

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.2933/2010**

% **Date of Decision: 03.05.2010**

DTC Petitioner
Through Mr. J.S. Bhasin and Ms. Rashmi Priya,
Advocates

Versus

Vijender Singh Respondent
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Delhi Transport Corporation has challenged the order dated 19th October, 2009 passed by the Central Administrative Tribunal, Principal Bench in TA No. 1220/2009 titled as Sh. Vijender Singh Vs. The Management of DTC, allowing the original application of the respondent and holding that the respondent shall not be entitled for anything more than what has been paid to him during the period of suspension from the date of his suspension upto the date of his acquittal as a subsistence allowance; he would be entitled

to full salary between the date of acquittal and reinstatement and he would be deemed to be in service for the purpose of fixation of pay and the respondent, however, shall not be entitled for any interest on any of the amount payable to the respondent.

Brief facts to comprehend the controversies are that the respondent was arrested in a criminal case on 15th October, 1995 and he was placed under suspension which continued up to 2nd December, 2000. The Session Court had convicted him on 6th December, 2000 and the respondent had been dismissed from the service under clause 15 (2) (vii) of the DRTA (Conditions of Appointment and Service) Regulation 1952 and the instructions on the subject.

The respondent had preferred a criminal appeal No. 681/97 which was, however, allowed by order dated 20th March, 2001 and pursuant to his acquittal and the representation made by respondent to the petitioner, he had been reinstated in service on 11th December, 2002.

On reinstatement, the admissible benefits were denied to the respondent and therefore, he filed the writ petition on 4th January, 2008, which was later on transferred to Central Administrative Tribunal, Principal Bench which is decided by the Tribunal on 19th October, 2009, which is order is impugned before this Court.

Before the Tribunal, respondent had claimed full wages from the date of suspension after deducting the amount paid to him as subsistence allowance and full salary from the date High Court acquitted him till the date of reinstatement along with eight increments for the period. The respondent had claimed all these amounts also contending that during the period of suspension from 15th October, 1995, up to his reinstatement on 11th December, 2002, he was not employed alternatively and therefore, he was entitled for full salary.

The petitioners had opposed the plea of the respondent contending inter alia that an order dated 23rd September, 2003 was passed by which a penalty of censure was imposed pursuant to a show cause notice dated 11th August, 2003, and the subsistence allowance paid to the respondent was adequate. Therefore, he is not entitled for full salary. The petitioners also relied on the unsatisfactory service record of the respondent and suspension from 5th September, 2003 and the censure order passed against him and revocation of suspension from 7th November, 2003.

The Tribunal after considering the pleas and contentions of the parties held that the period from 4th September, 2003 up to 7th November, 2003 was after his reinstatement on 11th December, 2002 and therefore, was not relevant for the period up to his reinstatement. Whether the respondent was entitled for full salary or not and whether

increments for about eight years could be withheld till the time he was reinstated on 11th December, 2002 were not effected by the subsequent imposition of censure.

The Tribunal relied on DRTA (Conditions of Appointment and Service) Regulation, 1952 contemplating effect of suspension under Clause 15(iv). The said clause contemplates that where suspension of an employee is unjustified or in a case where the employee who has been dismissed or suspended, is later on reinstated, the concerned authority is to grant the benefit of pay to such an employee. Reliance was also placed on sub clause (b)(i) stipulating that in case of acquittal such an employee would be entitled to full pay to which he would have been entitled if he had not been dismissed, removed or suspended. Referring to Clause (ii), it was also held that such an employee will be entitled to such portion of pay and allowances as the authorities may prescribe.

The Tribunal also noticed that the petitioners having passed the detailed order for the claim of the respondent for the period from 1995 when he was suspended till 11th December, 2002 when he was reinstated, during the period the respondent was under suspension, he would be entitled for subsistence allowance only which had already been paid to him and not the full salary on the ground that it has not been shown that the suspension was unwarranted or unjust. This

finding of the Tribunal has not been challenged by the respondent. The learned counsel for the petitioner has pointed out that the respondent has not challenged the order of the Tribunal granting only subsistence allowance which has already been paid to him during the period he remained under suspension and no other amount has been granted during this period. This finding of the Tribunal in the facts and circumstances cannot be faulted.

The Tribunal has granted full salary from the date of acquittal till the date of reinstatement. The respondent was acquitted on 20th March, 2001 and he had been reinstated on 11th December, 2002 and in the circumstances, granting full salary from the date of acquittal till his reinstatement is in consonance with DRTA (Conditions of Appointment and Services) Regulations, 1952 and cannot be faulted.

The learned counsel for the petitioner is also unable to disclose any cogent ground as to why the respondent should not be entitled for full salary from the date he was acquitted till the date he was reinstated.

During the period from 1995 till 2002 no explanation has been given as to why increments for about eight years had been withheld for the purpose of fixation of pay. In the circumstances, the Tribunal has directed the petitioner to re-fix the pay from the date of his

reinstatement and workout the benefits on this basis by grant of annual increment.

The learned counsel for the petitioner is also unable to show any plausible cogent ground to show that such a direction is contrary to any Rule or Regulation or makes the order illegal or irregular. Consequently, even this direction of the Tribunal cannot be faulted. The Tribunal has not granted any interest on any amount of pay and allowances which is to be paid to the respondent.

In the totality of the facts and circumstances, we do not find any such illegality or any irregularity or such perversity in the order of the Tribunal which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit and is, therefore, dismissed.

ANIL KUMAR, J.

MAY 03, 2010

‘rs’

MOOL CHAND GARG, J.