

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3355/2016
with
O.A.No.3356/2016
O.A.No.3360/2016
O.A.No.3361/2016
O.A.No.3362/2016
O.A.No.3364/2016
O.A.No.3365/2016
O.A.No.3366/2016

Order Reserved on: 30.09.2016
Order pronounced on 05.10.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

O.A.No.3355/2016:

Shri Yogesh Kumar
S/o Sh. Hari Prasad Sharma
Driver Badge No.24287, T.No.66277
R/o Vill. & P.O. Chaumua, Distt. Mathura,
U.P.-281406. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002

2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

with

O.A.No.3356/2016:

Sh. Pawan Kumar, aged 39 years
S/o Sh. Laxman Singh
Driver Badge No.24235, T.No.66225
R/o H.No.134, Pana Mamurpur
Narela, Delhi-110040. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002

2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3360/2016:

Sh. Mahender Singh, age 37 years
 S/o Shri Daya Chand
 Driver Badge No.25235, T.No.67233
 R/o H.No.719, Vill. & P.O.Ghitorni
 P.S.Vasant Kunj, Delhi – 110 030. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
 Delhi Transport Corporation
 Head Quarter, I.P.Estate
 New Delhi – 110 002
2. Regional Manager-cum-Appellate Authority
 Through CMD-DTC
 DTC Head Quarter, I.P.Estate
 New Delhi.
3. The Depot Manager
 Delhi Transport Corporation
 Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3361/2016:

Shri Suresh Chand, 43 years
 S/o Sh. Jagan Singh
 Driver Badge No.25346, T.No.67348
 R/o B-49, Gali No.4, Jyoti Colony
 Shahdara, Delhi – 110 032. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002

2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi.
- ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3362/2016:

Sh. Sunil Kumar, Age 38 years
S/o Sh. Ram Niwas
Driver Badge No.21923, T.No.63884
R/o V.P.O. Sankhol, Tehsil Bahadurgarh
P.S.Sector-6, Bahadurgarh
Distt. Jhajjar, Delhi.

....

Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002

2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3364/2016:

Sh. Krishan Kumar, age 45 years
S/o Sh. Hukum Singh
Driver Badge No.24422, T.No.66412
R/o Jharoda Kalan, Near Najafgarh
Delhi – 110 072. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002

2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3365/2016:

Shri Mahender Singh
 S/o Sh. Ram Singh
 Driver Badge No.25322, T.No.67323
 R/o Vill. & P.O. Sidhrawali,
 Gurgaon, Haryana-122001. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
 Delhi Transport Corporation
 Head Quarter, I.P.Estate
 New Delhi – 110 002
2. Regional Manager-cum-Appellate Authority
 Through CMD-DTC
 DTC Head Quarter, I.P.Estate
 New Delhi.
3. The Depot Manager
 Delhi Transport Corporation
 Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O.A.No.3366/2016:

Sh. Major Singh, 43 years
 S/o Sh. Hari Singh
 Driver Badge No.23967, T.No.66953
 R/o 1/9213B, Gali No.5, West Rohtas Nagar
 Shahdra, Delhi – 110 032. Applicant

(By Advocate: Shri F.K.Jha)

Versus

1. Chairman-Cum-Managing Director
Delhi Transport Corporation
Head Quarter, I.P.Estate
New Delhi – 110 002
2. Regional Manager-cum-Appellate Authority
Through CMD-DTC
DTC Head Quarter, I.P.Estate
New Delhi.
3. The Depot Manager
Delhi Transport Corporation
Millennium Depot-4, New Delhi. ..Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (Common)

Since the questions of fact and law involved in all the aforesaid OAs, are identical, they are being disposed of by this common order. For the sake of convenience, the facts of OA No.3355/2016 are taken for consideration

2. The applicants in all these OAs are working as permanent Drivers, on regular basis, in the respondent-Delhi Transport Corporation (in short, DTC), and filed the OAs questioning the respective inquiry reports and

the Show Cause Notices issued thereto, proposing to terminate their services under Rule 15(2) of the DRTA (Conditions of Appointment and Service) Regulations, 1952, and calling for their explanation.

3. It is submitted that the applicant in OA No.3355/2016, was selected as Driver after participating in the selection process conducted by the Delhi Subordinate Services Selection Board (in short, DSSSB) in 2008, for appointment in the respondent-DTC. On 15.12.2008, when the applicant was medically examined by DTC Medical Board, a defect was found in his vision. On a representation of 412 identical candidates, i.e., the Drivers whose vision was found defective, a decision was taken on 29.01.2009 to call for a second medical opinion. In the consequential 2nd medical examination, conducted by the Gurunanak Eye Center, GNCTD, the said medical board cleared the candidature of the applicant and accordingly he was appointed as Driver on 20.10.2009. On successful completion of the probation period of two years, the services of the applicant were confirmed.

4. When an accident was caused by a Driver, namely, Shri Vinod Kumar, the respondent got re-examined the applicant and number of other Drivers by an independent medical board, constituted by the GNCTD and thereafter alleging fraud in getting clearance in 2nd medical examination done at Gurunanak Eye Center, GNCTD, the services of the applicant and number of others were sought to be terminated by the respondents by issuing Show Cause Notices and when the Original Applications filed by the applicant and others, against the said Show Cause Notices were failed, they filed WP(C) No.4212/2014 (**Suresh Chand & Anr. v. Delhi Transport Corporation**) and batch and the Hon'ble High Court of Delhi by its common Judgement dated 14.07.2014 while disposing of the said batch of Writ Petitions, observed 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 sequitter, 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.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 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."

The batch of SLPs filed against the said orders, were also dismissed by the Hon'ble Supreme Court of India on 07.01.2015.

5. In pursuance of the aforesaid orders of the Hon'ble High Court, the respondents conducted a detailed departmental inquiry and the inquiry officer vide Annexure A4 submitted his inquiry report holding that

the charges levelled against the applicant were proved. The respondent-DTC vide the impugned Annexure A1, Show Cause Notice, dated 28.07.2016, while furnishing the inquiry report, called for the explanation of the applicant within 10 days from the date of receipt of the said notice. The applicant, vide Annexure A5 dated 16.08.2016, submitted his reply to the said Show Cause Notice. But the applicant even before the disciplinary authority considers his representation made against the inquiry report, and before passing a final disciplinary order, filed the OA questioning the inquiry report and the Show Cause Notice.

6. Heard Shri F.K.Jha, the learned counsel for the applicants and Shri Ajesh Luthra, the learned counsel for the respondents, on receipt of advance notice and perused the pleadings on record.

7. Shri F.K.Jha, the learned counsel for the applicant, arguing for the admission of the OAs and for granting of interim stay orders, submits that the earlier Show Cause Notices issued by the respondents on the same grounds, were set aside by the Hon'ble High Court and hence, the

impugned inquiry report and the Show Cause Notices issued thereto are also illegal.

8. The learned counsel further submits that in the similar circumstances, this Tribunal on 22.09.2016 in OA No.3223/2016 (Annexure A6), while disposing of the OA, directed the DTC to pass a final disciplinary order within a specified time, and further directed to maintain status quo as on the date of the said order, for a further period of one month from the date of passing of the said final disciplinary order, and hence, for parity of reasons, the applicants also entitled for granting of stay of the impugned show cause notice.

9. The learned counsel also submits that this Tribunal, in identical circumstances, in a batch of OAs, while issuing notices to the respondents directed them not to pass any adverse orders against the applicants therein. One such order in OA No.1408/2016 dated 22.04.2016 is filed as Annexure A7. Accordingly, he submits that similar interim orders may be passed in these OAs also.

10. A perusal of the Hon'ble High Court order in WP(C) No.4212/2014 and batch, dated 14.07.2014 (Annexure A2), clearly discloses that the Hon'ble High Court interfered with the earlier Show Cause Notices of termination, on the sole ground that the same were issued without providing an opportunity to the applicants by conducting a departmental inquiry. The Hon'ble High Court specifically stated that "the respondents have to necessarily hold an inquiry into the allegations both in respect of alleged fraud as well as the alleged participation or complicity of the applicants in it, and only thereafter the question of penalty can arise." In obedience to the said orders only, the respondents conducted the departmental inquiry wherein the applicant has participated and that the inquiry officer vide his impugned inquiry report held that the charges levelled against the applicant are proved. In consequence thereto, the respondents while furnishing the inquiry report to the applicant called for his explanation for their consideration before passing the final disciplinary orders. Hence, the action of the respondents is in accordance with the said orders of the Hon'ble High Court only.

11. As per the settled principles of law, ordinarily, no OA or Writ is maintainable against a Show Cause Notice or a Chargesheet, since no cause of action arose unless a final disciplinary order is passed. Hence, the OA is premature and accordingly not maintainable, at this stage.

12. The OA No.3223/2016 (Annexure A6), on which the learned counsel for the applicant places reliance, was disposed of summarily without considering any merits by order dated 22.09.2016. Hence, the same cannot be treated as a binding precedent. Moreover, even in the said case, it was found that the said OA is premature.

13. The other batch of OAs, wherein interim directions not to pass any adverse orders, were issued, by this Tribunal, belongs to two types of cases. One batch filed against the Show Cause Notices proposing to terminate the services of the Drivers without conducting any inquiry before issuing the said Show Cause Notices. The other batch, was filed against the termination orders itself, that to without conducting any inquiry. Hence,

the subject matter in both those types of OAs where the respondents were directed not to pass any adverse orders, is different from the subject matter of the present OAs, wherein a detailed inquiry was conducted and an opportunity was provided to the applicants, and the Show Cause Notices were issued for calling the explanation of the applicants against the inquiry report.

14. In the circumstances and for the aforesaid reasons, all the aforesaid OA Nos.3355, 3356, 3360, 3361, 3362, 3364, 3365 and 3366 of 2016 are dismissed as premature. However, this order shall not preclude the applicants from questioning the final orders, once passed, in accordance with law, and in such an event, any observations made on merits of the case, hereinabove, shall not have any bearing. No costs.

Let a certified copy of this order, be kept, by the Registry, in OA Nos. 3356, 3360, 3361, 3362, 3364, 3365 and 3366 of 2016.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)