

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

O.A No. 1871/2014

New Delhi this the 13th day of January, 2016

Hon'ble Mr. Justice B. P. Katakey, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

Sh. Usham Kumar, Driver
Aged 45 years,
S/o Shri Dalel Singh,
R/o : House No. 14,
Village & Post Office : Kutab Garh,
Near Bhutonwali Chaupal,
Delhi-110 039.

...Applicant

(By Advocate: Mr. Amit Kumar)

VERSUS

The Delhi Transport Corporation (DTC) & Others, Through :

1. The Chairman-Cum-Managing Director, DTC
DTC Headquarter, Indraprastha,
New Delhi-110 002.
2. The Regional Manager (North)
DTC, Wazirpur Depot, Delhi.
3. The Manager
PLD-III (HQ),
DTC Headquarter, Indraprastha,
New Delhi 110 002.
4. The Depot Manager
Delhi Transport Corporation
BBM Depot-1, Delhi-9.
5. The Depot Manager
BBM Depot-II
Delhi Transport Corporation,
Delhi.

...Respondents

(By Advocate : Mr. D. S. Mishra, proxy for Mr. Anand Nandan)

O R D E R (O R A L)

Hon'ble Mr. Justice B. P. Katakey, Member (J)

The grievance of the applicant in the present O.A is basically relating to non-implementation of the order dated 27.03.2012 passed by the

departmental appellate authority i.e., Regional Manager (North) DTC, in a departmental proceedings initiated against the applicant.

2. The case of the applicant is that though pursuant to a disciplinary proceedings initiated against him he has been penalised vide order dated 25.11.2009 passed by the disciplinary authority removing him from service, in the departmental appeal preferred against the said order, the departmental appellate authority on 27.03.2012 allowed the appeal by allowing the applicant to perform his duties and transferred him to BBM Depot-II, thereby setting aside the order of the disciplinary authority dated 25.11.2009, despite which he has not been taken back on duty as Driver.

3. The learned counsel appearing for the applicant referring to the order dated 27.03.2012 passed by the departmental appellate authority i.e., the Regional Manager (North), has submitted that since the departmental appeal preferred by the applicant has been accepted and the applicant was allowed to perform his duties by the departmental appellate authority, it amounts to setting aside the order of removal from service dated 25.11.2009, which order, the respondents though are bound to comply, the applicant, however, has not been taken back on duty. The learned counsel, therefore, submits that the respondents may be directed to take the applicant back on duty, pursuant to the aforesaid order dated 27.03.2012, more so when the said order has not been reviewed or revised by the authority till date.

4. Learned counsel appearing for the respondents referring to the note dated 03.05.2012 of the Personal Department has submitted that since the applicant has concealed the fact relating to the pendency of the criminal proceedings against him, he has been removed from service, hence, he cannot be taken back in service. It has also been submitted that this

Tribunal in a similar matter being **O.A No. 2609/2012 (Lal Singh Vs. DTC)** decided on 27.09.2013 has dismissed the O.A, which though was challenged before the Hon'ble High Court, Writ Petition filed by the applicant therein was also dismissed vide order dated 08.04.2015. The learned counsel, therefore, submits that the O.A deserves to be dismissed.

5. The factum of removal of the applicant from service by the disciplinary authority vide order dated 25.11.2009 and subsequent order dated 27.03.2012 passed by the departmental appellate authority i.e., the Regional Manager (North) DTC, in the disciplinary proceedings initiated against the applicant are not in dispute. It is not the case of the respondents that the order passed by the departmental appellate authority on 27.03.2012 has been reviewed or revised subsequently. The only contention, which has been advanced before this Tribunal by the respondents is that since the applicant has concealed the material fact relating to the pendency of the criminal proceedings against him at the time of his employment, he was removed from service and hence, not entitled to be reinstated in service.

6. The departmental appellate authority i.e., the Regional Manager (North), DTC, vide order dated 26.03.2012 has allowed the departmental appeal preferred by the applicant challenging the order of removal from service dated 25.11.2009. The Regional Manager (North) has in his order given the reasons for allowing the appeal and also allowing the applicant to perform his duty as Driver. In the said order the departmental appellate authority has also noticed that the applicant was exonerated from all the charges by the Additional Chief Judicial Magistrate, Faridabad. The relevant portion of the said order dated 27.03.2012 is reproduced below :-

"Under such circumstances, I am of the view that punishment imposed by the Disciplinary Authority is disproportionate to the offence committed. Simply not giving information in CVR form that too of a motor accident does not amount to be criminal in nature. So, the punishment imposed is on very very higher side. Any other measure could have been taken by the Disciplinary Authority, as this driver has been selected through DSSSB after passing written exam and interview. Then driving test was also carried out. He crossed all the barriers and thereafter he was given training in the Training School of DTC and after that he performed his duty successfully for one year nine months. So, I upheld his appeal and allow him duty. He is also transferred to BBM Depot-II."

7. There being no dispute relating to the aforesaid order dated 27.03.2012 as well as the competence of the Regional Manager (North) as the departmental appellate authority to deal with the departmental appeal preferred by the applicant, the respondents authority cannot ignore to implement the said order, more so when the said order has not been reviewed or revised subsequently.

8. The decision of this Tribunal in **Lal Singh** (Supra) cannot be applied in the case in hand, the facts in both the cases being different. In Lal Singh (Supra) this Tribunal has dismissed the O.A upholding the penalty imposed by the disciplinary authority, which was affirmed by the departmental appellate authority, for concealing the material facts at the time of his initial employment. In the said case the departmental appeal preferred was dismissed, unlike in the case in hand. In this case the departmental appellate authority has allowed the appeal by setting aside the order of removal of the applicant from service. In Lal Singh (supra) issue was not as to whether the department can refuse to implement the order passed by the departmental appellate authority in the departmental appeal preferred under the relevant rules against the order imposing penalty.

9. In view of the above, we direct the respondents to immediately take back the applicant in service, pursuant to the aforesaid order dated 27.03.2012. The order in this regard shall be passed forthwith. The applicant shall be entitled to all service benefits except back wages. The applicant, however, shall be paid the full salary with effect from today by taking into account the increments which otherwise would have been due to him had he performed his duties in the meantime.

10. The O.A is accordingly allowed as indicated above. No costs.

(K. N. Shrivastava)
Member (A)

(Justice B. P. Katakey)
Member (J)

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