
(1994) 04 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No. 3396 of 1993

Raghunandan Sharma

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Delhi Transport Corporation Act, 1950 — Section 12(1)

Citation : (1994) 2 AD 349 : (1994) 54 DLT 370 : (1994) 29 DRJ 151

Hon'ble Judges : R.C. Lahoti, J;Arun Kumar, J

Bench : Division Bench

Judgement

Arun Kumar, J.

(1) The question for determination in this writ petition and several other connected writ petitions is whether persons holding the post of Depot Manager in the Delhi Transport Corporation are empowered to take disciplinary action (including action for removal, dismissal and reduction in rank) against the employees who are generally working as Drivers and Conductors in the Delhi Transport Corporation falling in the category of Class III/Class Iv employees.

(2) A controversy of somewhat similar nature had arisen earlier also in this Court when a learned Single Judge had quashed the disciplinary action initiated against the petitioners in those cases holding that in case of persons employed between April 1973 and March 2, 1974 it is only the Transport Corporation or the General Manager who could initiate and take disciplinary action. The said judgment of the learned Single Judge was reversed in L.P.A. No.6 of 1976, D.T.C. vs. Surinder Kumar, decided on 30th September 1977. This judgment gives the history and circumstances in which the D.T.C. finally came into existence.

(3) In pursuance of Section 53(2)(c) of the Delhi Road Transport Act, the Delhi Road Transport Authority framed various regulations including the Regulations called "the D.R.T.A. (Conditions of Appointment & Service Regulations) 1952", (hereinafter referred to as "the Regulations"). These Regulations came into force

with effect from 1st p73 September 1952 and applied to all officers and servants of the erstwhile Delhi Road Transport Authority. except the General Manager and the Chief Accounts Officer. Under Regulation 6, in respect of Class Iii and Class Iv employees, the Appointing Authority is the General Manager. Regulation 15 deals with conduct, discipline and appeal. The "conduct" was dealt with under Regulation 15(1); "discipline" under Regulation 15(2), "appeal". under Regulation 15(3) and "suspension" under Regulation 15(4). Regulation 15(2) in its clause(a) provided for various penalties which may be imposed for misconduct "or for a good and sufficient reasons" upon an employees of the Delhi Road. Transport Act clause (b) of the Regulation 15(2) provided that the disciplinary action mentioned in clause (a) can be taken by the General Manager or such other officer as may be authorised by him in this behalf, subject to such order or instructions as may be issued by the D.R.T.A. from time to time. The disciplinary action referred to in clause (b) referred to the penalties which may be imposed finally as contemplated by Regulation 15(2)(a). Clause (c) of the Regulation 15(2) gives the procedure for inquiry where any of the penalties mentioned in sub-regulation (2)(ii) to(viii) can be imposed for misconduct for a good and sufficient reason. Clause (d) of the Regulation 15(2) gives the procedure in case of misconduct likely to lead to imposition of penalty of censure or reprimand, including reprimand and warning.

(4) In the year 1957 by virtue of the Delhi Municipal Corporation Act the public transport in Delhi came under the Municipal Corporation established under the said Act. Section 95 of the Delhi Municipal Corporation Act deals with the. subject of punishment of Municipal Officers and other employees. However, in the year 1971 there was again a statutory amendment. The Delhi Road Transport Laws (Amendment) Act 1971 came into force with effect from 3rd November 1971. In view of the said Amending Act and Section 3 of the Delhi Road Transport Act, a new Corporation named as the Delhi Road Transport Corporation was established with effect from 3rd November 1971. By virtue of Section 7 of the Amending Act the relevant provisions of Delhi Municipal Corporation Act were also subjected to amendments. Section 4 (e) and (f) of the Amending Act inter alias provide as under:-

(5) Section 4(e) and (f) of the Amending Act inter alias provided as under:-

"4-VESTING of assets etc. in the new Corporation on the establishment under the Road Transport Corporation Act, 1950 (64 of 1950) of a new Corporation, a)..... b)..... c)..... d)..... e) all rules, regulations, appointments, notifications, bye-laws, schemes, orders, standing orders and forms relating to transport services whether made under the Delhi Road Transport Authority Act 1950 (13 of 1950) or under the Delhi Municipal Corporation Act (66 of 1957) and in force immediately before such establishment, shall, insofar as they are not inconsistent with the provisions of this Act, continued to be in force and be deemed to be Regulations made by the new Corporation u/s 45 of the Road Transport Corporation Act (64 of 1950) unless and until they are superseded by

Regulations made under that Section; f) notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, every officer and other employees of the Municipal Corporation of Delhi appointed or deemed to be appointed for the purpose of the Delhi Transport Undertaking shall be transferred to, and, become an officer or other employee of the new Corporation with such designation as the new Corporation may determine and shall hold such office by the same tenure, on the same remuneration and on the same terms and conditions of service and with the same right to pension, gratuity and other matters as he would have held the same if the new Corporation had not been established and shall continued to do so unless and until such employment, tenure, remuneration and terms and conditions of service are duly altered or terminated by the Corporation. Provided that the tenure, remuneration and other terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage, without the approval of the Central Government; Provided further that any service rendered, or deemed to be have been rendered, in relation to road transport service, under the Municipal Corporation of Delhi, by any such officer or other employees before the establishment of the new Corporation shall be deemed to be service rendered under the new Corporation.

(6) The effect of Section 4(e) and (f) of the Amending Act, inter alia, was that every employee of the Municipal Corporation of Delhi appointed or deemed to be appointed for purpose of Delhi Transport Undertaking stood transferred as an employee of the new corporation and was to hold office for the same tenure on the same remuneration and on the same terms and conditions of service as he would have held if the new Corporation had not been established and was to continue to hold said office unless and until his terms and conditions of service were duly altered or terminated by the new Corporation.

(7) Another effect of Section 4(e) was that all orders, rules and regulations relating to transport services whether made under Data Act or under the Municipal Corporation Act and in force immediately before the establishment of the new Corporation, were to continue in force and were to be deemed to be Regulations made by the new Corporation u/s 45 of the Act unless and until they were superseded by Regulations made p73 u/s 45 of the Act. Therefore, the Regulations framed under Data Act and the orders issued by the General Manager Transport, dated 9.3,1967 including the office order No.32 dated 9.3.1967 mentioned earlier also continued to be in force.

(8) This brings us to certain relevant provisions of the Delhi Transport Corporation Act 1950.

12.Power to appoint committees and delegate functions - (1) A Board may, from time to time, by resolution passed at a meeting, - (a) appoint Committees consisting of Directors for performing such functions as may be specified in the resolution; (b) delegate to any such committee or to the Chairman or Vice-Chairman, subject to such conditions and limitations, if any, as may be specified

in the resolution, such of its powers and duties as it may think fit; (c) authorise the Managing Director or any other officer of the Corporation subject to such conditions and limitations, if any, as may be specified in the resolution to exercise such powers and perform such duties as it may deem necessary for the efficient day-to-day administration of its business. (2) The Chairman, Vice-Chairman or Managing Director may delegate any of his powers and duties (including powers and duties delegated to him under sub-section (1)) to any officer of the Corporation, and the officer to whom such powers and duties are delegated, shall exercise and perform such powers and duties under the control and supervision of the Managing Director. State Amendment Union Territory of Delhi. - In Cl.(b) for the words, "Chairman or Vice Chairman", the words "Chairman, Vice Chairman, Chief Executive Officer, the General Manager, the Deputy General Manager or the Chief Accounts Officer of the Corporation" shall be substituted .45. Power to make regulations. - (1) A corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made there under, for the administration of the affairs of the Corporation. (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: (a) the manner in which, and the purposes for which persons may be associated with the Board u/s 10; (b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business of such meetings; (c) the conditions of appointment and service and the scale of pay of the officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Advisor or, as the case may be, the Chief Accounts Officer-cum- Financial Advisor; (d) the issue of passes to the employees of the Corporation and other persons under Sec.19; (e) the grant of refund in respect of unused tickets and concessional passes under Sec.19."

(9) The case of the petitioners is that under the Delhi Road Transport Act the appointing authority for all employees is the Corporation. However, by virtue of delegation of powers this authority was delegated to the General Manager. Reference in this connection is invited to Regulation 6 of the Regulations framed in the year 1952 to which reference has at ready been made hereinbefore. According to the learned counsel for the petitioners these Regulations have a statutory force. The appointing authority being the General Manager, disciplinary action cannot be initiated or taken by any authority lower in rank than the General Manager. In this connection reference has also been made to a resolution passed by the new Corporation being Resolution No, 65 dated 24.2.1972. This Resolution is-

"RESOLVED that in exercise of powers vested in the Delhi Transport Corporation u/s 12 of the Road Transport Corporation Act, 1950 read with Section 7(a) of the Delhi Road Transport Law (Amendment) Act, 1971, the Corporation delegates the General Manager with such powers as were exercised by him prior to the setting up of the Delhi Road Transport Corporation. Further resolved that these powers

may be deemed to have been delegated to the General Manager with effect from 3.II.1971, i.e the date on which the Corporation was set up."

(10) It is further the case of the petitioners that Section 45 of the Delhi Road Transport Corporation Act 1950 requires that the Regulations can be framed under the said Act only with the previous sanction of the State Government and in the present case there has been no amendment of the Regulations so as to vest the disciplinary functioning in the Depot Manager much less compliance with the said statutory requirements. Therefore, the action of the Delhi Transport Corporation in as much as disciplinary action has been initiated by the Depot Managers or officers below the rank of General Manager in most of the cases, is contrary to law and the charge sheets or the show cause notices issued by the officers below the rank of the General Manager ...re liable to be quashed.

(11) It has been further argued on behalf of the writ petitioners that all the Office Orders issued from time to time by the Municipal Corporation of Delhi including the one delegating the powers of appointment in favor of the General Manager became statutory Regulations by virtue of the 1971 Amending Act. Reference has also made to two Office Orders which were issued by the General Manager (Transport), Municipal Corporation of Delhi - one was the Office Order No.32 dated 9th March 1967 and the other was the Office Order No.19 dated 1.4.1971. The effect of these orders was that the General Manager further delegated his powers under Regulation 15. Full powers were delegated to Traffic Superintendents as well as Assistant Traffic Superintendents under Regulation 15, short of order of dismissal, removal or reduction in rank. The other effect of the Office Order No.19 dated 1.4.1971 was that the Assistant General Managers were delegated the powers of suspension. In view of Section 4 (e) of the Amending Act, the Regulations as well as the Office Orders continued to be in force and acquired a statutory recognition as regulations. According to the petitioners even these office orders do not go to the extent of empowering the Depot Managers or officers of such rank to take such disciplinary action as is sought to be taken in the cases in hand.

(12) Mr. Ahmed, learned Additional Solicitor General appearing on behalf of the D.T.C. did not dispute the aforesaid Regulations and the position and power enjoyed by the General Manager in pursuance thereof. The Delhi Transport Corporation solely rests its case on Section 12(1)(c) of the Delhi Transport Corporation Act 1950. The submission is that Section 12(1)(c) permits the D.T.C. Board to pass a resolution authorising the Managing Director or any other officer of the Corporation to exercise such powers and perform such duties as it may deem necessary for the efficient day-to-day administration of its business. In exercise of such powers it is submitted "that the D.T.C. Board passed Resolutions firstly on 2nd March 1974 being Resolution No.319 and subsequently Resolution No.71 dated 28th April 1989 whereby the Depot Managers and the Assistant Engineer/ Traffic Superintendent/Assistant Traffic Superintendent were authorised and empowered to take disciplinary action including action for

dismissal, termination and suspension against the specified class of employees. The aforesaid authorisation is stated to be necessary for the efficient day-to-day administration of the business of the Corporation and, Therefore, is justified by the learned counsel. Thus according to the respondent there is no need to refer to the Regulations in as much as the source of power is drawn from Section 12(1) (c) on the basis of authorization- It follows from this that when no reference is sought to Regulations the question of amendment of the Regulation or framing new Regulation as per section 45 of the Delhi Transport Corporation Act becomes irrelevant.

(13) Apart from the above submission on merits the learned counsel for the respondent has also submitted that in view of the Division Bench judgment of this Court in L.P.A. No.6 of 1976, the question is no longer rest integra. While dealing with power of the Corporation under Clause (c) of Section 12(1) it has been observed in the said judgment that under this clause the Corporation can authorise any officer of the Corporation to exercise such powers and to perform such duties as "it may deem necessary for the efficient day-to-day administration of its business". The present is not a case to go into the finer distinction between delegation under clause (b) and authorisation under clause (c) for the simple reason that Resolution No.4 dated 18th November, 1971 talks of authorisation. The Corporation while passing this Resolution apparently exercised its power under clause (c) of Section 12 of the Act because it is only under clause (c) that it can authorise any authorised officer apart from the six officers mentioned in clause (b) to whom the power can be delegated. The only limitation in clause (c) for authorisation was that the power or the duties shall be such "as it may deem necessary for the efficient day-to-day administration of its business". It is in this light that Resolution No.4 dated 18th November 1971 has to be read. Reading in , this light, the purport of the Resolution No.4 dated 18th November 1971 was that the Corporation or authority having overall powers of running the Corporation authorised the General Manager and other officers of the Corporation. What they are authorised is mentioned in the later part of the Resolution. The later part of the Resolution particularizes the authorisation by stating that the authorisation is of such powers as were. delegated to them under Delhi Municipal Corporation Act, 1967 and they were to continue to exercise such administrative and financial powers which they had been exercising prior to the setting up of the Delhi Transport Corporation, i.e. the new Corporation. The description of the powers which were authorised by this Resolution was "such powers which they are already exercising". The effect of this Resolution was that the powers which the officers of the Delhi Municipal Corporation who had now become the officers of the new Corporation and which powers they were exercising by way of delegation under the Municipal Corporation Act, were now exercising them as per "authorisation" by the new Corporation and not by virtue of mere delegation which were just delegation of powers by the General Manager (Transport) and which powers had continued u/s 4(e) of the Amending Act. The powers which the other officers now enjoy, though

they were the same which they enjoyed earlier by way of delegation, yet now they were exercising them by virtue of "authorisation" u/s 12(c) of the Act. The effect of this would be "authorisation by the Corporation" itself.

(14) But, for understanding the scope and extent of the Resolution one has to go by the wordings of the Resolution and to see whether "the other officers" could be authorised u/s 12 of the Act or not. As opposed to Section 12(b) of the Act where the delegation can only be to Committee of its member or the six officers named therein, u/s 12(1)(c) of the Act, the authorisation can be to any other officer of the Corporation but the authorisation has to be restricted for the "efficient day-to-day administration of its business".

(15) The question of maintaining discipline among the employees and of taking disciplinary action, if necessary, from time to time comes within the ambit of the expression "efficient day-to-day administration of business" of the Corporation. Therefore the Resolution dated 18th November 1971, cannot be said to be ultra virus of the powers of the Corporation conferred on it by Section 12(1)(c) of the Act.

(16) The above observations also answers the argument on behalf of petitioners that disciplinary action against the employees is not something which is in the efficient day-to-day administration of the business of the Corporation. The Corporation works through its employees. Proper functioning of the employees is as much necessary for the efficient day-to-day business of the Corporation as anything else. Here the word "business" is not used in the sense of commercial transactions. Business will include all spheres of activities of the Corporation including management of the affairs relating to staff and maintaining discipline amongst the members of the staff.

(17) In this context the learned counsel for the respondent has referred to an Office Order dated 21st May 1968 (Annx.E) whereby the Traffic Superintendents in charge of the various Depots of the Delhi Transport Undertaking (as it was then called) were re-designated as Depot Managers. This was in the process of diversification of powers and making the Depots administratively as independent as possible. From this it followed that the Depot Managers had to have some independence in dealing with employees working under them. The Depot Managers were made all over administrative in charge of the respective Depots under them. In the process of making the Depot Managers functions independent and making them responsible within their respective Depots, the D.T.C. Board passed Resolution No.319 dated 2nd March 1974 whereby authorisation was given in favor of Depot Managers, Assistant Engineers, Traffic Superintendents and Assistant Traffic Superintendents. These powers were further modified and made more forceful under the D.T.C.Board Resolution No. 71 dated 28th April 1989. The relevant clauses in relation to the Depot Manager are as under:-

"C1.4. Appointments/ Full powers in respect of Promotions Class Iii & Iv employees working under their administrative control provided sanction has been

accorded by the competent authority for the creation of the post and appointment is made from the approved panel. (Power modified vide 00 No.22,dt.11.6.86) Cl.19 Taking 4 Subject to following disciplinary action Service Regulations full including dismissal, powers in respect of all termination and employees working under suspension against his administrative control the employees 4 on the posts of which he or officers subordinate to him are the appointing authority"

(18) It is worth noting here that while in Clause 4 as it was in Resolution 319 the posts named were (a) Assistant Foreman, (b) Foreman, (c) A.T.I., T.T. and Traffic Supervisor in the corresponding clause 4 of Resolution 71 of 1984 the posts were designated by their class as Class Iii & Iv employees. This was perhaps intended to make things more clear and specific. Clauses 4 and 19 give the complete power by way of authorisation in favor of the Depot Managers.

(19) It has been argued on behalf of the petitioners that the alleged authorisation is contrary to the Regulations, specially Regulation 6 which delegates this power in favor of the General Manager. According to the learned counsel the Regulation has statutory force and, Therefore, the alleged authorisation which goes contrary to the Regulation is illegal and invalid. Further the learned counsel has relied on the statements contained in the Office Order No. 11 dated 29.5.1989 issued regarding Resolution 71 of 1989 to the effect that the powers will be exercised subject to their following the rules and regulations, It is submitted that the authorisation in favor of the Depot Manager is contrary to the Regulation which gives this power specifically to the General, Manager. Therefore, in terms of the Office OrderNo.11dated29.5.1989, the impugned authorisation in favor of the Depot Manager is illegal and invalid.

(20) In reply to this argument the learned Additional Solicitor General submitted that firstly there is no inconsistency or conflict between the Regulations and the Board Resolutions u/s 12(1)(c) containing authorisation. Both operate in independent fields. The statute permits delegation as well as authorisation. Secondly, it is submitted that the power u/s 12(1)(c) of the Delhi Transport Corporation Act is independent and it is in exercise of that power that the D.T.C. Board passed the Resolutions regarding authorisation. The power being statutory and independent, cannot be made subject to Regulations.

(21) Considering this in the background of the fact that the need to authorise the Depot Managers was felt in view of the process of streamlining the administration of the various Depots under the D.T.C., there seems to be substance in what has been submitted on behalf of the D.T.C. The authorisation u/s 12(1)(c) became necessary in order to see that the Depot Managers are able to deal with the affairs of their respective Depots as efficiently as possible. Unless the power of the Depot Managers had teeth, they would have been mere heads of the Depots, with no effective control over the employees. Even otherwise in such a big organisation like the D.T.C. having thousands of employees, if for everything the General Manager was required to take action, it would be impracticable. In this

connection we find support from the judgment of the Division Bench in L.P.A. No.6 of 1976 "with which we are in respectful agreement. The power vested in the D.T.C. Board u/s 12(1)(c) is independent of Section 12(1)(b). When the statute has conferred both the powers on the Board which can be exercised independently of each other, it cannot be said that one is subject to the other. The choice is left to the Board which is the apex body to manage the Corporation and is supposed to know what is best in the interest of the administration of the organisation.

(22) Having considered all aspects we are of the view that the power conferred on the Depot Managers by virtue of the Resolutions passed by the D.T.C.Board deriving source from the provisions of Section 12(1)(c) of the Road Transport Corporation Act is valid exercise of statutory powers and the initiation of disciplinary action and issuance of the show cause notices, as the case may be, by the Depot Managers in these various cases, is valid. The initiation or taking of disciplinary action by the Depot Managers cannot be faulted on the ground of lack of power or authority in the officer concerned.

(23) To substantiate his submission Mr.D.N.Vohra, the learned counsel for the petitioners has placed reliance on certain decisions.

(24) First the cited Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . Referring to para 33 of the judgment it was contended that a Regulation framed under a statute is a legislation and applies in its full force. The authorities are bound by it. This legal proposition is well settled and there can be no doubt about its efficacy. But the point raised on behalf of the respondent is that the power is being exercised by it under a statutory provision co-existing with the power of delegation in the same section of the statute. Both powers are independent and there is no conflict. Therefore, this judgment is not relevant.

(25) For the same reason the judgment of the Supreme Court in Aboobakar vs. State of Kerala, 1987 (Suppl.) SCC 8 is not relevant. In this case it was held that a Resolution of the Board cannot be allowed to override statutory Regulations made by the Electricity Board. In the present case the Resolution of the Board is in exercise of an independent statutory power. The statute specifically permits passing of such resolutions. Moreover, we do not see any conflict between the Regulations and the Board Resolution in the present case.

(26) The Full Bench decision of this Court in the Management of D.T.U. vs. B.B.L.Hajeley & Ors., 1971 (1) Jlr 568 (Del) , was rendered on Section 95 of the Delhi Municipal Corporation Act. One of the questions for consideration was the purported delegation of power to remove an employee. In the case in hand the statutory provision on the basis of which the impugned action is sought to be justified is totally different. The statute specifically confers the power on the Board to pass Resolution or authorise officers to take action in the efficient day-

to-day administration of the business of the Corporation. Therefore, the judgment also has no relevance.

(27) The aforesaid judgment of the Full Bench of this Court was confirmed by the Supreme Court in *The Management of D.T.U. Vs. Shri B.B.L. Hajelay and Another*, . Mr.J.P.Dhanda, learned counsel appearing for another petitioner relied on observations in para 13 of the said judgment. The emphasis is on this statutory provision and that there can be no delegation contrary to the statutory provision. This proposition is well settled. The fact and the legal position in the present case are quite different.

(28) Next the learned counsel for the petitioners drew our attention to *Marathwada University Vs. Seshrao Balwant Rao Chavan*, . The question was about powers of the Vice Chancellor of the University to take disciplinary action against officers. On behalf of the University power was sought to be derived from the power of the Vice Chancellor to regulate the work and conduct of the officers of the University. Rejecting this contention it was held that the power to regulate the work and conduct cannot include the power to take disciplinary action. Secondly, under the statute the Appointing Authority was the Executive Council. Therefore, the specific statutory provision was to the contrary. In the case in hand the statute permits authorisation through Resolution of the Board. The Board Resolution clearly gives all such powers to the Depot Manager. Therefore, in view of the statutory provision involved in the two cases being different, there can be no parallel.

(29) On the other hand the learned counsel for the respondents placed reliance on the *Scientific Advisor to the Ministry of defense etc. vs. S.Daniel*, 1990 (Suppl.) SCC 74, in support of his contentions. This judgment is peculiar to its facts and the provisions involved. It is of no assistance in the present case. If we accept the case of the respondent that u/s 12(1)(c) of the Road Transport Corporation Act, the Board of the Corporation can authorise an officer to take such action, nothing more is necessary.

(30) The power of the Depot Manager to initiate disciplinary action and issue show cause notice was the only point raised in this batch of writ petitions. The same having been answered .in favor of the respondent Corporation, the writ petitions fail and are dismissed as such.

(31) The petitioner is granted four weeks" time to file reply to show cause notice.