



2026:DHC:3681-DB



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

+ W.P.(C) 5835/2026, CM APPL. 28668/2026 & 28669/2026

DELHI TRANSPORT CORPORATION .....Petitioner  
Through: Mr. Uday N. Tiwary, Mr.  
Akshat Tiwary and Mr. Nitesh Kumar,  
Advs.

versus

RAM PRAKASH .....Respondent  
Through: Mr. Anil Mittal and Mr Shaurya  
Mittal, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT (ORAL)**

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**29.04.2026**

**C. HARI SHANKAR, J.**

1. The respondent was appointed as a driver with the Delhi Transport Corporation<sup>1</sup> in 1984.

2. *Vide* Resolution Number 84 of 1998 dated 26 June 1998, the DTC resolved to enhance the age of retirement of its employees from 58 years to 60 years with effect from 27 May 1998, subject to their being found fit after a medical examination conducted after they attain the age of 55 years.

3. In 2015, the respondent underwent surgery for carcinoma of the

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<sup>1</sup> "the DTC" hereinafter



mouth, whereafter he was assigned light duty of a Gate Time Keeper with effect from 7 July 2015.

4. On 1 September 2015, the DTC wrote to the respondent advising him to appear before a Medical Board to consider his case for enhancement of age of superannuation, as he was approaching the age of 55. The respondent appeared before the Medical Board on 23 September 2015. The medical board declared him unfit for the post of driver. However, the treating doctor of the respondent at the Rajiv Gandhi Cancer Hospital certified that he was fit for DTC bus driving duty, *vide* certificate dated 25 September 2015.

5. Despite the certificate given by the Rajiv Gandhi Cancer Hospital, the respondent was retired at 55.

6. The respondent therefore approached the Central Administrative Tribunal<sup>2</sup> by way of OA 3848/2015. By judgment dated 30 October 2015, the Tribunal disposed of the OA with a direction to the DTC to constitute an independent Medical Board to examine the respondent *within four weeks*. There was no compliance with this direction, thereby prompting the respondent to move the Tribunal in contempt by way of Contempt Petition 70/2016. It was only thereafter that, on 7 March 2016, a Medical Board was constituted by the DTC.

7. The Medical Board *vide* its report dated 2 September 2016,



declared the respondent fit for duty. Even after the result of the Medical Board, the DTC did not allow the respondent to resume duty, thereby prompting the respondent to file a second Contempt Petition 634/2016 before the Tribunal. It was only after the second contempt petition was filed that the DTC, *vide* order dated 30 March 2017, allowed the respondent to resume duty stipulating in the order, however, that he would not be entitled to back wages. The respondent joined duty on 3 April 2017.

**8.** The respondent thereafter addressed a legal notice to the DTC on 13 May 2017, claiming back wages. The DTC, predictively, relied on the order dated 30 March 2017, whereby the respondent was permitted to resume duty, stating that the order specifically stipulated that he would not be entitled to back wages.

**9.** The respondent, therefore, approached the Tribunal once again by way of OA 20/2018, in which the presently impugned order has come to be passed.

**10.** The respondent prayed that the orders dated 30 March 2017, as well as order dated 17 November 2017 be quashed and set aside to the extent they denied back wages to the respondent. A mandamus was sought to the DTC to direct back wages to be paid to the respondent for the period from 1 November 2015 till 3 April 2017.

**11.** The respondent also included, in the OA, a prayer that the DTC

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<sup>2</sup> “the Tribunal” hereinafter



be directed to pay him the third financial upgradation under the Modified Assurance Career Progression<sup>3</sup> scheme from July 2014 and re-fix his pay along with interest.

**12.** The Tribunal allowed the OA in the following terms:

“10. From the facts narrated above, it is noticed that the respondents have ordered the applicant to retire from service w.e.f. 31.10.2015 under Clause 10 of the DRTA (Conditions of appointment and Service) Regulations 1952, on the ground of report dated 23.09.2015 of the Medical Board wherein he was declared unfit for the post of Driver. However, the treating Doctor of the applicant declared him 'Fit' for “DTC Bus Driving Duty”. Feeling aggrieved, the applicant. filed an OA No.3848/2015 before this Tribunal which was disposed of vide order dated 30.10.2015 with the direction to DTC to constitute a Medical Board consisting of at least 3 Doctors to reexamine the fitness of the applicant. The DTC adopted a dilatory tactics and finally the Medical Board vide its report dated 02.09.2016 declared the applicant fit for duty. Despite the report dated 02.09.2016, the respondent allowed the applicant to join duty vide order dated 30.03.2017 with continuity of service but without back wages.

11. It is noticed that there was no fault on the part of the applicant in not joining the duty, rather he has vigorously pursued his matter to join the duty and to constitute the Medical Board. All the delay in constituting the Medical Board and in passing the order after receipt of the report of Medical Board is attributable to the respondent - DTC.

12. It is settled law that once continuity in service is granted by the respondents, the applicant should not be deprived from his arrears of backwages and other consequential benefits for which he is entitled. We also feel that the adverse ACRs of the applicant for the period 2012-13 & 2013-14 should have been ignored while considering his case for grant of MACP, by considering previous years ACRs.

13. It is not the case of the respondents that during the period from 01.11.2015 to 30.03.2017 i.e. period when respondent-DTC retired him from service and order to allow him to resume duty, the

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<sup>3</sup> “MACP” hereinafter



applicant was engaged in any gainful business or venture or employed somewhere else or has earned any income. Moreover, the order to allow the applicant to join duty i.e. dated 30.03.2017, indicates that the applicant has been granted continuity in service. At the most, the applicant is to be asked to file an undertaking that he was neither employed nor engaged in any gainful business or venture and he did not have earned any income during the period 01.11.2015 to 30.03.2017.”

**13.** Following the above reasoning, the Tribunal disposed of the OA in terms of para 14 which read thus:

“14. On the basis of above analysis, we are of the view that the present OA deserves to be allowed and as a result thereof, the same is allowed with the following directions :-

(a) The order dated 30.03.2017 (Annexure-A/1) to the extent of denying the back wages and allowance to the applicant and the order dated 17.11.2017 (Annexure-2), passed in response to the various representations of the applicant are quashed and set aside.

(b) Applicant is directed to file an affidavit before the respondents to the effect that he was neither employee nor employed in any gainful business or venture and he did not have earned any income during the period 01.11.2015 to 30.03.2017.

(c) The respondents are directed to pay the backwages for the period 01.11.2015 to 30.03.2017 to the applicant with interest at the extant rate of interest on GPF from 01.04.2017 to the date of this order.

(d) The respondent-DTC is directed to consider extending the benefit of the 3<sup>rd</sup> MACP to the applicant from due date i.e. 23.06.2016 by ignoring the adverse ACR/remarks of the years 2012-13 and 2013-14 by counting or taking into consideration the previous years' ACRs and to grant the consequential benefits thereof;

(e) This order shall be complied with within a period of 90 days from the date of receipt of a certified copy of this order.”

**14.** Aggrieved thereby, the DTC has approached this Court by means of the present writ petition.



15. We have heard Mr. Tiwary, learned Counsel for the DTC and Mr. Mittal, learned Counsel for the respondent at length.

16. Mr. Tiwary submits that, in the absence of any evidence to indicate that the respondent was not gainfully employed during the period prior to his being permitted to resume duty, the Tribunal could not have granted back wages. He relies, for this purpose, on the judgment of the Supreme Court in *Rajasthan State Road Transport Corporation v. Phool Chand*<sup>4</sup>.

17. The Supreme Court has, in its recent decision *Dinesh Chandra Sharma v. Bhartiya Paryatan Vikas Nigam Ltd.*,<sup>5</sup> revisited the aspect of entitlement of an employee to back wages, albeit in the context of illegal dismissal or removal from service, and has held as under:

“11. We have considered the rival submissions and have perused the materials on record. In *Deepali Gundu*<sup>6</sup> (*supra*), the judgment relied by the High Court, this Court, in paragraph 22, had observed as follows:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injuries suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. *With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers*

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<sup>4</sup> (2018) 18 SCC 299

<sup>5</sup> (2025) SCC OnLine SC 3003

<sup>6</sup> *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324



*grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”*

**18.** The judgment of the Supreme Court in *Phool Chand* on which Mr. Tiwary places reliance, is an entirely different factual scenario. That judgment deals with a situation in which an order of dismissal or termination is made subject matter of the proceedings before the Labour Court which ultimately sets aside the order. In such cases, there are decisions of the Supreme Court which hold that, absent any evidence that the workman has not been in gainful employment, he cannot be held to be entitled to full back wages. This is on the presumption that, where a litigation continues for years before Labour Court or Industrial Tribunals, it can be reasonably inferred that the workman would not remain without a job for the entire period of time. It is for that reason that Courts have, in such cases, placed the onus on the workman to demonstrate that he was not in gainful employment.



**19.** Those decisions have nothing to do with the controversy before us. In the case before us, the DTC has, in a manner in which leaves much to be desired, driven the respondent twice to approach the Tribunal in contempt actions before, under pain of contempt, they implemented the order passed by the Tribunal. We deprecate the attitude of the DTC in this case. The respondent is only a bus driver, and we can well imagine the travails that he must have undergone, financial as well as otherwise, in order to secure his just entitlements.

**20.** While it may be possible for the DTC to urge that it could have ignored the certificate of 25 September 2015 as it was issued by a private hospital, there is no justification for the delay on the part of the DTC following the expiry of four weeks from 30 October 2015 by which date, according to the judgement of the Tribunal in OA 3848/2015, a Medical Board was required to be constituted. Though the period for constituting the Medical Board expired somewhere around 30 November 2015, the Board was constituted only on 7 March 2016, after the respondent moved the Tribunal in contempt.

**21.** Even after the Medical Board submitted its report on 2 September 2016, in favour of the respondent, the DTC once again drove the respondent to proceed against it for contempt before it implemented the order and gave him permission to rejoin duty by order dated 30 March 2017.

**22.** In such circumstances, the stipulation in the order dated 30



March 2017 that the respondent would not be entitled to back wages is completely unquestionable in law and incapable of enforcement. It amounts to no less than adding insult to injury.

**23.** Given the circumstances of the case, we modify the order of the Tribunal in so far as the aspect of entitlement of the respondent to back wages is concerned *only to the extent that the back wages would be computed from expiry of four weeks from 30 October 2015* when the Medical Board was to be constituted. Though Mr. Tiwary has prayed that the period expended by the Medical Board in giving its report should be excluded, in the peculiar facts of this case, when the respondent had to approach the Tribunal twice in contempt, owing to the fault of the DTC and no one else, we are not willing to extend that latitude.

**24.** Accordingly, so far as the aspect of the impugned order granting back wages to the respondent is concerned, we modify the order to the extent that the back wages would be computed from 30 November 2015 instead of 1 November 2015 as directed in the impugned order. The respondent would, in other words, be entitled to back wages for the period 30 November 2015 to 30 March 2017.

**25.** However, so far as the aspect of MACP is concerned, we find that the Tribunal has not addressed the arguments of the DTC to the effect that there were adverse entries in the respondent's confidential reports thereby disentitling him to MACP.



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**26.** Mr. Anil Mittal has pointed out that it was because of these adverse entries that the Tribunal has directed MACP benefits to be granted only from 23 June 2016. However, for want of any clear reasoning of the Tribunal in this regard, we deem it appropriate to remand the aspect of entitlement of the respondent to MACP to the Tribunal for consideration afresh.

**27.** Accordingly, this writ petition is disposed in the following terms:

(i) The judgment of the Tribunal, to the extent it holds the respondent entitled to back wages, is affirmed. However, the back wages would be payable for the period from 30 November 2015 rather than 1 November 2015.

(ii) The aspect of entitlement of the respondent to MACP is remanded to the Tribunal for consideration afresh. For this purpose, both parties would appear before the Tribunal on 18 May 2026. Neither party would seek an adjournment. We request the Tribunal to reconsider the respondent's entitlement to MACP and pass a detailed and speaking order on the said entitlement after hearing the parties.

**28.** We have not expressed any opinion on the respondent's entitlement to MACP and, if he is entitled, the date from which he would be so entitled. We are sanguine that the Tribunal, which is an experienced judicial body, would decide the matter in accordance with



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law.

**29.** Compliance with the direction for payment of back wages, along with interest as granted by the Tribunal, be ensured by the DTC within a period of six weeks from today.

**30.** The writ petition is disposed of in the aforesaid terms with no orders as to costs.

**C.HARI SHANKAR, J**

**OM PRAKASH SHUKLA, J**

**APRIL 29, 2026/ss**