CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.100/3532/2015

New Delhi this the 25th day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)

Netra Pal, Driver, B.No.23885, WPD
S/o Ved Prakash, aged about 40 years
R/o 27-A, Jat Mohalla, Badu Sarai,
New Delhi-110071. .....Applicant

(Argued by: Mr. Anil Mittal, Advocate)

Versus

The Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002
(through Chairman-cum-Managing Director) ....Respondent

(By Advocate: Mr. Manish Garg, Advocate)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by the applicant, Netra Pal, Ex-Driver, Delhi Transport Corporation (DTC), is to the impugned Show Cause Notice (SCN) dated 27.09.2013 (Annexure A-1) and order dated 27/28.07.2014 (Annexure A-2), whereby his services were terminated by the Depot Manager.

2. Tersely, the facts & material, culminating in the commencement & relevant for deciding the instant OA, and exposited from the record, is that, consequent upon selection by Delhi Subordinate Services Selection Board (for brevity "DSSSB"),

and on being found medically fit after re-medical examination, conducted by the Guru Nanak Eye Centre (for short "GNCE"), the applicant was appointed on the post of Driver in OBC category in the Pay Band of Rs.5200-20200 + Grade Pay of Rs.2000/- and other allowances admissible therein, initially on probation for a period of 2 years, vide offer of appointment dated 16.02.2009 (Annexure A-3) by the competent auhority. He successfully completed his period of probation and was confirmed, vide order dated 17.06.2011 (Annexure A-4). Thereafter, he continuously performed his duty to the entire satisfaction of his superiors.

3. The case, set-up by the applicant, in brief, insofar relevant, is that, the impugned notice dated 27.09.2013 (Annexure A-1) was issued to show cause as to why his services be not terminated, as he was found medically unfit by the Medical Board. The applicant and other similarly situated Drivers filed OAs which were disposed of with the main ***OA*** bearing ***No.3255/2013*** titled as ***Mahinder Singh and Another Vs. DTC***, vide order dated 23.05.2014 by a Coordinate Bench of this Tribunal, without granting any substantive relief to the Drivers.

4. Thereafter, the above applicants filed the Writ Petitions, which were decided with the main ***Writ Petition bearing No.4212/2014*** titled as ***Suresh Chand and Another Vs. DTC***, decided on 14.07.2014 by Hon'ble High Court of Delhi, wherein it was held that it shall not be open to the DTC to terminate or

dismiss the services of the petitioners (therein) merely by giving a show cause notice. It was alleged that despite the order of Hon'ble High Court of Delhi, his services were terminated, vide impugned order dated 28.07.2014 (Annexure A-2) by the DTC.

5. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned SCN and order on the following grounds:-

(i) That the act of respondent is discriminatory, arbitrary and illegal;

(ii) That when the policy of respondent had been to absorb its own employees who have been rendered medically unfit for a particular post to an equivalent, the applicants should have been adjusted to some other post in accordance with the said policy;

(iii) That the act of respondent is against the law as laid down by the Supreme Court of India in which the courts have been clearly stated that in case of medical unfitness of an employee alternative employment must be provided to the employee;

(iv) That the act of the respondent in laying the applicants off duty on the ground that are medically unfit is wrong and illegal and contrary to the spirit of section 47 of the Act;

(v) That the impugned act is against the provisions of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

(vi) That on one hand the legislature has enacted the Act to safeguard the interest of an employee who has suffered disability during the course of employment that such a disabled person should not be removed from service nor his salary and other service benefits be reduced just because he had become unfit to perform his duty, whereas on the other hand the respondent is acting contrary to the said legislation and laying drivers off duty on their being found medically unfit to work as drivers;

(vii) That the act of the respondent is in violation of article 14 and 16 of the Constitution of India and also of various rulings pronounced by various High Courts and Supreme Court of India;

(viii) That if the applicants have been found medically unfit for post of driver they should be given alternate job with same pay scale;

(ix) That the respondent has failed to assign any reason to its orders dated 19.11.2013 and 07.02.2014;

(x) That act of respondent is in violation of its own circular dated 20.03.2006 in which it has been decided that henceforth the provision of section 47 of the Persons with Disability Act, 1995 should be complied in all cases where an employee acquires disability during service or its declared unfit by DTC Medical Board;

(xi) That under similar facts and circumstances the Hon'ble High Court of Delhi vide its common order dated 14.07.2014 disposed of the writ petitioner of other drivers with a direction to the respondent not to terminate the service of the drivers without holding inquiry and to pay suspension allowance from date of laying them of duty;

(xii) That the said order dt. 14.07.2014 of the High Court has been upheld by the Hon'ble Supreme Court and pursuant to that the respondent has reinstated the said drivers and decided to pay them the suspension allowance".

6. On the strength of aforesaid grounds, the applicant seeks to quash the impugned SCN and order, in the manner indicated herein above.

7. The respondent has refuted the claim of the applicant and filed the reply, inter alia, pleading certain preliminary objection of maintainability of the application, cause of action and locus standi of the applicant. It was pleaded that in this case, the condition precedent was that the applicant was not supposed to make false declaration or give false information. The applicant himself did not declare the fact that he was declared medically unfit on earlier occasions at the time of regular recruitment of Drivers by the Medical Board.

8. According to the respondent, the applicant was examined by the Medical Board and was declared unfit. At his request, he and similarly situated persons were re-examined in GNEC, Government of NCT of Delhi, New Delhi and were declared fit. On consequent upon re-examination by the Medical Board, the applicant was declared unfit on 04.09.2013 due to defective eyes. Therefore, SCN was given to him and his services were rightly terminated in view of provisions of Section 9(b) of DRTC (Conditions of Appointment & Service) Regulations, 1952.

Virtually acknowledging the factual matrix and reiterating the validity of the impugned SCN and order, the respondent has stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

9. Having heard the learned counsel for the parties, having gone through the records with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, in the manner and for the reasons mentioned hereinbelow.

10. What cannot possibly be disputed here is that, consequent upon applicant's selection to the post of Driver in DTC by DSSSB, and on being found medically fit after re-medical examination, conducted by the GNCE, he was appointed on the post of Driver in OBC category in the Pay Band of Rs.5200-20200 + Grade Pay of Rs.2000/- and other admissible allowances. Having successfully completed his period of probation, applicant was confirmed, vide order dated 17.06.2011 (Annexure A-4) by the competent authority. This factual matrix has been fairly acknowledged by the learned counsel for respondent.

11. According to the applicant, suddenly he received the impugned SCN dated 27.09.2013 (Annexure A-1) and even despite the order dated 14.07.2014 (Annexure A-7) of Hon'ble High Court of Delhi, his services were illegally terminated in a

very casual manner, without holding any regular enquiry vide impugned order dated 28.07.2014 (Annexure A-2) by the Depot Manager. Thus, it would be seen, that the facts of the case are neither intricate, nor much disputed, and falls within a very narrow compass.

12. That being the position on record, now the short and significant question that arises for our consideration in this case is, as to whether the services of the applicant (confirmed Driver), can be terminated on the ground of his alleged misconduct for giving false information of his eyes vision at the time of initial recruitment, without holding any regular DE, in the background peculiar facts and circumstances of the case or not?

13. Having regard to the rival contentions of the learned counsel for the parties, to us, the answer must obviously be in the negative in this regard.

14. 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.

15. Moreover, it is not a matter of dispute that the services of the applicant, who is a confirmed employee, is 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.

16. 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 enquiring/Disciplinary Authority are required to observe the statutory rules and principles of natural justice as well, which is

totally lacking in the present case, and is not legally permissible. This matter is no more res integra and is now well settled.

17. 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.

18. 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 by a Larger Bench 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.

19. There is yet another aspect of the matter, which can be viewed entirely from a different angle. A similar question in case

of similarly situated Drivers of DTC 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 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.

7. As far as Section 47 is concerned, the question of its application would arise where the employee suffers a disability after securing employment. In the facts of the present case, its application, in the opinion of the Court, is pre-mature. When the employer DTC is alleging fraud against the petitioners at the stage of their obtaining employment, and that fact is under a cloud, it is not open to the petitioners to contend or establish their innocence by taking cover under Section 47 of the Disability Act. It is only in the event of the petitioners being exonerated, and the DTC seeking to use the subsequent report of 2013 to either terminate them or pass appropriate orders against them, that they would be in a position to invoke Section 47 of the Disability Act and not otherwise.

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."

20. 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.

21. This is not the end of the matter. The impugned termination order dated 28.07.2014 (Annexure A-2) reads as under:-

"No.WPD/AI(T)/14/2494 Dated:28.07.2014

Mr. Netra Pal S/o Sshri Ved Prakash, Driver Badge No.23885, Token No.65871 of this unit after having declared medically unfit for the post of Driver by the Independent Medical Board, Guru Tegh Bahadur Hospital, Shahdra, Govt. of NCT of Delhi vide Medical report dated 4/9/2013, hence the Show Cause Notice for termination was issued vide letter No.WPD/AI(T)/DSSSB/Dr./13/2634 dated 27.09.2013 but the reply of SCN has not been received as yet.

After he had filed OA No.3612/2013, there is no stay operating against the applicant.

Accordingly his services is hereby terminated with immediate effect from the Corporation under clause 9(b) of the executive instruction on procedure regarding disciplinary action and appeals issued vide ADi.3(18)/53

dated 5.8.1955 subject to the final outcome of the writ petition filed by the DTC in the Hon'ble High Court in WPC No.44/2014.

He is covered under EPS-95 Scheme. As per record the name of his nominee is Smt. Anju.

He is directed to deposit all the DTC articles in his possession with the livery section within 24 hours of the date of termination. Non-depositing of DTC Articles (Badge, Identity card-cum bus Pass, medical card etc.) in accordance with instruction contained in Office order No.3 dated 8.2.2013 will render him liable to pay a penalty of Rs.50 per day, for the number of days he keeps any article of the DTC in his possession after the specified period of 24 hours. In case of police report lodged on the date or after termination regarding loss of returnable DTC articles, a penalty of Rs.50000/- will be imposed at the time of settlement as per instructions contained in above referred circular dated 8.2.2013

DEPOT MANAGER".

22. Moreover, a bare perusal of the record would reveal, that the services of the applicant were terminated only on the misconduct, allegedly committed by him, at the time of his initial appointment. Not only that the respondent has so admitted in the reply.

23. Therefore, even if the contents/substance of the impugned order, indicating attending circumstances and the basis of termination order is taken into consideration and put together, then conclusion is inevitable, not only that the impugned termination order is smeared with stigma, but also passed on the alleged misconduct of the applicant. Thus, the impugned termination order is held to be stigmatic and punitive in nature. Naturally, such stigmatic and punitive order should not have been passed by the competent authority without following the due procedure of holding regular DE as per statutory rules and by observing the principles of natural justice.

23A. Sequelly, 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.

24. 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.

25. Therefore, once it is proved on record that the services of the applicant were terminated for the above mentioned misconduct, by virtue of the impugned stigmatic and punitive order, then the protection under Article 311 of the Constitution of India is available to him and his services cannot be terminated

on speculative grounds, without holding an enquiry in view of law laid down by 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 its previous judgments, it was ruled by the Apex Court 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.

26. Thus such impugned stigmatic and punitive order of termination, passed on account of indicated misconduct against the applicant by the competent authority would be inoperative and cannot legally be sustained. Thus, the contrary arguments of the learned counsel for the respondent *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

is *mutatis mutandis* applicable in the present controversy and is a complete answer to the problem in hand.

27. As is evident from the record, that the respondent has issued impugned SCN and terminated the services of the applicant on the ground of pointed misconduct at the time of initial appointment. On the contrary, the applicant claimed that he was medically found fit by doctors of Guru Nanak Eye Centre. As to whether the applicant has committed any indicated misconduct or his services are liable to be terminated in this regard, or not, inter alia, would be the moot points to be decided during the course of enquiry by the competent authority. Such intricate questions can only effectively be decided by holding regular DE and not otherwise. Above all, the statutory rule and natural justice require that adequate opportunity should be granted to the applicant to prove his innocence before snatching his livelihood by means of impugned termination order. Even if the charge is proved against the delinquent official during the enquiry, he would have an opportunity to plead for proportionality of the punishment vis-à-vis the charge of misconduct.

28. This is not the end of the matter. The impugned order of termination passed by the Depot Manager is sketchy and unreasoned. As mentioned hereinabove, the applicant has raised very important issue of his medical fitness, which has not been considered by the respondent. Such authority exercises quasi judicial functions and is required to consider the entire matter in

right perspective and then to pass speaking and reasoned order to decide the matter in dispute between the parties, which is totally missing in this case.

29. 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 kind by the concerned authorities.
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> 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."

30. 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"**.

31. 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. Madhuusudan Rao JT 2008 (2) SC 253.***

32. Thus, seen from any angle, indeed impugned SCN and order 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.

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

34. 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 DE, the OA is hereby partly accepted. The impugned SCN and termination order are set aside with all consequential benefits. The applicant is 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, nothing observed hereinabove, would reflect on merits in regular DE, as the same has been so recorded for a limited purpose of deciding the pointed limited question. The parties are left to bear their own costs.

35. Needless to mention, the DTC would be at liberty to initiate and conduct regular departmental enquiry against the applicant for his alleged indicated misconduct, in accordance with

law, before imposing any punishment on him. At the same time, since the validity, genuineness or otherwise of the eye vision of the applicant is very much questionable, so the DTC would be at liberty to suspend him in contemplation of the regular Departmental Enquiry, subject to the payment of admissible subsistence allowances. In case the DTC chooses not to suspend then applicant may be deputed on some other job. It (DTC) will not assign him the duty of Driver in public interest and safety, during the pendency of the regular DE.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
25.11.2016

Rakesh