



**DRAFT UNIFORM POLICY FOR ACCIDENT CASES U/S
304-A OF IPC**

**CHANDIGARH ADMINISTRATION
TRANSPORT DEPARTMENT
DRAFT ORDER/NOTICE**

No._____/ LO-(H)/CTU/2023

Dated: 30.05.2023

Uniform Policy

Short Title:-

- i. This policy shall be called as **“UNIFORM POLICY FOR ACCIDENT CASES U/S 304-A, 2023”**.
- ii. This shall come into force on and with effect from the date of its publication.

APPLICABILITY AND SCOPE:-

Except otherwise expressly provided, this policy shall apply to all the accident cases where the FIR is registered against the bus driver U/s 304-A of IPC.

BACKGROUND OF POLICY:-

The drivers of this undertaking against whom cases are registered for rash and negligent driving on account of the accident caused by the buses of this Undertaking under section 279, 337, 338, 304-A IPC and thereafter their conviction in the said cases, the departmental proceedings are initiated parallelly against them followed by passing of the disciplinary action against them. In the conviction under section 304-A of IPC, the order of dismissal are passed against the delinquent drivers while exercising the powers under Article 311(2) of the Constitution of India. The appeals against such departmental actions are preferred by the delinquent officials before the Secretary, Transport, Chandigarh. While hearing the appeals wherein some of the drivers have pleaded that different punishment have been given to them by the Competent Authority while passing the dismissal orders while the other drivers against whom the conviction order has been passed have been given liberal treatment and they are still working in the undertaking. The Secretary, Transport while considering the submissions of the drivers has desired that a Uniform Policy in the Administration is required to be formulated for taking uniform decisions in the cases of conviction under section 304-A of IPC against the drivers of this undertaking as directed by the Hon'ble High Court in CWP No. 4093 of 2004 in Rishi Dev Vs. State of Haryana and Ors. wherein the Hon'ble High Court has held that in future no reinstatement of driver convicted of an offence under section 304-A of IPC be ordered merely on the ground that the offence for which he had been convicted did not involve moral turpitude and further the directions have been issued to the Chief Secretary, Haryana and Punjab and Advisor to the Administrator, Chandigarh Administration to formulate a uniform policy and place the same before the Hon'ble High Court.

In the backdrop of the issue is the CWP No. 4093 of 2004 titled as Rishi Dev Vs. State of Haryana and Ors wherein the petitioner in the said CWP has challenged his dismissal on account of his conviction under section 304-A IPC on the ground that the Competent Authority has adopted a differential treatment to the petitioner by dismissing him on account of his conviction whereas the similarly situated drivers who have been convicted under section 304-A IPC were not dismissed and were still working with the Haryana Roadways. The Hon'ble High Court while disposing the above CWP has directed the Chief Secretaries, Haryana and Punjab and Advisor to the Administrator, Chandigarh to frame a Uniform Policy in the cases where conviction is ordered of the drivers working under State Transport Undertakings under section 304-A of IPC. In pursuance thereof, the Chandigarh Administration issued instructions dated 16.09.1998 wherein some relevant cases have been discussed like Deputy Director of collegiate education (Administration) Madras Vs S. Nagoor Meera in civil appeal no. 2992 of 1995 decided by the Hon'ble Supreme Court of India in which it was held that what is really relevant thus is the conduct of the Government Servant which has led to his conviction on a criminal charge whereby the conduct of the Government official is relevant to consider upon which he is convicted that whether his services are desirable in the department or otherwise.

Thereafter, one more instruction was issued by the Chandigarh Administration vide letter dated 17.01.2006 to comply with the directions of the Hon'ble High Court in Rishi Dev Case in letter and spirit. Further, the CTU Workers Union filed CWP No.20022 of 2008 praying for review of judgement dated 20.09..2005 passed by the Hon'ble High Court in Rishi Dev's case. The Hon'ble High Court vide order dated 26.11.2008 directed the Chandigarh Administration to pass speaking order on the representation, if any filed by the petitioner Union with in a period of 03 months. The petitioner union has mentioned in its representation that the punishing authority is duty bound to consider all the relevant facts of the case while deciding the case of the drivers, who have been convicted under Section 304-A of IPC and the conviction should not result into automatic dismissal of the employee and the punishment under the Employees Conduct Rules can be given only when a person is found to have misconducted and the punishing Authority while awarding punishment is required to take into consideration the factors such as gravity of the misconduct, the impact which the misconduct is likely to have on Administration and apply its mind to the penalty which could appropriately be imposed upon the employee.

In view of above, the Home Secretary-cum Secretary Transport, U.T., Chandigarh vide order dated 27.05.2009 has disposed off the representation of petitioner union with the observation that the punishing authority will decide such cases keeping in view the provisions of the Article 311 (2) (a), Punjab (Punishment and Appeal) Rules, the orders passed by the Hon'ble Courts and the principle of natural justice.

Further, the union of the employees of the undertaking raised their grievances with regard to the instructions issued by the Administration demanding that a lenient view be taken in cases of conviction under section 304-A of IPC by awarding lesser punishment. The then Secretary Transport, Chandigarh in order to address the demands raised by the union convened a meeting to look into the demands of the union headed by W/Secretary Transport, Chandigarh.

PURPOSE OF POLICY:-

The purpose of making the uniform policy, which was not framed till today as confirmed by the officials of the Transport Department. Till today each and every case is being dealt separately and decisions are taken on the basis of facts and circumstances of the each case. This has led to a situation where numerous representations are being received in the Transport Department from the convicted officials as well as CTU Workers Union. The drivers and the union are thus demanding that a lenient view shall be taken and they should be accommodated by framing a policy for their continuity in service by awarding minor penalty/reduction of pay/stoppage of annual increments etc.

PROCEDURE FOLLOWED BY THE DEPARTMENT IN BOTH FATAL AND NON-FATAL ACCIDENT CASES:-

Whenever the bus of this undertaking met with an accident, the driver or the conductor of the bus is duty bound to intimate the same to the Duty Section of the undertaking. The Duty Section then intimates the said facts to the Accident Committee of the Department or the concerned Duty Inspector. The Duty Inspector immediately inform to the General Manager of the concerned Depot / Station Supervisor Traffic (H) for deputing the Inspectors for getting the bus released on superdari from the concerned Court. The Station Supervisor sends the inspector with all relevant documents needed for releasing the impounded bus. The Inspector has to release the bus within three days. If more days have passed, then a suitable reason is to be explained regarding delay in release of bus. The Duty clerk makes a report of accident and the same is forwarded to the Duty Inspector and thereafter to the Competent Authority for further action and the Box branch incharge gives missed kilometer report and financial loss report, if any due to the said accident. After the report, the Accident Committee members visit the spot of the accident and make a detailed report on the severity and circumstances under which the accident occurs i.e. number of people killed, rash and negligent driving of the driver, CCTV footage, statement of passenger and persons present on the spot of accident and submit the same before the General Manager/Competent Authority for further action. The Accident Committee members who visited the accident site are made as prosecution witness in the chargesheet issued to the delinquent driver. The Competent Authority after receiving the report from the

Inspectors place the delinquent driver under suspension and chargesheet him under the provisions of Punjab Civil Services (Punishment and Appeal) Rules on the ground of misconduct (rash and negligent driving) and the financial loss caused to the undertaking on account of missed kilometres as the bus remained in custody till released on Superdari and for the damages caused to the bus on account of repairs. Further, the Inquiry is entrusted to the Inquiry Officer to look into the charges levelled in the chargesheet issued to the delinquent official. The above said procedure is followed by the Department in fatal accident cases. As a result, two cases are registered against the driver one is MACT where the case is defended by this Undertaking in the MACT Courts, High Court and Supreme Court and the another case is criminal case registered against the driver only and the same is dealt by the concerned driver on his own. In Non-fatal accident cases, where the driver of another vehicle admits his mistake of driving the vehicle negligently on the spot and wants to settle down the same through compromise by payment of damages in presence of the Accident Committee members then the above said process is not required to be initiated and the payment received in such cases is deposited by the drivers in the cash branch of this Undertaking and there is no need to suspend the driver as the matter has been compromised. In case of major loss, FIR may be lodged by the Department against the defaulting driver of another vehicle.

PROCEDURE WHERE CONVICTIONS IS ORDERED AGAINST THE DRIVER:

1. Cases where FIR is under section 279, 337, 338 IPC in the cases where the death is not caused in the Motor Vehicular Accident caused by the driver of the undertaking, the procedure as enumerated above is followed.
2. Cases where FIR is registered under section 304-A IPC in the cases where death is caused in the Motor Vehicular Accident caused by the driver of the undertaking, the Competent Authority apart from the pending chargesheet passed dismissal order against the delinquent driver while exercising the powers under Article 311 of the Constitution of India on the ground of conviction by the Hon'ble Courts.

RELEVANT JUDGEMENTS AND JUDICIAL PRONOUNCEMENTS:-

The judgment passed by the Hon'ble Punjab & Haryana High Court dated 23.05.2007 in **Civil Writ Petition No. 18896 of 2005 titled as Kaur Singh and another Vs. Punjab State Electricity Board and others (CP/192)** was placed before the Chairman and other committee members wherein the Hon'ble Punjab & Haryana High Court quashed the impugned judgment of dismissal of the delinquent Official by holding that the gravity of misconduct committed by him, was not unbecoming of Government

servant. While passing the dismissal order the Competent Authority was required “to consider” the entire conduct of the delinquent employee/ gravity of the misconduct committed by him, the impact of which his misconduct is likely to have, on the Administration and other extinguishing circumstances or redeeming feature, if any, present in the case while passing the present judgment.

While passing the aforesaid judgment, the Hon’ble High Court relied upon the judgment passed by Constitutional Bench of Hon’ble Supreme Court of India in the case titled as **Union of India Vs Tulsi Ram Patel 1985 AIR 1416 (CP/242)**. The observations made in the Para No. 127 of the judgment, is reproduced here under:-

“To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of penalty and if so, what that penalty should be. For the purpose it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and the various factors set out in **Chellapan’s case**. This, however, has to be done by it ex-parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant”.

The perusal of aforementioned para of the judgement mandates that numerous factors are required to be taken into account by the Competent Authority because the conviction alone cannot automatically entail dismissal, removal or reduction in rank. This view point is also reiterated by the Hon'ble Punjab and Haryana High Court in case titled as **Kulwant Singh Vs. District Primary Education Officer, Gurdaspur (1997) 115 PLR 228 (CP/379)**. Even the Hon’ble Constitutional Bench in the case titled as the **Divisional Personnel Officer Sothern Railway and Another Vs. TR Chellapan 1976 SCC (3) 190** had been held as under:-

“Proviso (a) to Article 311(2), however, completely dispenses with all the three stages of departmental inquiry when an employee it’s convicted on a criminal charge. The reason for the proviso is that in a criminal trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence..... ” The word ‘consider’ has been used in contradistinction to the word "determines’. The rule making authority deliberately used the word ‘consider’ and not ‘determine’ because the word ‘determine’ has a much wider scope. The word

'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that maybe passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry, which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311 (2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent **T.R. Chellappan in Civil Appeal No.1664 of 1974** where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but | have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction". (Emphasis added) (CP/411).

This clearly holds that the disciplinary authority is supposed to apply its mind while passing a dismissal order i.e. the conduct of the employee/driver. Whether the conduct of such driver was unbecoming of a Government Servant as it is incumbent upon the drivers appointed in a Public Transport Authority to drive the vehicle / bus safely and to ensure safety of general public without violating the provisions of the Motor Vehicles Act and provisions of other related Statutes.

The Hon'ble Punjab & Haryana High Court dated 09.01.2019 (CP/231) in **Civil Writ Petition No.21557 of 2017 titled as Madan Lal Vs. State of Punjab and others**, wherein it is held that the Competent Authority is required to consider the facts and circumstances of the case and various factors as said out in **Chellapan's case** and **Tulsi Ram Patel's case (CP/242)** before deciding the further course of action. In **Madan Lal's case** the Hon'ble High Court observed that the authorities are exercising the powers upon the conviction of the Government Servant based on the criminal charge but are to exercising such discretion on their individual basis and on case to case basis without there being any closeness to uniformity in such action or any parameters being followed to achieve some uniformity in action based on set parameters in similar circumstances to be followed by different authorities in different cases having similar facts, charges and circumstances. The Government is required to issue the parameters and guidelines based on the gravity, elements of moral turpitude and depravity-perversity of action demonstrated by the convicted Government employee in its conduct and pass orders in cases involving similar charges and circumstances subject to extenuating factors in each case based on such guiding factors. Thus the Hon'ble High Court issued a writ of mandamus to the State of Haryana, State of Punjab and the Union Territory Administration to formulate and issue necessary instructions and circulars covering the aforesaid aspects so that the same may guide procedural requirement and relevant consideration in the assessing conduct of the convicted government employee leading to conviction on criminal charge. The Hon'ble High Court further directed that such instructions/circulars so made be placed on the Court file within six months from today in acknowledgement of such compliance having been made based on aforesaid mandamus.

Further, it is settled law that conviction u/s 304-A of IPC does not amount to moral turpitude and the conviction is made only on account of rash and negligent act, therefore, the competent authority is duty bound to see other aspects before arriving at any conclusion as the punishment of dismissal in any manner is a harsh punishment as it deprives the employee from any further employment as well as from his retiral benefits. However, the proposition of law is very clear that the dismissal, removal or reduction in rank is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant has been released on bail pending the appeal. The Hon'ble High Court order in **Rishi Dev's case** is an order on arbitrary reinstatement of drivers convicted u/s 304-A of IPC. The court never said that the authority will punish without reading and evaluating trial court, appellate court and revisional court orders. Some accidents might become fatal leading to the loss of the life of a person irrespective of the fact that the said accident has been caused due to the negligence of the other vehicle i.e. bus etc. There are many cases where the injuries have been caused or even deaths have caused when a person due to any of the reason hit against the stationary vehicles and the total negligence in such

cases is of the said vehicle occupier who dashed into the stationary vehicle but there are cases, where in such a situation the negligence has been attributed to the bus driver and the Chandigarh Administration has to pay the price in terms of compensation and the driver has to face the music in terms of conviction.

Therefore, uniformity in suspension/reinstatement is desirable. It does not mean that all conviction cases are equal and so is the conduct of every convicted driver. For some it might be first accident and for other it might be 10th, where nine previous did not result in death but damaged cars, buses, broken bones only. This is where application of mind and a justifiable punishment is required. Court awarded punishment for the deed done, but disciplinary authority evaluates his further suitability for service and punishment if reform is expected and then award suitable punishment. For the deed done, he has already suffered judicial punishment, but evaluation of conduct is done by the authority which means that the conduct of the employee is to be specifically brought out in the punishment order passed by the disciplinary authority. The departmental punishment, is, therefore not a necessary and automatic consequence of conviction on a criminal charge. The disciplinary authority has to consider all the circumstances of case and then make such order in relation to the question of imposition of penalty of the government servant for his original conduct which had led to his conviction.

The judgement of the Delhi High Court in Iqbal Singh Vs Inspector General of Police, Delhi wherein the court allowed the writ petition of Iqbal Singh because the order of dismissal had been based merely upon his conviction in the criminal case and the order of dismissal did not show clearly that it was based on anything except the conviction. The order further did not show that the Competent Authority had at all considered the gravity of offence or recorded any conclusion of his own regarding Iqbal Singh having rendered himself undesirable for retention in service on account of his conduct which has led to his conviction. Another point which the Delhi High Court decided in favor of Iqbal Singh relates to the requirement of natural justice in affording government official an opportunity of being heard before inflicting any departmental punishment on him in spite of his conviction.

For the foregoing reasons, the court held:-

1. The departmental punishment of removal and dismissal from government service is not an essential and automatic consequence of conviction on a criminal charge.
2. The authority competent to take disciplinary action under Rule 19 (i) of the 1965 Rules against a Central Government Servant convicted on a criminal charge has to consider all the circumstances of the case and then device (a) whether the conduct of the delinquent official which led to his conviction is such as to render him further retention in public service undesirable; (b)

if so, whether to dismiss him or to remove him from service, or to compulsory retire him; and (c) if the said conduct the official is not such which renders his further retention in service undesirable, whether the minor punishment, if any should be inflicted on him.

GUIDELINES AND PARAMETERS:-

The following parameters or guidelines to be considered or kept in mind while deciding the conduct of the employee by the disciplinary authority before passing punishment orders in all accident cases against drivers where FIR has been registered u/s 304-A of IPC and the same is relevant to mention in the punishment order are as follows :-

1. The disciplinary authority should notify the speed limit which restricts the driving to that speed limit and if the official was over speeding hence the driver has violated such notification by driving the vehicle at higher speed than the speed limit imposed under the rules. The report of speed limit of the bus at the time of accident should be taken care of while deciding the conduct of the driver and the same should be necessarily be made a part of the evidence in every accident report.
2. The CCTV footage must be taken in every accident case by the accident committee members, which is a conclusive and decisive piece of evidence and the same should also be made a part of report of every accident case.
3. Nature and manner in which the accident had taken place.
4. The disciplinary authority should peruse the judgment passed by the trial court, appellate court and revisional court as per the stage before passing order of dismissal, removal and compulsory retirement or any other lesser penalty, if could be imposed under the given circumstances.
5. The conduct of the driver before and after the occurrence of the accident. Also whether he informed the status of his court cases to the department from time to time on his own or not.
6. Whether the driver was intoxicated or not at the time of accident due to which the accident occurred should be duly checked by the accident committee members gone to witness the spot of accident and the same should be mentioned in their accident committee report and they be impleaded as PW's in the chargesheet.
7. Further, the statement of passengers, videography of the spot of accident along with the bus involved in the accident and the statement of conductor be made a part of the accident report, if any.

8. Whether the accident of bus occurred due to natural calamities or not should be specifically mentioned in every accident report.
9. Whether the official is a habitual offender of causing the accident or not which includes the past history, his length of service and the same should be recorded by the disciplinary authority in the punishment order.
10. The service record and the conduct of driver till the date of his conviction be duly considered and relevant to mention in the punishment order.
11. Other relevant factors which the disciplinary authority may deem fit to consider before passing the punishment order.

-Sd-

Director Transport,
UT, Chandigarh.