
(2021) 02 DEL CK 0311

In the Delhi High Court

Case No : Civil Writ Petition No. 1458 Of 2021, Civil Miscellaneous Application
No. 4189 Of 2021

Delhi Transport Corporation

APPELLANT

Vs

Om Singh

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 02 DEL CK 0311

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Ashish Uppal

Final Decision : Dismissed

Judgement

CM APPL. 4190/2021 (of the petitioner for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.

2. The application is disposed of.

W.P.(C) 1458/2021 & CM APPL. 4189/2021 (of the petitioner for ex-parte interim stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 2nd January, 2020 of the Central Administrative Tribunal,

Principal Bench (CAT), in O.A. No. 1794/2014 preferred by the respondent impugning the disciplinary proceedings against the respondent resulting in

punishment/penalty of stoppage of two increments with cumulative effect; vide the impugned order, the said punishment/penalty has been modified by

CAT, to that of stoppage of one increment without cumulative effect.

4. The petition came up first before this Court on 4th February, 2021, when on

request for virtual hearing, the same was posted to today.

5. We have heard the counsel for the petitioner Delhi Transport Corporation (DTC) and apprised him, that a petition with respect to the orders of the

CAT lies under Article 226 of the Constitution of India and not under Article 227 of the Constitution of India, invoking which this petition has been

filed.

6. We have heard the counsel for the petitioner DTC.

7. The respondent, a Manager with the petitioner DTC, was appointed as an Enquiry Officer in a disciplinary proceedings initiated by the petitioner

DTC against one Brijvir Singh. The respondent submitted his report dated 6th May, 2010, holding that the charges against Brijvir Singh had not been

proved. The Chairman of the petitioner DTC who happened to consider the representation of the said Brijvir Singh, took a view that the respondent

had not conducted the enquiry properly and that there were several lapses. Accordingly, disciplinary proceedings were initiated against the respondent

(who is informed to have since retired), by issuing a charge sheet dated 27th December, 2011. The Enquiry Officer in the said disciplinary proceedings

against the respondent submitted a report dated 4th September, 2012, holding the charges against the respondent to have been proved and the

disciplinary authority of the petitioner DTC passed an order dated 31st January, 2013 imposing the punishment of stoppage of next due two

increments, with cumulative effect. The departmental appeal preferred by the respondent was rejected on 2nd May, 2013, resulting in the respondent

approaching the CAT.

8. CAT, vide the impugned order/judgment, has modified/reduced the punishment/penalty, reasoning (i) that the gravity of the allegation against the

respondent was that he did not conduct the enquiry properly and should have summoned the relevant record; (ii) basically, it is the duty of the

Department and the Presenting Officer, to place the relevant material before the Enquiry Officer and it not for the Enquiry Officer to call for any

report; (iii) that if the Enquiry Officer is enrolled with the responsibility to gather material against the delinquent employee, he tends to become partisan

and would cease to be neutral; (iv) thus the lapse, if any, was on the part of the petitioner DTC; and, (v) taking into consideration the minor lapses on

the part of the respondent, the punishment of stoppage of next due two

increments with cumulative effect was too severe.

9. Though we entertain doubt as to the correctness of the observation of CAT in the impugned order, of the enquiry proceedings being adjudicatory

and not inquisitorial, but refrain from rendering any final opinion thereon since we have neither heard the counsel for the petitioner on the said aspect

nor has the counsel for the respondent appeared.

10. However, we are of the view that the modification done by the CAT in the punishment was within the jurisdiction and discretion of CAT,

constituted as the final arbiter for service matters and no case for interference with the discretion exercised by CAT, and which is not found to have

been perversely exercised, in reducing the punishment, especially considering that the respondent has already retired, is made out.

11. There is no merit in the petition.

12. Dismissed.