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

+ **RFA 548/2004**

**ROHTASH SINGH**

.....Appellant

Through: Mr. Aayush Agarwala and Ms.  
Malika Luthra, Advocates  
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versus

**GOVT. OF N.C.T. OF DELHI & ORS.**

.....Respondents

Through: Mr. Dhruv Rohatgi, Ms. Chandrika  
Sachdev, Mr. Dhruv Kumar,  
Advocates for R-1, 3 & 4  
M:9643400939  
Email: [dhruv@rohatgilaw.com](mailto:dhruv@rohatgilaw.com)  
Ms. Manisha Tyagi, Adv for R-2  
(through VC)

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**JUDGMENT**

**08.09.2025**

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1. The present Regular First Appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 ("CPC"), against the judgment and decree dated 27<sup>th</sup> February, 2004, passed by the Court of Additional District and Sessions Judge, Delhi in Suit bearing *no. 130/02*. The suit was filed on behalf of the appellant/plaintiff for recovery of Rs. 4,50,000/- along with interest.

2. By way of the impugned judgment and decree, the Trial Court decreed the suit in favour of the appellant for Rs. 15,000/-, with interest @ 6% per annum from 23<sup>rd</sup> September, 2002, until realisation, along with the



caveat that if the said amount was not paid to the appellant by 15<sup>th</sup> April, 2004, the appellant shall be entitled to claim interest @ 9% per annum from 15<sup>th</sup> April, 2004, till realisation, along with proportionate costs. Respondent nos. 1 to 3, who were defendant nos. 1 to 3 in the Trial Court, were held jointly and severally liable to pay the decretal amount.

3. Before delving into the facts in hand, this Court notes that *vide* order dated 05<sup>th</sup> September, 2016, respondent no. 3 was directed to file an Amended Memo of Parties, reflecting the fresh address of respondent no. 3. However, respondent no. 3, by way of the said Amended Memo of Parties, made changes to the order of the respondents, that was initially reflected in the Memo of Parties, filed with the present appeal. In view of the same, this Court proceeds to refer to the respondents, in accordance with the latest Amended Memo of Parties dated 03<sup>rd</sup> November, 2016.

4. The brief facts in relation to the present appeal, are as follows:

4.1 The appellant was a permanent employee of the respondent no. 4, i.e., Delhi Transport Corporation (“DTC”) and had been working as a driver at the Keshopur Depot. The appellant had a Driving License bearing no. C-90110431, which was purportedly valid till 20<sup>th</sup> December, 1996. On the basis of the said Driving License, respondent nos. 2 and 3, i.e., Motor Licensing Officer (“MLO”) and Motor Licensing Authority (“MLA”), issued him a Public Service Vehicle badge bearing no. 00011038 BT on 24<sup>th</sup> May, 1994. Thereafter, the appellant was also issued an employee badge by respondent no. 4, bearing no. 12052.

4.2 The appellant lost his Driving License in May, 1996, and lodged an N.C.R bearing no. 720/96 on 29<sup>th</sup> May, 1996, in the Police Station, Vikas Puri, and informed the Depot Manager of respondent no. 4 of the same on



30<sup>th</sup> May, 1996. Upon receiving this information, the Depot Manager warned the appellant that if he failed to produce his Driving License by 20<sup>th</sup> December, 1996, he would not be allowed to perform his duties as a driver.

4.3 Consequently, the appellant applied for issuance of a duplicate Driving License on 07<sup>th</sup> June, 1996, with respondent no. 2. However, respondent no. 2 gave the remarks that that the appellant's Driving License had expired on 15<sup>th</sup> November, 1993.

4.4 The appellant intimated this fact to respondent no. 4, who, in turn, issued him a certificate dated 30<sup>th</sup> May, 1996, that the badge no. 12052 issued to the appellant, was on the basis of the appellant's Driving License bearing no. C-90110431, which was valid till 20<sup>th</sup> December, 1996. The appellant also got a clarification from the Dy. Commissioner of Police (Traffic), Delhi, to the effect that no challan was pending against his Driving License.

4.5 Despite the submission of the said documents, respondent no. 2 refused to issue a duplicate Driving License to the appellant.

4.6 Aggrieved by the actions of respondent no. 2, the appellant herein filed a suit bearing no. 542/96 (subsequently numbered 151/1997) for permanent and mandatory injunction directing respondent nos. 2 and 3 herein to issue a duplicate Driving License in *lieu* of his earlier Driving License, which was valid up to 20<sup>th</sup> December, 1996. The appellant also sought a permanent injunction restraining respondent no. 4 and the Depot Manager of DTC from creating any hindrance in the performance of duties as a driver by the appellant, till a duplicate Driving License was issued to him.

4.7 While the suit was pending, respondent no. 4 stopped the appellant



from performing his duties as a driver with effect from 08<sup>th</sup> February, 1997. Thereafter, it was only on 12<sup>th</sup> February, 2001, that the appellant sought allotment of alternative services from respondent no. 4, pursuant to which, respondent no. 4 allotted the appellant a desk duty on 14<sup>th</sup> February, 2001, till his Driving License was renewed.

4.8 Appellant sought an amendment in the prayer in suit 542/1996, however, before that application could be disposed, the Civil Judge summoned the MLO in Court, and by order dated 21<sup>st</sup> March, 2002, the Court noted that since as per the records of respondent no. 4 herein, the Driving License had expired on 20<sup>th</sup> December, 1996, and since the records after 15<sup>th</sup> November, 1993, were not traceable in the office of the Directorate of Transport, it was a fit case for directing the Directorate of Transport to issue a duplicate Driving License to the appellant herein, even though the statutory period of 5 years for renewal of licenses had already expired.

4.9 In compliance of the Order dated 21<sup>st</sup> March, 2002, the appellant was issued a duplicate Driving License bearing no. C01042002174069 on 22<sup>nd</sup> April, 2002, which was valid till 21<sup>st</sup> April, 2005. Consequently, the appellant was allowed to resume his services as a driver with respondent no. 4 from 22<sup>nd</sup> April, 2002, till his superannuation.

4.10 The appellant then filed the suit bearing no. 130/2002 on 23<sup>rd</sup> September, 2002, for recovery of sum of Rs. 4,50,000/- with *pendente lite* interest @ 18% per annum till realisation, against respondent nos. 1, 2 and 3. No relief was claimed against respondent no. 4.

4.11 By way of the impugned judgement and decree dated 27<sup>th</sup> February, 2004, the suit filed by the appellant/plaintiff was decreed in his favour for a sum of Rs. 15,000/- along with interest. Being aggrieved by the quantum of



damages, the appellant/plaintiff filed the present appeal, seeking to set aside the impugned judgement and decree dated 27<sup>th</sup> February, 2004.

5. On behalf of the appellant, it is submitted as follows:

5.1 On account of negligence and resultant delay on part of the MLO in issuing the Driving License to the appellant, the appellant was unable to perform his duty as a bus driver with the DTC for a period from 08<sup>th</sup> February, 1997 to 18<sup>th</sup> February, 2001, and therefore, the sum of Rs. 4,50,000/-, is liable to be paid by the MLO, on account of their negligence and the loss caused to the appellant.

5.2 The fact of negligence and delay in issuing the Driving License to the appellant, are not in dispute as the said issue has been decided in favor of the appellant by order dated 21<sup>st</sup> March, 2002, passed in suit no. 542/1996, and by the findings of the Trial Court in the impugned judgement.

5.3 The Trial Court was misplaced in its reasoning regarding the applicable limitation period that as the suit was filed in 2002, the period for which relief can be claimed, was only since 1999. The limitation period for a suit for damages and the cause of action arose only when the order dated 21<sup>st</sup> March, 2002, was passed in favor of the appellant. Moreover, the suit was filed claiming damages for negligence, and not for wages against respondent no. 4. Thus, the period calculated by the Trial Court was misplaced.

5.4 The appellant has produced the best evidence in possession and custody of the appellant, therefore, the appellant could not be penalized because DTC did not produce documents to the satisfaction of the Trial Court. Moreover, the evidence of PW2 is not dubious, as the salary computation he brought with him was signed and stamped by the Depot Manager, DTC, and his statement proved that the appellant was not paid any



salary for the period he was not under employment.

5.5 The appellant did not come with unclean hands as observed by the Trial Court, and the word ‘net payment’ is used in *Ex. PW2/A* is the final figure arrived at after deductions. Further, the appellant has made no claims regarding any other position, such as the desk job given to the appellant by DTC. Therefore, there is no question of misleading statements.

6. On behalf of respondent nos. 2 and 3 – MLO and MLA, the following submissions are made:

6.1 The appellant’s license had expired on 15<sup>th</sup> November, 1993, and the appellant was unable to establish that any application for renewal was filed by him.

6.2 The grant of a Driving License to the appellant is violative of the provisions of the Motor Vehicle Act, 1988 and the Delhi Motor Vehicle Rules, 1993.

6.3 The reliance of the appellant on the badge bearing no. 000110038 BT dated 24<sup>th</sup> May, 1994, is misplaced, and the same cannot be permitted to form the basis of revalidating an action which was against the norms that license and badge have to co-exist. Moreover, the badge of the appellant was not found in the records of the Transport Department.

6.4 The certificate dated 30<sup>th</sup> May, 1996, issued by the Depot Manager, DTC is self-serving and holds no evidentiary value, and the certificate itself was not corroborated by the issuing authority.

6.5 The Licensing Authority made remarks about the appellant’s license having been expired on 15<sup>th</sup> November, 1993, on the basis of the record available with them. Further, since the appellant’s license had already expired, no claim for loss can be made against the MLO, as the License had



expired prior to the period of loss, as claimed by the appellant.

7. On behalf of respondent no. 4 – DTC, the following submissions are made:

7.1 The appellant did not have a Driving License, and therefore was not entitled to drive the vehicle. Further, it was the fault of the MLO that they did not issue a duplicate License to the appellant, despite the certificate having been issued by DTC in favor of the appellant that his License was valid till 20<sup>th</sup> December, 1996.

7.2 The management of DTC warned the appellant that he will not be able to perform his duty without a Driving License, and even took a lenient view and did not remove him from service. Further, upon the appellant filing the application dated 12<sup>th</sup> February, 2001, with the DTC, an alternate duty was given to the appellant as a desk clerk and he joined the said duty on 14<sup>th</sup> February, 2001.

7.3 The appellant has not claimed any relief from DTC, and only against respondent nos. 1 to 3. Further, if any relief is sought by the appellant against DTC, the same has to be raised as an industrial dispute, and not by way of a suit for recovery.

7.4 When the appellant was not on duty as a driver, he was given a salary of Rs. 6,124/- per month by the DTC.

8. I have heard learned counsels for the parties and perused the record.

9. In the present case, the initial dispute stemmed from the rejection/refusal of issuance of a duplicate Driving License to the appellant by respondent nos. 2 and 3. The same was on the premise that the appellant's Driving License already stood expired on 15<sup>th</sup> November, 1993, and the appellant did not undertake any renewal of the same. On the other



hand, it was the claim of the appellant that his Driving License was valid till 20<sup>th</sup> December, 1996, and therefore, respondent no. 2 ought to issue a duplicate Driving License to the appellant.

10. When the fact of refusal was intimated to the Depot Manager of respondent no. 4, the appellant was warned that he would not be permitted to continue as a driver until he procures a Driving License. The said Depot Manager also issued a certificate dated 30<sup>th</sup> May, 1996, in favor of the appellant, certifying that the appellant's Driving License was valid till 20<sup>th</sup> December, 1996.

11. Despite the appellant providing the certificate of Depot Manager to respondent nos. 2 and 3, the L.L.D. form dated 07<sup>th</sup> June, 1996, by way of which the appellant sought issuance of a duplicate Driving License, was rejected by the said respondents with the remarks, "*expired 15/11/93, apply fresh*".

12. Pursuant to the rejection by respondent nos. 2 and 3, the appellant filed a suit bearing no. 542/96 (subsequently numbered 151/1997), seeking permanent and mandatory injunction directing respondent nos. 2 and 3 to issue a duplicate Driving License in favor of the appellant. The appellant also sought a permanent injunction restraining respondent no. 4 and the Depot Manager, DTC from creating any hindrance in the performance of duties by the appellant as a driver, till a duplicate Driving License is issued to appellant.

13. In the said suit, the Civil Court allowed the prayer of the appellant *vide* order dated 21<sup>st</sup> March, 2002, in the following manner:

*" It is stated by the learned MLO that the record after 15.11.1993 is not traceable in the office for want of date of renewal of the licence of the plaintiff. He further states that the badge was issued to the plaintiff on 24.5.1994 and on that day the licence was valid as no*





badge can be issued without a valid licence.

The D-3 and 4 has stated that as per the record of DTC the licence of the plaintiff was valid up to 20.12.1996. The learned MLO further states that the licence can be renewed only up to 5 years from date of its expiry and if that 5 years expires in that event the applicant has to apply a new licence.

The plaintiff has filed the present suit on 19.12.1996 and the licence as per the records of DTC has expired on 20.12.1996.

In these circumstances since the record of the licence is not traceable in the office of Directorate of Transport.

It is a fit case where a duplicate licence be ordered to be issued to the plaintiff. Accordingly the Directorate of Transport is directed to issue duplicate licence to the plaintiff despite the fact that the period of 5 years since expiry of the licence has expired, on payment of requisite fee by the plaintiff.

With these directions nothing survives in the suit. The suit is disposed of accordingly. File be consigned to the record room."

(Emphasis Supplied)

14. Thereafter, the Driving License of the appellant was renewed, and he was assigned the duty as a driver by the DTC.

15. Subsequently, the appellant filed suit bearing no. 130/2002, for recovery of Rs. 4,50,000/- with *pendente lite* interest @ 18% per annum till realisation, against respondent nos. 1, 2 and 3. No relief was claimed against respondent no. 4 herein.

16. The Trial Court *vide* order dated 21<sup>st</sup> January, 2003, framed the following issues:

"1. Whether the plaintiff has got no cause of action for filing of suit? (OPD 1, 2 and 3)

2. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? (OPD 1, 2 and 3)

3. Whether the suit of the plaintiff is not maintainable, in view of Section 80 of CPC? (OPD 1, 2 and 3)

4. Whether the plaintiff is entitled to the suit amount as prayed? (OPP)

5. Whether the plaintiff is entitled to the interest. If so, at what rate?



(OPP)

*6. Relief''*

17. By the impugned judgment, the Trial Court held that the appellant failed to prove that he did not receive any salary during the period from 08<sup>th</sup> February, 1997 to 18<sup>th</sup> February, 2001. Thus, the suit of the appellant was allowed to the limited extent of allowing the damages for having suffered physically, mentally and financially, for which the damages was quantified at Rs. 15,000/-. The Trial Court further held that the appellant would be entitled to interest @ 6% per annum from 23<sup>rd</sup> September, 2002, till realization. It was also held that the respondent nos. 1 to 3 would be jointly and severally liable to pay the decretal amount, and no relief was granted against respondent no. 4. The Trial Court also added the caveat that, in case, the decretal amount was not deposited by 15<sup>th</sup> April, 2004, the appellant would be entitled to an interest at the rate of 9% per annum from 15<sup>th</sup> April, 2004, till realization.

18. Aggrieved by the rejection of the claim for damages/loss by the Trial Court, when the appellant was not allowed to perform his duty as a driver on account of the negligence of respondent nos. 2 and 3, for the period starting from 08<sup>th</sup> February, 1997 to 18<sup>th</sup> February, 2001, the appellant filed the present appeal, challenging the impugned judgement.

19. From the facts and documents on record, it has been established that respondent no. 2 was negligent in not issuing the Driving License to the appellant even though his License was valid till 20<sup>th</sup> December, 1996. By order dated 23<sup>rd</sup> March, 2002, the Civil Judge in suit bearing no. 542/96 (subsequently numbered 151/1997), had directed the Directorate of Transport to issue a duplicate Driving License to the appellant, on the ground that the Driving License of the appellant was valid till 20<sup>th</sup>



December, 1996, as per the records maintained by respondent no. 4, and the records of the said Driving License were not traceable in the records of the Directorate of Transport.

20. Furthermore, the Trial Court held that there was negligence on behalf of respondent no. 2 in not issuing the Driving License to the appellant. This Court notes that the respondents have not filed any appeal or cross objections against this finding. Thus, the said finding has attained finality, and this Court will not interfere with the same.

21. At this stage, it is to be noted that the appellant had claimed the amount of Rs. 4,50,000/- as damages for negligence of respondent no. 2 before the Trial Court. The relevant portion of the plaint is reproduced as under:

a.	Loss of salary w.e.f. 8/2/97 to 18/2/2001	Rs 3,12,168/-
b.	Loss of bonus of last 4 years	Rs 10,000/-
c.	Loss of medical facilities during the aforesaid period	Rs 5,000/-
d.	Mental agony including interest on the aforesaid amount & misc. expenses of notice, advocate fee, fares, etc.	Rs 1,00,000/-
e.	Loss of benefits of Gazetted holidays for the aforesaid period	Rs 22,832/-

Rs 4,50,000/-

(Rupees: Four Lac Fifty Thousand Only)

22. The Trial Court rejected the claim of the appellant for damages towards loss of salary, firstly, by holding that since the suit had been filed on 23<sup>rd</sup> September, 2002, the appellant could have claimed recovery of money only from 23<sup>rd</sup> September, 1999 to 18<sup>th</sup> February, 2001. Secondly, the Trial Court held that the appellant herein was unable to prove his salary from 08<sup>th</sup>



February, 1997 to 18<sup>th</sup> February, 2001.

23. As regards the first ground on which the Trial Court rejected the prayer of the appellant herein, it is to be seen that the plaint filed by the appellant, was for recovery of damages on account of the negligence on behalf on the respondent no. 2. The appellant claimed compensation of Rs. 4,50,000/- under various heads, one of which, was the loss of salary suffered by the appellant when he was not allowed to perform his duty as a driver from 08<sup>th</sup> February, 1997 to 18<sup>th</sup> February, 2001. Thus, a perusal of the plaint, as a whole, reveals that the suit had been filed by the appellant for recovery of damages for negligence, and not for recovery of back wages.

24. However, the Trial Court proceeded on a wrong premise by not appreciating that the suit filed by the appellant was for damages resulting from the negligence of respondent no. 2, and was not a suit for recovery of back wages from respondent no. 4. Thus, the finding of the Trial Court that the appellant could claim the amount only from 23<sup>rd</sup> September, 1999 to 18<sup>th</sup> February, 2001, is totally erroneous. The appellant was well within his right to claim for compensation/damages for loss of salary from 08<sup>th</sup> February, 1997.

25. As regards the second ground of rejection of claim of the appellant, the Trial Court failed to appreciate the evidence on record and proceeded on a wrong premise. The issue before the Trial Court was regarding the loss of salary which the appellant suffered on account of the appellant not being allowed to discharge the duties as a driver, in the absence of issuance of duplicate/fresh Driving License by the respondent nos. 1 to 3/Government of NCT of Delhi (“GNCTD”). The appellant was not given the duties as a driver and remained without any work from 08<sup>th</sup> February, 1997 till 13<sup>th</sup>



26. Before the Trial Court, the appellant produced PW2-Ashok Kumar, Junior Clerk, Keshopur Depot, who brought the summoned record pertaining to account of salary of the appellant/plaintiff. The deposition of PW2, reads as under:

I have brought the summoned record. Ex. PW 2/A is the account of salary of plaintiff Rohtash ~~XXXXXX~~ Singh driver D.T.C. Badge No. 12052, token number 39165 w.e.f. 8/2/97 to 13/2/2001. The ~~account~~ amount of 3,32,239/- encircled in red is the amount (total gross amount which was to be received to Rohtash Singh for the aforesaid period. This document Ex. PW 2/A is signed by Depot Manager, Kesho Pur Depot <sup>at point A</sup> his name is Sh. R.B.L. Srivastava. I have seen him signing and writing as I am also posted in the same depot. This account is prepared under supervision of Depot Manager. This document contains only salary of the employee but does not include bonus, yearly increments and leave benefits. The benefit of gazetted holidays have been shown in the Ex. PW 2/A but other benefits and bonus is not included. I have ~~xxxx~~ brought the record of the badge of ~~XXXXXXXXXXXX BY THE RECORDS OFFICE OF THE RAILWAYS~~ Rohtash Singh as per record in the file badge was issued on 24/5/94. Ex. PW 1/A is the copy of the badge which is in our record. Mark G is shown to the witness and he states that this document is signed by Sh. B.S. Chouhan who was depot manager in Kesho Pur depot on 30/5/96. I have seen him writing and signing and I recognise his signature. This document is now ~~xxx~~ Ex. PW 2/B.



27. Further, in his cross examination by respondent no. 4/defendant no. 4, the said witness, i.e., PW2 deposed as under:

XXXXXXXXXXXXXXXXXXXXX By the counsel for defendant no. 4. D.T.C.

I am working in the Kesho Pur Depot for the last two years. It is correct to suggest that the period for which the salary account are prepared and filed in the court I was not posted in the said depot. The salary accounts are prepared after going through the records. ~~It does not suggest that the salary of the plaintiff is not included in the accounts of the salary filed before this Hon'ble Court includes the salary Ex. PW 2/A is the salary which has not been paid to the plaintiff during the period for which he was not under the employment. It is correct that the employee is not entitled to salary for the period for which he has not worked. It is correct that when there is no salary then the increments and other benefits cannot follow. It is correct that the plaintiff received his salary after rejoining. The plaintiff never demanded the salary for the period for which the period for which he was not under the employment (objected to as the witness is not the authority.)~~

I have deposed on the basis of my personal knowledge and on the basis of the record. The Ex. PW 2/A was not prepared in my presence but I know the person who



who prepared the same. Had the plaintiff been in employment he was entitled to the amount as shown in Ex. PW 2/A. I had seen Sh. B.S. Chouhan, Depot Manager, Kesho Pur signing and writing for the last 5/6 years.

R. O. & A. .

*Rajendra Bhatnagar*  
A.D.J./DELHI  
18/3/2003

28. A perusal of the aforesaid deposition clearly shows that the said witness had brought the original record as maintained by the respondent no. 4-DTC. The said witness had clearly deposed that the record, *Exhibit PW2/A*, was the account of salary of appellant herein, which had been prepared by the Depot Manager, Sh. R.B.L. Srivastava. He categorically deposed that he recognized the signature of the aforesaid official, as he had, in the normal course of his job, seen the said official signing on various documents, though, he was not present when the aforesaid document was signed by the said official. Even during his cross examination, the said witness affirmed the fact that the appellant would have been entitled to the amount as shown in *Ex. PW2/A*, had the appellant been discharging his duties.

29. The Trial Court wrongly ignored the aforesaid deposition by PW2 and the original record maintained by DTC, i.e., *Ex. PW2/A*, which was duly proved during the course of examination by producing the original record. In the absence of any evidence to prove that the said record was incorrect, forged or fabricated, its correctness cannot be doubted. In this regard, reference may be made to the judgment in the case of *Manoj Alias Monu*



*Alias Vishal Chaudhary Versus State of Haryana and Another, (2022) 6 SCC 187*, wherein, it was held as follows:

“xxx xxx xxx

**34. Section 35 of the Evidence Act, 1872 is attracted both in civil and criminal proceedings. It contemplates that a register maintained in the ordinary course of business by a public servant in discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such register is kept would be a relevant fact.** This Court in a judgment in *Ravinder Singh Gorkhi v. State of U.P.* [*Ravinder Singh Gorkhi v. State of U.P.*, (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632] held as under: (SCC pp. 591-92, para 23)

“23. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder : (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (iv) all persons concerned indisputably must have an access thereto.”

**35.** In *Krishna Pal v. State of U.P.* [*Krishna Pal v. State of U.P.*, 2010 SCC OnLine All 695], the learned Single Judge of the Allahabad High Court held that a family register is a public record in terms of the Evidence Act inasmuch as the same is prepared under the statutory provisions of Section 15(xxiii)(e) of the U.P. Panchayat Raj Act read with Rule 2, Rule 67, Rules 142 to 144 of the U.P. Panchayat Raj Rules, 1947. The family register is prepared under the Uttar Pradesh Panchayat Raj (Maintenance of Family Registers) Rules, 1970. It is to be noted that Form (A) also records the date of death of a family member. There is yet another form, namely, Form (D) which is for registering the date of birth and death. Both these forms, therefore, record the date of death of a person and they are prescribed under the Rules. Needless to say that the Rules are framed by the State





Government and the registers prescribed for particular purposes are notified under the Rules. Reference may be made to Section 110(vii) of the 1947 Act for the said purpose.

36. The Court held as under: (Krishna Pal case [Krishna Pal v. State of U.P., 2010 SCC OnLine All 695], SCC OnLine All)

**“In my opinion, a presumption has to be drawn in respect of the said public document and it cannot be merely disbelieved if the Gram Panchayat Adhikari had not been produced to prove it. The copy of the family register is a public document and a presumption as to its genuineness is accepted under Section 79 of the Indian Evidence Act.”**

37. In Shiv Patta v. State of U.P. [Shiv Patta v. State of U.P., 2013 SCC OnLine All 14202], it was held that the family register is maintained in discharge of statutory duties under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. Similarly, date of death is maintained in discharge of statutory duty under the Registration of the Birth and Deaths Act, 1969 and it is a public document within the meaning of Section 74 of the Evidence Act, 1872. **The certified copy of these documents is admissible in evidence under Section 77 of the Evidence Act and carry presumption of correctness under Section 79 of the Act. The High Court held that in the absence of any evidence to prove that it was incorrect, its correctness is liable to be presumed under Section 79 of the Evidence Act, 1872.**

xxx xxx xxx”

(Emphasis Supplied)

30. Likewise holding that in the absence of any evidence to show that records of the Government are not maintained properly, the official record would carry the presumption of correctness, the Supreme Court in the case of ***Union of India and Another Versus S. Narasimhulu Naidu (Dead) through Legal Representatives and Others***, (2021) 20 SCC 321, has held as follows:

“xxx xxx xxx

47. Apart from the fact that the transfer of title in favour of the Union is complete when the possession was delivered, but even thereafter, the military land register and general land register produced by the appellants show the possession of the appellants over such land. **The military land register and general land register are public documents within the meaning of Section 74 of the Evidence Act,**



1872 (Evidence Act) containing the records of the acts of the sovereign authority i.e. the Union as well as official body. Still further, Section 114 of the Evidence Act grants presumption of correctness being an official act having been regularly performed. Therefore, in the absence of any evidence to show that such records were not maintained properly, the official record containing entries of ownership and possession would carry the presumption of correctness. In view of the transfer of land on 10-10-1956 followed by delivery of possession on 19-3-1958 and continuous assertion of possession thereof, it leads to the unequivocal finding that the appellants are owners and in possession of the suit land.

xxx xxx xxx”

(Emphasis Supplied)

31. This Court further notes that no question was put forth in the cross examination to the said witness, i.e., PW2, that the record brought by him was forged and fabricated in any manner. Thus, there was nothing on record which can justify discarding of the cogent evidence before the Trial Court, as regards the salary which the appellant would have received had he been discharging the duties as a driver.

32. The aforesaid fact becomes all the more material considering the fact that the Trial Court accepted the deposition of the same witness with regard to another aspect regarding the Driving License of the appellant. The Trial Court accepted the deposition of PW2 on the aspect of Driving License of the appellant on the ground that the said witness had proved the certificate, i.e., *Ex. PW2/B* issued by the Depot Manager, on the basis of his deposition that he recognized the signatures of the said Depot Manager, as he had seen the said Depot Manager signing various other documents during the course of his job. When the Trial Court accepted the deposition of PW2 on one aspect, stating the same as cogent and reliable evidence, rejection of the deposition of PW2 on the aspect of salary of the appellant, in the absence of any contrary evidence, was not justifiable. There is nothing on record to suggest that the document *Ex. PW2/A* was a false and fabricated document.



Thus, the Trial Court erred in rejecting the cogent evidence on record.

33. The Trial Court itself has recorded that at the request of the appellant, the DTC had provided him temporary work in Keshopur Depot. Further, the DTC never stated that the appellant had been dismissed from service, except that he was not assigned the duty as a driver in the absence of a Driving License with the appellant, which he had lost, and was able to obtain only pursuant to the order dated 21<sup>st</sup> March, 2002, passed in the first suit filed by the appellant, i.e., *Suit No. 542/1996*.

34. The fact of the salary payable to the appellant during the period when he was not assigned the duty as a driver, has been duly proved by the appellant. It is also notable that in para 8 of the plaint, the appellant/plaintiff had asserted loss of salary with effect from 08<sup>th</sup> February, 1997 to 18<sup>th</sup> February, 2001. In reply thereto, the DTC in the written statement simply stated as follows:

and 9

8-9. That para 8/of the plaint does not relate to the  
defendent no. 4 therefore no comments.

35. Perusal of the aforesaid clearly shows that there was no specific denial in the written statement by the DTC that the claim of the appellant towards the salary component was wrong. Further, there is specific admission by the DTC to the effect that no duty was assigned to the appellant as a driver, due to non-renewal of the Driving License. Para 6 of the written statement filed by the DTC before the Trial Court, reads as under:



6. That para 6 of the plaint is correct to the extent as the plaintiff was performing his duty as a driver with defendant No. 4 and the depot manager warned the plaintiff that in case he will not produce the driving licence by 20-12-1996 then he would not be allowed to perform his duty as a driver and he was not given his duty due to non-renewal of driving licence as per rules of the corporation.

36. It is also to be noted that pursuant to order dated 13<sup>th</sup> July, 2016, an affidavit was filed before this Court on behalf of Chairman-cum-Managing Director ("CMD") DTC, wherein, it was stated as follows:

"xxx xxx xxx

7. That as per rules without driving license the appellant was not entitled to drive the vehicles, hence, the Depot Manager ordered not to give him duty without driving license. Under these circumstances, appellant filed suit for permanent and mandatory injunction praying for directions to the Director of the Motor Licensing Authority/M.L.O to issue duplicate driving license in lieu of the earlier driving license and for the directions to the GNCTD/DTC not to put any obstructions in the discharge of his duties till he obtains the duplicate license. Even before the trial court, the MLO took the same stand that the driving license of the appellant was valid upto 15.11.1993 and that the record after 15.11.1993 is not traceable in the office for want of date of renewal of the license.

8. That during the pendency of the suit, appellant for the first time submitted an application to the then DM of the Corporation/applicant on 12.02.2001, requesting therein that he is not having license due to the reasons as stated above, therefore, he is not able to drive the DTC buses and requested for alternate services. That taking a lenient view on the application of the appellant, the then DM vide dated 14.02.2001 allowed him Desk duty till his license is renewed.

xxx xxx xxx

16. That in reply to the Hon'ble Court's order dated 13.07.2016 it is stated that because the appellant informed to the department that he has applied for the duplicate license but same has not been issued by the Motor Licensing Authority and has filed the suit for the issuance



**of duplicate license against the MLO and GNCTD, hence, no action was taken against him as there was no misconduct of the appellant.**

17. That as per the DRTA Regulation, 1952, action can be taken under Regulation 15(2) only on the misconduct as per the standing orders governing the conduct of the employees. As per clause 19 of DRTA Act following acts and omissions shall be treated as misconduct:-

- a) Willful insubordination or Disobedience by an employee individually or in combination with others, to any official order of a superior employee;
- b) Theft, fraud or dishonesty in connection with the Authority business or property;
- c) Willful damage or loss to Authority's goods or property;
- d) Taking or giving bribe .....
- e) Habitual late attendance ....
- f) Habitual breach of any rules, law, etc .....
- g) Disorderly behavior .....
- h) Habitual negligence of duty ....
- i) Striking work or inciting others .....
- j) Habitual in debtness ....
- k) Any offence involving turpitude ....
- l) Any employee who may be arrested ....
- m) Any other activity not specifically covered above, but which is prima facie detrimental, to the interest of the Organization.  
(copy of the regulation 15 and clause 19 are annexed herewith as **Annexure R-1**)

**18. That as per the above rules and regulation, the appellant has not committed any misconduct and even the court case filed by him was pending, hence no coercive action was taken against him.**

19. That even as per Office order 14 dated 13.03.86, DTC drivers whose license has been suspended by the Motor Licensing Authority for causing fatal accident, the management has given sympathetic consideration and to help them decided that they may ask for extra ordinary leave under clause 14 (10) (ii) of D.R.T.A. Regulation 1952 till such time their driving license is restored by the Authority. **Whereas in the present case Licensing Authority did not renew his license for no fault of the appellant and even the court case was pending for direction to the Authority to renew the license, no coercive action was taken against him. Further, the workman never made a representation for alternate duty before 12.02.2001. The department immediately allowed his representation dated 12.02.2001 and directed to join duty of desk clerk. After issuance of duplicate**



license, he was immediately allowed the duty of driver. (copy of Office Order dated 14 is annexed as Annexure R-2)

xxx xxx xxx”

(Emphasis Supplied)

37. Reading of the aforesaid affidavit filed on behalf of the CMD of DTC clearly shows that even though the Driving License of the appellant had been lost and the duplicate Driving License had not been issued, the appellant herein was never removed from the service. Further, it was only in the year 2001, that the appellant requested for an alternate duty for the first time *vide* representation dated 12<sup>th</sup> February, 2001, which was allowed, and the appellant was allowed to join duty as a desk clerk.

38. Thus, it is evident that the appellant was never removed from service. The appellant, being a permanent government employee, could not have been terminated from service without a formal termination letter. Furthermore, when the appellant sought allotment of alternative duty, he was permitted to perform duty as a desk clerk w.e.f. 14<sup>th</sup> February, 2001. This alternative duty was allotted to the appellant without any fresh recruitment process, in continuity with his original job as a driver with respondent no. 4. After receiving a valid Driving License on 22<sup>nd</sup> April, 2002, the appellant was permitted to resume as a driver with respondent no. 4, till his superannuation. Thus, it is evident that the appellant was never formally terminated, or removed from his service.

39. This Court further notes that *vide* order dated 02<sup>nd</sup> December, 2010, the Court in the present appeal directed respondent no. 4/DTC to file an additional affidavit, taking a categorical stand if any payment on any post was ever made by respondent no. 4/DTC to the appellant during the period from 08<sup>th</sup> February, 1997 to 13<sup>th</sup> February, 2001. In compliance of order dated 02<sup>nd</sup> December, 2010, respondent no. 4 filed an additional affidavit,



wherein, it was submitted as follows:

7. That after verifying records pertaining to the Appellant it is submitted that at the time when the Appellant was not on duty , he was drawing the salary as per the following :

Basic Pay	: Rs. 4220/-
Dearness Allowance	: Rs. 338/-
House Rent	: Rs. 1266/-
C C Allowance	: Rs. 300/-
<b>Total</b>	<b>: Rs. 6124/-</b>

Less payable C.P.F.@ DA + B.12% Rs. 547/-

**Net Payable** : **Rs. 5577/-**

It is further submitted that Rs. 750/- as HRA & Rs. 135/- as CCA for the period March 1997 to May 1997 had already been paid to him . Further more the Appellant was paid salary for which he was entitled at the rate of Basic Pay , during the period he was allowed for Desk Duty i.e. w.e.f 14.02.2002 to 21.04.2002 & from 22.04.2002 till date .

40. Thus, as per the additional affidavit, the appellant was receiving a salary of Rs. 6,124/- per month (net payable being Rs. 5,577/-), for the period when he was not on duty. Furthermore, the appellant received salary at basic pay during the period when he was allotted desk duty from 14<sup>th</sup> February, 2002 to 21<sup>st</sup> April, 2002.

41. This Court has already noted the validity and credibility of the documentary proof produced before the Trial Court, relating to salary account of the appellant, being a cogent documentary proof to ascertain the aspect of the amount of salary that was payable to the appellant, as a driver. However, there is an apparent difference in the salary entitlement of the appellant as a driver, in contrast to the salary actually paid during the period,



when the appellant was not allowed to discharge his duty as a driver.

42. Thus, it is manifest that the appellant received less salary than what he was entitled to, as a driver. Furthermore, the appellant continued to be in service with the DTC as a driver but could not be paid as a driver, on account of the established negligence of respondent nos. 1 to 3 in not issuing a duplicate/fresh Driving License to the appellant, when the appellant had lost his Driving License. It was only pursuant to a court order that a Driving License was issued in favour of the appellant. Therefore, due to circumstances beyond his control, on account of the negligence of the said respondents in not issuing a duplicate/fresh Driving License, the appellant was unable to discharge his duties as a driver, on account of which, the salary which the appellant would have been entitled to as a driver, was not released to him.

43. It has already come on record that only limited salary was received by the appellant, as detailed in the additional affidavit of the DTC. The DTC cannot be faulted in not assigning the duty as a driver to the appellant in the absence of a valid Driving License. Thus, the DTC was justified in releasing only limited amounts to the appellant during the period when the appellant did not discharge duties as a driver, though he continued to remain in the service of DTC.

44. In view of the fact that the finding regarding the negligence of respondent nos. 1 to 3 in not issuing duplicate/new Driving License to the appellant has not been challenged, the said finding on the aspect of negligence by respondent nos. 1 to 3, as noted above, has attained finality, and accordingly, stands established.

45. Further, the salary which the appellant would have received as a





driver during the period when he was not allowed to discharge the function/duty as a driver, along with the salary which was actually paid to the appellant during the said period, also stands established. Therefore, the loss as suffered by the appellant on the account of the difference in his salary entitlement as a driver and the amount paid to him, also stands established.

46. It is also noted that the appellant was forced to pursue litigation in order to get the duplicate/new Driving License issued in his favour, for which, negligence on the part of respondent nos. 1 to 3, stands established.

47. Therefore, considering the facts and circumstances of the present case, this Court deems it fit to enhance the amount of damages awarded to the appellant.

48. Accordingly, it is held that the appellant shall be entitled to a further amount of Rs. 30,000/-, in addition to the amount already awarded by the Trial Court, payable by respondent nos. 1 to 3. The appellant shall also be entitled to interest @ 9% per annum on the aforesaid further amount from the date of filing of the present appeal, till realization.

49. The impugned judgment and decree is modified accordingly.

50. The present appeal is allowed in the aforesaid terms and the same is disposed of.

**MINI PUSHKARNA  
(JUDGE)**

**SEPTEMBER 08, 2025/au/sk**