend the applicants, then it (DTC) will not assign them the duties of

Drivers in public interest and safety. They may be deputed on some other job except Drivers, during the pendency of the regular DEs.

Let a copy of this order be placed in all the connected files

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
26.10.2016

Rakesh