
(2018) 02 CAT CK 0038

In the Central Administrative Tribunal

Case No : Original Application No. 366, 375 Of 2017

Ravinder Singh And Ors

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Delhi Road Transport Authority (Conditions Of Appointment And Service) Regulations, 1952 — Rule 9(a)(i)

Citation : (2018) 02 CAT CK 0038

Hon'ble Judges : V. Ajay Kumar, J;Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : F.K. Jha, Shashank Singh, Umesh Joshi

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. Since the facts and law involved in both the aforesaid OAs are common, the same are being disposed of by way of this common order.

2. In OA No.366/2017, the facts relevant for the purpose of disposal of the OA are that the applicant who was working as a contractual Driver in the respondent-Delhi Transport Corporation (DTC) has applied in response to its notification for recruitment as a permanent Driver and on selection, vide letter dated 18.01.2011, was offered appointment as Driver. On accepting the same, the respondent-DTC issued the posting orders to the applicant and other similarly situated persons on 18.03.2011 (Annexure A-5) appointing him as a regular Driver with effect from 22.03.2011. Accordingly, the applicant joined as a regular Driver on 22.03.2011 and he was kept on probation for a period of 2 years from the said date in terms of the conditions of appointment. While the applicant was about to complete his probation, the respondent-DTC vide Annexure A-11 Memorandum dated 16.01.2013 issued a show cause notice to the applicant stating that he has submitted driving license bearing No.7173/MTR/03 issued by

the Licensing Authority, Mathura (UP) at the time of his selection and when the said license was sent for verification to the said Licensing Authority, vide letter No.2480/license verification/2012 dated 26.12.2012, it was informed that the said license has been issued to Rakesh Kumar S/o Shri Anoop Singh and not to applicant, i.e., Ravinder Singh S/o Balvir Singh and hence the driving license submitted by the applicant was bogus driving license and he obtained the appointment by deceiving the Corporation deliberately and accordingly directed the applicant to submit his explanation why his services should not be terminated from the Corporation.

3. As the applicant has not submitted any reply to the said show cause notice, the respondents vide the impugned Annexure A-1 order dated 13.02.2013 terminated the services of the applicant under clause 9(a)(i) of DRTA (Conditions of appointment and services) Regulation, 1952. The applicant submitted his appeal against the said termination order vide Annexure A-7. However, the Appellate Authority, vide its order dated 25.07.2013 rejected the same.

4. In OA No.375/2017 the applicant was appointed as regular Driver vide Annexure A-6 letter dated 25.04.2011 with effect from 28.04.2011 and he joined as such on 28.04.2011. Accordingly he was kept on probation for a period of 2 years with effect from the said date. The respondent-DTC vide Annexure A-11 order dated 10.10.2013 issued show cause notice that the Mathura Licensing Authority stated that the license No.5641/MTR/99 has not been issued by them and that the driving license submitted by the applicant to the respondent-DTC at the time of his selection was fake/bogus/not genuine as per their official records and hence why his services shall not be terminated. Since the applicant has not submitted any reply to the said show cause notice, his services were terminated vide the impugned Annexure A-1 order dated 31.10.2013. The appeal preferred by the applicant against the said termination order was rejected by the Appellate Authority vide its order dated 29.09.2014.

5. Questioning the aforesaid orders of termination and rejection of the appeals, the applicants filed the instant OAs.

6. Heard Shri F.K. Jha for the applicants in both the OAs and Shri Umesh Joshi for the respondents in both the OAs and perused the pleadings on record.

7. Shri F.K. Jha, learned counsel appearing for the applicants submits that both the applicants were selected as Drivers on regular basis after undergoing due selection process and accordingly appointed as Drivers on permanent basis. Hence, terminating their services without holding any regular enquiry under the discipline and appeal rules is illegal and accordingly, the impugned termination orders are liable to be quashed.

8. The learned counsel further submits that in the identical circumstances, this Tribunal in Hari Om Vs. Delhi Transport Corporation in OA No.2351/2015 and batch dated 26.10.2016, quashed the impugned termination orders therein and hence following the same, the instant OAs are also liable to be allowed.

9. Per contra, Shri Umesh Joshi, learned counsel appearing for the respondent-DTC opposed the OA on the following grounds:-

(i) The termination order in OA No.366/2017 is dated 13.02.2013 and appeal of the applicant thereto was rejected on 25.07.2013 and the applicant filed the instant OA on 23.01.2017, i.e., after a lapse of more than 2½ years of the expiry of the period of limitation. Similarly, in OA No.375/2017, the termination order was passed on 31.10.2013 and the appeal preferred by the applicant thereto was rejected on 29.09.2014 whereas the said OA was filed on 23.01.2017, i.e., again after expiry of the period of limitation.

It is submitted that both the OAs having been filed beyond the period of limitation, that too, without accompanying any MA seeking condonation of delay in filing the OAs are liable to be dismissed on the ground of limitation.

(ii) The decision in Hari Om Singh and batch has no application to the facts of the present case as the applicants in Hari Om Singh's case (supra) were all working as regular Drivers after completion of their probation period, whereas the applicants in both the instant OAs were still under probation and were terminated before completion of the said period of probation in terms of the conditions of their letter of appointment read with Rule 9(a)(i) of the DRTA (Conditions of Appointment and Services) Regulation, 1952. The services of a probationer can be discharged and there was no necessity to hold any enquiry before termination of the services of a probationer. Hence, there is no illegality in passing the impugned termination orders.

10. It is seen that the applicants in both the OAs have earlier filed OAs No.378/2015 and 379/2015 respectively during 2015 but the same were dismissed as withdrawn without prejudice to their rights to file fresh OAs on 28.11.2016 (Annexure A-19). Filing an OA and withdrawing the same with liberty to file a fresh OA does not extend the period of limitation, unless a specific order to that extent is passed.

Hence, as rightly pointed out by the counsel for the respondents, both the instant OAs are filed beyond the period of limitation and without accompanying any MA seeking condonation of delay in filing the OAs.

11. Further, as rightly pointed out by the learned counsel for the respondents, the applicants in Hari Om Singh and batch cases were permanent Drivers whose probation have been cleared whereas in the instant OAs, the applicants were still under probation. Hence, the said decision has no direct application to the facts of the present case.

12. The Hon'ble Apex Court in Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363, having considered the previous judgments of Hon'ble Supreme Court in cases Samsher Singh v. State of Punjab (1974) 2 SCC 831, Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another (1999) 2 SCC 21, State of U.P. vs.

Kaushal Kishore Shukla (1991) 1 SCC 691, Triveni Shankar Saxena vs. State of U.P.(1992) Supp (1) SCC 524, State of U.P. vs. Prem Lata Misra (1994) 4 SCC 189, Samsher Singh (supra), Parshotam Lal Dhingra vs. Union of India AIR 1958 SC 36, State of Bihar vs. Gopi Kishore Prasad AIR 1960 SC 689, State of Orissa vs. Ram Narayan Das AIR 1961 SC 177, Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593, Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593, Anoop Jaiswal vs. Govt. of India (1984) 2 SCC 369, Nepal Singh vs. State of U.P. (1980) 3 SCC 288, Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena (1994) 5 SCC 177, Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena (1994) 5 SCC 177, Chandra Prakash Shahi vs. State of U.P. and Others (2000) 5 SCC 152, Union of India and Others vs. Mahaveer C. Singhvi (2010) 8 SCC 220, Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences (1999) 3 SCC 60, Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another (2002) 1 SCC 520] and State Bank of India and Others vs. Palak Modi and Another (2013) 3 SCC 607, in respect of termination of the service of a probationer, ruled that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311(2).

13. In the instant OAs, the services of the applicants were terminated after issuing a show cause notice and on the ground of submission of fake/bogus/not genuine driving license, which is one of the essential qualification for appointment as Driver. Applicants services were terminated not on the ground of misconduct or any inefficiency or for any similar reason but by way of termination simpliciter as they were not possessing valid driving licenses as on the date of their appointment. This is more so, in view of the admitted fact that the applicants have not questioned the action of the Mathura Licensing Authority, in declaring their driving licenses as not genuine, till date, i.e., for the last about more than 3 years either by filing any appeal against the finding that the driving licenses of the applicants were not genuine/bogus/fake before any higher authority or before any competent court of law. The employer has no choice when a certificate/license was declared as fake/bogus/not genuine by the authority which issued the said certificate/license except to take action, in accordance with law on its employees basing on the said finding of the issuing authority. The applicants having not even initiated any action against the declaration of their driving licenses as not genuine, cannot justify their challenge to their termination. Even, if regular enquiry is conducted, the same would be a useless formality and a futile exercise, in the absence of any valid challenge to the finding of the Licensing Authority that the driving licenses of the applicants

are not genuine.

14. In the circumstances and for the aforesaid reasons, the OAs are dismissed on the ground of limitation as well as on merits. No costs.

Let a copy of this order be placed in OA No.375/2017.