

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 2763/2014

New Delhi, this the 25th day of May, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Bhagwat Prasad,
S/o. Sh. Budh Ram,
Age 58 years, R/o. R-1151/1,
Model Town-III,
New Delhi-110 009
Badge No. 6342,
Working as Fitter

...Applicant

(By Advocate : Mr. Ravinder S. Garia)

VERSUS

Delhi Transport Corporation,
Through
Chairman, D.T.C.,
I.P. Estate, New Delhi-110 001.

....Respondent

(By Advocate : Ms. Ruchira Gupta)

O R D E R (O R A L)

Shri V. N. Gaur, Member (A) :

The applicant is a Fitter, working with the respondents (Delhi Transport Corporation). He was served with show cause notices on 18.05.2013 and 21.05.2013 to explain why recovery should not be made from his salary on account of GPS devices stolen from 5 buses. The applicant at first, vide letter date 23.05.2013,

asked for documents/ information like Hindi translation of the notices; details of the legal provisions to be made available in Hindi; whether the GPSs were functional, and the speed limit fixed for the buses. After some more correspondence the respondents provided him some of the information on 02.07.2013 and the applicant submitted his reply on 29.07.2013. Thereafter, the respondents passed the impugned order dated 27.07.2013 and 13.08.2013 imposing token penalties of Rs.596/- and Rs.459/- respectively to be recovered from his salary in one instalment. The applicant filed appeal against these orders which was rejected by the respondents after giving him personal hearing, on 27.06.2013.

2. According to the learned counsel for the applicant, the respondents have imposed the token penalty on the applicant without any inquiry and for no lapse on his part. The applicant being a Fitter is responsible for checking the mechanical fitness of the buses while the actual maintenance work was entrusted to a private organisation. The boundary wall of the depot where the buses were parked was not very high. In these circumstances, the respondents could not have pin pointed the responsibility on the applicant for the loss of the GPS. The respondents themselves have issued the

instructions to the Drivers that they will be responsible for the loss or damage to GPS equipment, because many of the drivers did not want a functional GPS as that would record violations of speed limit and scheduled stoppages. The respondents have also lodged an FIR with the police regarding the missing GPS equipment but without waiting for its outcome have taken action against the concerned staff in an arbitrary manner. The respondents have not taken any action against the private company for loss of the GPS devices though their staff was responsible for checking the buses at the time of entering and exiting the bus depot.

3. The learned counsel for the respondents, on the other hand, refuted the allegations made by the applicant and submitted that the respondent have issued instructions from time to time to all concerned staff to be vigilant and to ensure proper maintenance and safety of GPS devices. She referred to an order dated 11.07.2013 filed along with the counter that casts responsibility on all the concerned staff to check the working status of the GPS device at the time of handing over / taking over of the buses without fail. In cases of missing/damaged devices, the matter should be immediately brought to the notice of VMs/service providers and necessary

damage/recoveries to be effected from the responsible agency/official. Such recoveries are to be completed within three days besides filing of FIR with the police. Action taken by the respondents in the instant case was in accordance with the existing instructions. Responding to the submission made by the applicant that it was not his responsibility to check the GPS device the learned counsel referred to the workshop duty allocation for the months of March and April, 2013 annexed to the counter. The duties mentioned against the name of the applicant clearly show that he was responsible for checking all the GPS devices as well. The applicant, therefore, cannot escape the responsibility if he has not performed his duty properly. The applicant had not even reported to the concerned authority that the GPS devices were missing. Therefore according to the learned counsel there was no merit in the OA and it deserved to be rejected.

4. We have heard the learned counsel for the parties and perused the record. The main arguments of the applicant against the imposition of the token penalty of recovery of amounts of Rs.596/- and Rs.459/- is that according to the distribution of work, there is no clear cut responsibility placed on the applicant for checking the functioning of the GPS. According to him, the buses when

they enter and exit the depot are checked for up keep by the staff of a private agency and only later the role of the applicant as a Fitter came in to see that the buses were roadworthy for undertaking its duty. It was, therefore, the responsibility of the private maintenance organisation to have checked and reported if the GPS was missing. It has also been argued that filing of FIR in the case showed that the respondents are yet to come to a conclusion as to who is responsible for the theft of GPSs.

5. We find that the instructions issued by the respondents on 11.07.2013 inter alia lays down the following procedure with regard to GPS :

“Working status of GPS devices should also be noted at the time of handing over/taking over of buses without fail. In case of missing/damaged devices, the matter should be immediately brought to the notice of VMs/Service Provider and necessary damage / recoveries be effected from the responsible agency/official.

2. All Depot Managers shall take extra precautions, towards security of GPS devices to avoid theft/missing/tampering of GPS devices cases and resultant complications in the matter.

3. In case of damaged/missing/stolen devices/vandalism etc 100% cost device/repair be recovered from concerned responsible official after fixing the responsibility as per enquiry which must be completed within 03 days of incident and FIR for any missing/stolen device must also be registered within these 3 days period.”

6. Though the date of this instruction is after the incident for which the applicant has been penalised, the

order itself says that these instructions are nothing but reiteration of the instructions issued vide office orders dated 21.12.2011, 03.02.2012, 07.08.2012 and 05.12.2012. The applicant, therefore, cannot plead ignorance of these instructions and say that it was not his duty to check the presence of GPS in the buses. He has admitted that after the buses have entered the depot, he as a Fitter has been assigned the duty to check the buses. In that case, had hereally checked the buses and found the GPS device missing, it was his duty to have brought the same to the notice of concerned authorities. The workshop duty allocation charts for the months of March 2013 and April 2013 also have the following entry against the name of the applicant showing the nature of his duty:

“I/c. Shift, Maintaining Device Register and monitoring of reports, gate duty, GPS devices.”

7. Therefore, we do not find any substance in the submission of the applicant that it was not his responsibility to check the GPS in the buses. The FIR is against the incident of theft of GPS and has nothing to do with the penal action taken by the respondents in accordance with the departmental instructions. The applicant was given opportunity to explain his position and defend himself against the allegations. The

respondents have passed the order after taking into account the representations as well as giving him a personal hearing. The relevant record have also been made available to him though a few documents asked by him were not been provided as the same were not been considered as relevant. In the letter dated 23.05.2013, the applicant had asked for details of Section 7(2) c and Section 192 Section 12 of the Act of 1936 and clause 15(2) of D.R.T.A. Regulation Act 1957 to be made available in Hindi. He also wanted information whether GPSs were functioning and the speed limit of the buses. However, in the letter dated 02.07.2013 the applicant has mentioned that he has not been given any information as demanded from Sl. No. 1 to 5 and 7 to 9. No such list of documents has been attached with the O.A. We are, therefore, unable to conclude in what manner non-supply of these documents has prejudiced the defence of the applicant.

8. It is trite that in a case of disciplinary action, the scope of interference by the Tribunal is very limited and is circumscribed by the consideration whether any principles of natural justice has been violated and whether the respondents has followed the prescribed procedure while imposing the penalty. In the background

of the facts of this case we do not find any denial of natural justice to the applicant. We, therefore, do not find any merit in the O.A. and same is dismissed as such. No costs.

(V. N. Gaur)
Member (A)

(Justice M. S. Sullar)
Member (J)

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