CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2665/2013

Reserved on : 27.02.2019

Pronounced on : 18.03.2019

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)

Suwa Lal Meena
S/o Shri Gopal Meena
R/o Village Naya Gaon Ranipura,
Teh & Distt. Tonk, Rajasthan. ...Applicant

(By Advocate: Shri Suresh Charn)

Versus

The Delhi Transport Corporation through

1. The General Manager,
   DTC Headquarters,
   I.P. Estate,
   New Delhi.

2. The Regional Manager,
   DTC South West,
   New Delhi.

3. The Depot Manager,
   DTC TehKhand Depot,
   New Delhi. ..Respondents

(By Advocate: Ms. Arati Mahajan Shedha with Ms. Swati)

ORDER

By Shri V. Ajay Kumar, Member (J)

The applicant, a probationary Driver in the respondents-Delhi Transport Corporation (in short 'DTC'), filed the OA questioning the Annexure A-2 Termination Order dated 15.02.2013.

2. The brief facts, as narrated in the OA are that the applicant was appointed as a Driver in the respondents-DTC with effect from 11.07.2011 and was kept on probation for 2 years. The respondents-DTC, vide Annexure A-3 Order dated 06.11.2012 while stating that during police verification, it was found that in case No.36/2009 under Section 279 of IPC registered against the applicant at PS Jaipur City West, he was convicted and awarded with fine and the said fact was concealed by the applicant while submitting his CVR form and he was asked to submit his explanation and failing which, appropriate action would be taken against him as per rules. The applicant submitted his reply to the said show cause notice vide Annexure A-4 dated 07.11.2012. However, the respondents-DTC vide Annexure A-5 Memorandum dated 26.11.2012 issued another show cause notice on the similar lines and for which also the applicant submitted his reply on 05.12.2012 (Annexure A-6). However, the respondents-DTC vide the impugned Termination Order Annexure A-2 dated 15.02.2013 terminated the services of the applicant. Hence, the OA.

3. Heard Shri Suresh Charn, the learned counsel for the applicant and Ms. Arati Mahajan Shedha with Ms. Swati, the learned counsel for the respondents and perused the pleadings on record.

4. Shri Suresh Charn, the learned counsel appearing for the applicant while not denying the fact of his conviction in a criminal case under Section 279 of IPC, i.e., rash and negligent driving in a criminal case by a competent court of law, however, submits that due to wrong understanding of the Question No.12 in the CVR form and since no criminal case was pending as on the date of filing of the said CVR form, the applicant answered that at present there is no criminal case pending against him and since the said mistake was not an intentional mistake, the same may be condoned. He further submits that since the offence was also not a grave or heinous offence and same was petty offence and on this ground also, the said conviction may be ignored and the applicant may be reinstated and the termination order may be set aside.

5. The learned counsel placed reliance on a judgment of the Hon'ble Apex Court in **Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471** and particularly on paras 29 and 30 (4)(a) in support of his submissions.

6. On the other hand, Ms. Arati Mahajan Shedha, the learned counsel appearing for the respondents-DTC while reiterating that the applicant was convicted under Section 279 of IPC, i.e., rash and negligent driving and that he has intentionally suppressed the said fact in the CVR form, prays for dismissal of the OA.

7. The learned counsel further submits that it was not the case of the applicant that the offence for which he was convicted has no relation with his duties in the respondents-DTC. On the other hand, the applicant was appointed as a Driver and he was convicted for the offence of rash and negligent driving and hence his continuation in service is not only against the rules, but also may cause great danger to the public at large. The learned counsel also placed heavy reliance on the same judgment of the Hon'ble Apex Court in **Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471** and also on a judgment of a Coordinate Bench of this Tribunal in O.A. No.2434/2013 dated 10.09.2018 in Manjeet Singh Vs. The Delhi Transport Corporation and Others.

8. Admittedly, the applicant convicted for an offence under Section 279 of IPC, i.e., rash and negligent driving by a competent court of law. Further, the applicant was appointed as a Driver in the respondents-DTC. Since both the counsels placed reliance on the same judgment of the Hon'ble Apex Court in **Avtar Singh** (supra), it is necessary to note down the relevant paragraphs of the same:-

> "29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal

> case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.
>
> (7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.
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> (8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.
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> (9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.
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> (10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.
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> (11) Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him".

9. A Coordinate Bench of this Tribunal has already, in an identical case has examined the identical facts and the relevant paragraphs of the same read as under:-

> "8. In view of the concealment/suppression/furnishing of false information by the applicant, and also in view of his conviction in a criminal case for rash and negligent driving, the services of the applicant were terminated after providing him due opportunity and after issuing show cause notice and after considering his explanation thereto. The submission of the applicant that he has given a wrong answer in the CVR form, unknowingly and without understanding the exact meaning and implication of the same cannot be accepted and

it cannot also be treated as a minor indiscretion by a young person. The learned counsel also placed reliance on various decisions in support of his submissions.

9. The post in question is Driver in the respondent-DTC. Admittedly, the applicant was convicted in case FIR No.327/07 under Section 279 of IPC, i.e., rash driving or riding on a public way and in view of the compounding of the offence under Section 338 IPC in view of the fact that the injured had been suitably compensated, he was released after admonition under Section 3 of the Probation of Offenders Act. Further, admittedly, the applicant was convicted in FIR No.76/10 under Sections 279 and 338 IPC (causing grievous hurt, i.e., rash driving or riding on a public way and causing grievous hurt by act endangering life or personal safety of others respectively) and was acquitted due to compromise between the parties. Therefore, the offences for which the applicant was convicted, cannot be equated to an offence of trivial nature, such as, shouting slogans at young age or petty offence, which, if disclosed, would not have rendered an incumbent unfit for the post in question, as mentioned in **Sumit Kumar Vs. Union of India and Others** in W.P. (C) No.3775/2017 dated 05.09.2017 of the Hon'ble High Court of Delhi on which the learned counsel for the applicant placed reliance. Any leniency may lead to a major accident causing loss to the property and even to life.

10. Even the submission made by the applicant that the impugned termination is liable to be set aside as the respondents have not followed the procedure, such as, conducting regular enquiry etc., also cannot be accepted as the applicant was admittedly under probation as on the date of issuance of the termination order. Even if such a course is adopted, the same would be a futile exercise, as admittedly, the applicant was convicted for an offence of rash and negligent training.

11. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs".

10. As observed above, the applicant placed heavy reliance on paragraphs 29 and 30(4(a) of the **Avtar Singh** judgment (supra), i.e., where offence is trivial in nature in which conviction had been recorded, has to be seen not only in the nature of offence but also with the duties to be performed by the concerned employee if he continued in service. Shouting slogans at young age or for a petty

offence unrelated to the duties of an employee only falls within the said paragraphs on which the applicant placed reliance but in the instant case, admittedly, the applicant was appointed as a Driver and he was also convicted for an offence of rash and negligent driving. Hence, the said paragraphs of the judgment have no application to his case. On the other hand, the facts in Manjeet Singh (supra) are squarely applicable to the applicant's case.

11. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merit. No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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