

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

O.A. No.3676/2011

New Delhi, this the 19th day of August, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Mam Chand, Fitter, B. No. 7131, K. P. Depot,
S/o Shri Nanak Chand
R/o RZ-13, Phase-III, Om Vihar,
Uttam Nagar,
New Delhi.

..Applicant

(Argued by: Ms. Komal Aggarwal for Mr. Anil Mittal)

Versus

Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002.

(Through Chairman-Cum-Managing Director) ...Respondents

(By Advocate: Ms. Ruchira Gupta)

ORDER (ORAL)

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

The epitome of facts, which needs a necessary mention for deciding the core controversy involved in the instant Original Application (OA) and exposted from the record, is that, the applicant, Mam Chand, while working as Diesel Fitter in Delhi Transport Corporation (DTC), remained absent from duty for 51 days from 01.07.2006 to 31.07.2007. Thus he was stated to have committed the grave misconduct during the course of his employment.

2. As a consequence thereof, he was dealt with departmentally under Clause 15(2) of D.R.T.A. (Condition of

Appointment & Service) Regulation, 1952 and he was served with the following charge sheet:-

“You are required to explain as to why disciplinary action under clause 15(2) of the D.R.T.A. (Condition of Appointment & Service) Regulation, 1952 read with Road Transport Laws (Amendment) Act, 1971 should not be taken against you for the following irregularities:-

1. That you remained unauthorisedly absent from duty for 51 days from 1.7.2006 to 31.03.2007 details of which is enclosed. During this period the following irregularities were found against you:-

(a) the work of the Corporation suffered on account of your constant absence from duty.

(b) your above act shows your carelessness towards your duty ;

(c) from above it is clear that you do not have any interest towards the work of the Corporation.

Your above act amounts to misconduct under para 19 (h & m) and para 4 of standing orders governing the conduct of the employees of DTC.

Copy of the report no. KPD/07/1394 dated 1-5-2007 on which the charge sheet is based is enclosed.

Your past record will be taken into consideration at the time of passing the final orders or giving recommendation in this case.

If you desire to be heard in person, request to this effect be made in your explanation.

Your explanation should reach this office within 10 days of the receipt of this charge-sheet, failing which the case will be decided on its merits without any reference to you.”

3. During the course of regular Departmental Enquiry (DE), applicant admitted all the charges against him of his own free will and stated that he do not want any further enquiry into the matter. However, he explained in his final statement, that he remained absent on account of his family problem and he will be careful in future. In view of his categorical admission, the Enquiry Officer (EO) submitted his report dated 11.10.2007 (Annexure A-6).

4. In pursuance thereof, a Show Cause Notice (SCN) along with the report of the EO was sent, and the applicant filed the reply to SCN dated 07.12.2007 (Annexure A-7).

5. Having completed all the codal formalities, taking into consideration the entire material on record and admission of the applicant, a penalty of removal from service was imposed on him, vide impugned order dated 27.08.2008 (Annexure A-2), by the Disciplinary Authority (DA). The appeal filed by him was also dismissed vide impugned order dated 05.02.2009 (Annexure A-3) by the Appellate Authority (AA).

6. Dissatisfied therewith, the applicant initially filed OA bearing No.640/2010, which was disposed of with the direction to the AA to decide the appeal of the applicant, by passing a reasoned and speaking order, by way of order dated 09.07.2010 (Annexure A-9).

7. In pursuance of the order of the Tribunal, the AA provided the opportunity of personal hearing and dismissed the appeal of the applicant, by means of impugned speaking order dated 07.09.2010, available on record (page 53).

8. Aggrieved thereby, the applicant has preferred the instant OA bearing No.3676/2011 on the following grounds:-

“(i) Because the respondent cannot be permitted to impose highly exaggerated punishment on the applicant who has served the respondent for over 27 years.

(ii) Because the punishment is shockingly disproportionate to the alleged charge.

(iii) Because the applicant was prevented by extreme family circumstances from attending to his duties regularly.

(iv) Because after the issuance of the charge sheet the applicant had been very regular in attending the duties.

(v) Because the punishment proposed is highly excessive and disproportionate”.

9. The respondent refuted the claim of the applicant, filed his rejoinder and produced his previous record of absence from duty (Annexure R-1).

10. Virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondent has stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

10A. After hearing the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the considered view that there is no merit, and the instant OA deserves to be dismissed for the reasons mentioned herienbelow.

11. Initially, this OA was allowed and matter was remitted back to the DA to impose any penalty upon the applicant, but it shall be lower than the extreme punishment of removal from service, within a period of 2 months from the date of receipt of a certified copy of the order, by virtue of order dated 14.08.2012 by this Tribunal.

12. Thereafter, DTC filed a **Writ Petition (Civil)** bearing **No.7692/2012** challenging the order dated 14.08.2012 of this Tribunal. The W.P. was allowed. The matter was remitted back to this Tribunal to decide the OA afresh, by virtue of order dated 06.12.2013. The operative part of which, is as under:-

“12. We have considered the submissions made by the counsel for the parties. We note, the grounds averred by the respondent in the O.A., are primarily; the penalty was shockingly disproportionate to the charge; the respondent was prevented by attending his duties by extreme family circumstances. In other words, other than the aforesaid two grounds no other ground was averred by the respondent. The scope of the O.A. shall be the grounds which have been averred by the respondent. Regrettably the Tribunal considered issues like the past record of the respondent being not considered; that the inquiry report is false and perverse etc.

13. Even otherwise the grounds which have been raised and considered by the Tribunal also overlooking the reply given by the respondent to the show cause notice issued to him wherein the respondent being conscious of the fact that he remained absent without any intimation, stated that he would not give any cause for complaint in future, which meaningfully read amounts to an "admission".

14. In any case we would not like to advert much on the merits of the contention raised by the counsel for the parties. Suffice would it be to say that the Tribunal, should have looked into the contents of the reply given by the respondent to the show cause notice and the limited grounds pleaded by the respondent in the O.A. and their effect on the issue to be determined by it. The Tribunal having failed to consider the aforesaid aspects we are of the view that the matter needs to be remanded back to the Tribunal. Accordingly, we set aside the order of the Tribunal dated August 14, 2012 passed in O.A.No.3676/2011 and revive the O.A. to its original number with a direction to the Tribunal to adjudicate the O.A. afresh keeping in view our observations above as expeditiously as possible within a period of six months from the date of this order".

13. Meaning thereby, the facts of the case are neither intricate nor much disputed. Now the short and significant question, that arises for determination, for our consideration, is as to whether the punishment of removal from service awarded to the applicant is disproportionate to misconduct relatable to his absence from duty or not?

14. Having regard to the rival contentions of the learned counsel for the parties and relevant record, the answer must obviously be in the negative.

15. The pleaded case of the respondent in this regard, is as under:-

a) That the applicant joined the services of the Corporation as a fitter in the year 1981 on regular basis and was allotted badge No. 7131. The workman from the very beginning never remained serious in regard to his services. His past record and the leave record had a very gloomy picture. Even after issuing of the charge sheet dated 15.05.2007 till the date of his removal many opportunities were given to him to improve his attendance, but no heed was paid by him. Even after receiving the charge sheet on 5.7.2008 he chose not to give a reply of the same. Even in the departmental proceedings he was given full opportunity to defend his case by taking help of a co-worker or by himself, but he admitted the charges and did not produce any document in reply to the show cause notice issued to him after he was found guilty in the departmental proceedings. He remained absent un-authorizedly for a

period of 113 days even during the period from 1.1.08 till 15.08.08 for which he did not have any explanations to offer.

b) That the workman did not reply the charge sheet issued by the Corporation. Even a reminder was sent to him on 31.07.2007 but no heed was paid by him. In the absence of any reply, the case was entrusted to the enquiry officer to ascertain the truth in the facts and circumstances of the case.

c) That workman admitted the charges against him in the enquiry proceedings. On the basis of the enquiry proceedings the enquiry officer submitted his findings and conclusions on 11.01.2007 to the concerned authority.”

16. In support of the allegations, the respondent has placed on record the previous record (Annexure R-1) of the applicant, which reads as under:-

Sl. No.	Order No	Reasons	Period of Penalty
1.	No. KPD/AI(T)/7ZR/93/2113 dt. 07.05.93	Due to excess CWP w.e.f. 1.1.92 to 12.12.92 & 14.12.92 to 31.12.92.	Stoppage of Next due one Increment with C/effect.
2.	No. KPD/AI(T)/damage/95/8 16 dt. 14.03.95	In a damage case of bus No. 8922 on 15.02.94	A token penalty of Rs.50/- recovered from his salary in two equal instalments of Rs.25/-
3.	No. KPD/AI(T)/ST/2178 dt. 27.09.95	Remained unauthorised absent from duty w.e.f. 11.06.95 to 04.07.95 without any information. Duty allowed by Forenoon office on 05.07.95	Warning
4.	No. KPD/AI(T)/St Case/96/2307 dt. 05.11.96	Due to remained Unauthorised absence from duty w.e.f. 15.09.1996 to 03.10.96. Duty allowed on 04.10.96.	Warning
5.	No. KPD/AI(T)/5/97/611 dt. 07.03.97	Due to 01.01.96 to 31.07.96. Total = 105 days (According to the details given below, he remained absent unauthorisedly) No. of days of unsanctioned leave = 17 No. of days without application = 88 Total = 105	Stoppage of Next due Two increments without cumulative effect.
6.	No. KPD/AI(T)/CS-42/05/3440 dt. 25.10.2005	Due to remained 80 days unauthorised absence for the period 1.4.03 to	Stoppage of next due two increments with

		31.03.2004 and not taking interest in the work of Corporation	cumulative effect.
7.	No. KPD/AI(T)/CS-06/06/3700 dt. 20.11.06	Due to 93 days unauthorised remained absence for the period from 01.01.2005 to 31.12.2005 is shows that he is not taking interest in the work of Corporation	Stoppage of next due two increments with cumulative effect.
8.	No. KPD/AI(T)/damage/48/08/2799 dt. 25.08.2008	Due to Trigger Box missing on 05.06.08 of Bus No. 5169	Partly amount of Rs.3472/- is hereby recovered from his salary.
9.	No. KPD/AI(T)/c824/07/08/2819 dt. 27.08.08	Due to not improved his performance attention i.e., 73 days only PP and availed 113 days unauthorised absence w.e.f. 01.01.2008 to 15.08.2008 shows gloomy picture	Removed from the service of the Delhi Transport Corporation with immediate effect under Clause 15 (2) (vi) of the DRTA (Condition of Appointment and Service) Regulations, 1952.

17. Meaning thereby, it stands proved on record that the applicant is a habitual absentee and he was repeatedly warned to be careful in future and punished, but in vain.

17A. After hearing the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the considered view that there is no merit, and the instant OA deserves to be dismissed for the reasons mentioned herienbelow.

18. Therefore, he is not entitled for any leniency in the matter of awarding of punishment and the punishment already awarded by the DA and affirmed by the AA, cannot possibly be termed to be disproportionate to his misconduct in the

obtaining circumstances of the case. This matter is no more res integra and is now well settled.

19. The Hon'ble Apex Court in the case of ***U.O.I. & Others Vs. Bishamber Das Dogra (2009) 13 SCC 102*** has held that in case of misconduct of grave nature or indiscipline, even in absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment, if the facts of the case so require. It was also held that habitual absenteeism means, gross violation of discipline.

20. At identical question came to be decided by the Hon'ble Apex Court in the case of ***Mithilesh Singh Vs. U.O.I. & Others AIR 2003 SC 1724*** wherein it was ruled that absence from duty without prior intimation is a grave offence warranting removal from service. Similarly, the Hon'ble Supreme Court in the case of ***State of U.P. and Others Vs. Ashok Kumar Singh (1996) 1 SCC 302***, held that absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment holding that the punishment was not commensurate with the gravity of the charge.

21. Again, it was reiterated by the Hon'ble Apex Court in the cases of ***North Eastern Karnataka Road Transport Corporation vs. Ashappa, (2006) 5 SCC 137*** and ***State of***

Rajasthan vs. Mohd. Ayub Naz: 2006 SCC (L&S) 175, that that habitual absenteeism can be a valid ground for dismissal of an employee from service. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, he may be removed from service. Further, the Hon'ble Apex Court held in ***Delhi Transport Corporation Vs. Sardar Singh (2004) 7 SCC 574*** that habitual or continuous absence from duty, without sanctioned leave for long, prima facie, amounts to "habitual negligence of duties and lack of interest in work" which constitutes misconduct under relevant Standing Order of the Corporation.

22. Meaning thereby, the wilful and unauthorised absence of the applicant is duly proved on record. The DA and AA have correctly appreciated the matter in the right perspective. In this backdrop, it cannot possibly be saith that the punishment awarded to the applicant is excessive, as urged on his behalf.

23. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the DA has rightly imposed the indicated punishment on the basis of categorical admission of the applicant, which was upheld by the AA. The

DA as well as AA have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case, particularly when jurisdiction of judicial review of this Tribunal in such disciplinary matters is very limited. As such, no interference is warranted in the impugned orders by this Tribunal in the obtaining circumstances of the case, in view of law laid down by the Hon'ble Apex Court in cases of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** and **K.L. Shinde v. State of Mysore, (1976) 3 SCC 76.**

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

25. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
19.08.2016