

Central Administrative Tribunal
Principal Bench

OA No.2842/2015

New Delhi, this the 5th day of March, 2018.

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Yash Pal, Ex.Driver,
Badge No.178483, T.No.55205,
S/o Sh. Rosha Lal,
R/o T-3646, Raja Park,
Shakurpur Basti,
New Delhi.

...Applicant

(By Advocate: Shri M.R. Sinha)

Versus

1. Delhi Transport Corporation
Through its Chairman,
I.P. Estate, New Delhi.
2. The Regional Manager (P),
Appellate Authority,
Mayapuri Depot, New Delhi.
3. The Depot Manager,
DTC, Naraina Depot,
Naraina, New Delhi.

...Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER (Oral)

By Hon'ble Mr. Uday Kumar Varma, Member (A):

It is the second round of litigation. In the first round, the applicant had approached the Tribunal by way of OA No.2541/2013 challenging the appellate order dated 09.04.2013 passed by the respondents on his appeal dated 08.01.2013, which was set aside by the Tribunal vide order dated 06.04.2015 holding the appellate order as cryptic,

bad and not sustainable in law. Following the above decision of the Tribunal, the respondents have passed a fresh order dated 17.06.2015 on the appeal of the applicant, which has now been challenged in this fresh OA. It is the prayer of the applicant that the impugned Circular dated 02.11.2012, Communication dated 29.11.2012 and Order dated 17.06.2015 respectively passed by respondent-DTC (Annexure A-1 Colly.) may be quashed with a direction to the respondents to reinstate the applicant and allow him to perform his duties on the post of Driver with immediate effect or any other post till his attaining the age of sixty five years. The applicant has also prayed for a direction to the respondents to pay him the arrears and salary with all consequential benefits w.e.f. 01.12.2012 till the date of his reinstatement.

2. Brief facts of the case are that the applicant was appointed as Driver in the respondent-Corporation on 14.06.1988. He was in possession of Heavy Motor Vehicle [hereinafter referred to as HMV] license issued by Transport Department, Govt. of Delhi valid upto 23.12.2012. It is submitted that while on duty, the applicant met with an accident in the year 2004 and accordingly a police case was registered against him vide FIR No.194/2004 under Section 279/304-A IPC, P.S. Patel Nagar, Delhi and his HMV

License was seized vide Seizure Memo dated 05.05.2004 and deposited in the court and the said case is still pending before the Metropolitan Magistrate, Tis Hazari Court, Delhi. (However, during the course of hearing, the applicant submitted that the criminal case stands decided). At the time of seizure, the HMT License was valid upto 2006. It is contended that after the accident, HMT License of the applicant was cancelled and a license for driving light motor vehicles was made in his name. Accordingly, the applicant was given to perform light duties on staff cars of the respondent organization, which, he contends, was being discharged by him sincerely, honestly, diligently and without any complaint.

3. The applicant further submits that after attaining the age of superannuation i.e. 55 years on 30.09.2010, he was given first extension for a period of one year w.e.f. 01.10.2010 to 01.10.2011 after being found medically fit vide letter dated 29.04.2011 followed by second extension vide letter dated 13.10.2011 upto 01.10.2012 to perform light duties on staff cars of the respondents on the same terms. The applicant, who was to be considered for third extension of service after 01.10.2012, was referred to the Medical Board of the respondent for medical examination for the purpose. As the applicant was found medically fit,

he was given third extension of service upto 31.10.2013 vide letter dated 19.10.2012. In the meantime, the applicant was served with a Notice dated 21.11.2012 by respondent no.2/disciplinary authority stating therein that *“those Drivers of Corporation who are not having HMV License after they attained the age of 55 years, will not be eligible to work on the post of Driver.”* It was also mentioned in the said Notice that if the applicant could not produce his MHV license within a period of five days from the date of issue of the notice, the applicant would be compulsorily retired from service.

4. The applicant further submits that as he received the Notice dated 21.11.2012 only on 26.11.2012, therefore, submitted his reply/representation on 29.11.2012 to the respondent no.2 informing that his HMV License would be renewed after obtaining necessary order from the Ld. Metropolitan Magistrate, Tis Hazari Court where his case was pending adjudication. Further contention of the applicant was that since he was found medically fit for third extension, he should not have been retired and, therefore, requested for three months time to get his HMV license renewed. It is further submitted by the applicant that without considering his representation, he was retired from service w.e.f. 30.11.2012, vide order dated

29.11.2012, which is on the basis of Notice dated 21.11.2012 for compulsory retirement in terms of Circular dated 02.11.2012, which is arbitrary, *mala fide* and is in complete violation of principles of natural justice as also in violation of Articles 14 and 21 of the Constitution of India. The applicant submits that he got his HMV License renewed on 06.12.2012.

5. The applicant, being aggrieved by his compulsory retirement, preferred an appeal before the respondent No.1 [CMD of DTC] enclosing therewith the MHV driving license with a request to allow him to continue in service of the respondents as he has already been found medically fit by the DTC Medical Board for further extension of service. The appellate authority summarily rejected his appeal. Aggrieved, the applicant approached this Tribunal by way of OA No.2541/2013, which was disposed of vide order dated 06.04.2015 holding that the order passed in appeal by the respondent was not fit to be accepted and *prima facie* it appeared to be bad and could not be legally sustained. The applicant further contends that the respondents, in compliance of the above order of the Tribunal, have again rejected the appeal of the applicant vide order dated 17.06.2015 in a cryptic manner. The applicant, therefore, prays that this OA be allowed.

6. The respondents filed their reply without disputing the factual position as mentioned in the OA. However, the respondents have stated that though the HMV License of the applicant was seized by the police and deposited in the court, yet he was allowed to perform light duties of driving staff cars by giving consecutive two extensions of service. The respondents further submit that for the third extension of service, the applicant was informed vide Notice dated 21.11.2012 that those who are not in possession of HMV License on completion of 55 years will not be eligible for working in the DTC for the post of Driver. As such, he was asked to submit his response along with HMV license within a period of five days of receipt of the notice. However, the applicant did not submit any reply to the Notice dated 21.11.2012. It is the case of the respondents that even the appeal filed by the applicant requesting the respondents to allow him to continue in service did not mention about his reply which is alleged to have been filed by him within the prescribed period.

7. We have heard the learned counsel for the parties and gone through the records of the case.

8. It is evident from the records and it is also an admitted fact that the notice was issued to the applicant on 21.11.2012 asking him to produce the HMV License within

five days from the date of issue of the notice. The applicant claims that he had submitted a reply on 29.11.2012 because he had received the said notice only on 26.11.2012 and, therefore, he had submitted the reply within five days as required in the notice. The respondents, however, contradict the assertion of the applicant that he had submitted any reply. In the written statement, the respondents have clearly stated that no reply was submitted by the applicant. This averment of the respondents has not been contested by the applicant. We have also seen the appeal filed by the applicant but this appeal also does not, at any place, mention the fact that he had at any point of time submitted any reply to the Notice dated 21.11.2012. It is not difficult to deduce from these facts that this appears to be an afterthought on the part of the applicant.

9. Admittedly, the applicant was employed in the DTC against the post of a Driver to drive a Heavy Motor Vehicle. It is inconceivable as to how a Driver, who does not possess a HMV license, be given extension of service in the same capacity. As a matter of fact, the earlier extensions given to the applicant too defy any explanation and seem not in order, given the fact that the applicant was holding a post of HMV

Driver. However, merely because the applicant was given extensions on two earlier occasions, even though he was not possessing HMV License, cannot be the ground of continuing this apparently irregular extension.

10. At the time of oral submissions, the applicant stated that he had obtained the HMV License at the time of filing of appeal. However, this does not negate the fact that when the Notice dated 21.11.2012 was issued to him, he was not in possession of such a license. It is also clearly established that the applicant had not replied to the Notice dated 21.11.2012. Thus, none of the grounds mentioned in the OA as also at the time of oral arguments make a case in favour of the applicant. In our view, refusing extension to the applicant for want of production of HMV License seems absolutely in order and does not need to be interfered with at all. Therefore, we do not find any merit in the OA and the same is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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