



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No 3925/2014

Reserved on 15.01.2020
Pronounced on 23.01.2020

**Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Charanjit Sharma (Driver)
Aged 55 years
S/o Shri Kasturi Lal Sharma,
R/o P-2 Old Double Storey Qtrs.,
(2nd Floor), Lajpat Nagar-IV,
New Delhi-110002.

... Applicant

(By Advocate: Mr. Atul T. Nagrajan with Mr. Manoj Kumar)

VERSUS

The Chairman,
Delhi Transport Corporation,
Indraprastha Estate
New Delhi-110002

... Respondent

(By Advocate: Mr. Anurag Sharma for Ms. Ruchira Gupta)

ORDER

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Mr. Atul T. Nagrajan, counsel for applicant and Mr. Anurag Sharma for Ms. Ruchira Gupta, counsel for respondent, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “1) Allow the present application of the applicant and set aside the order of retirement dated 02.06.2014 by which order the applicant has been retired with effect from 30.06.2014 (AN), which order is based on the wrong finding and opinion of the medical board;



- 2) Award cost of the proceedings;
- 3) Pass any other order/direction which Hon'ble Tribunal may deem fit and proper, in favour of the applicant and against the respondents, in the facts and circumstances of this case."

3. The relevant facts of the case are that as the applicant was about to attain the age of 55 years on 04.06.2014, the respondent vide letter dated 05.05.2014 asked the applicant to undergo medical examination for extension of his service period. The applicant appeared in the medical examination. He was temporarily stated to be unfit on 22.05.2014 and after re-examination of X-ray and doctor's report he was declared unfit to continue after 55 years of age. As such vide order dated 02.06.2014 he was retired from the service of the Corporation w.e.f. 30.06.2014 in accordance with the relevant rules. The order of retirement is extracted below:-

"Sh.Charanjit Sharma S/o Sh.Kasturi Lal, Driver B.No.9920 P.T. No.29622 will attain the age of superannuation i.e. 55 year on 04.06.2014. He was referred for medical examination to Medical Board for extension of service vide memo No. SNPD/GO/PFC-Dr/14/1341 dated 08.05.2014. The Medical Board declared him "UNFIT" w.e.f 29.05.2014. He shall, therefore, retire from the services of this Corporation w.e.f. 30.06.2014 (AN) in accordance with clause 10 of the DRTA (Conditions of Appointment & Services) Regulations 1952 read with Office Order No. PLD-2479 & PLD-2145 dated 07.03.74 & 30.06.98.

He is required to deposit all the DTC articles including Medical Card and Identity Card in his possession and hand over the charge of the post on 30.06.2014. Non-deposit of the DTC articles (i.e. identity card cum Bus pass and Medical card etc.) by him in accordance with the instruction contained office



order No.03(42)/2013/109 dated 08.02.2013 will render him liable to pay a penalty of Rs.5000/-(Rs. Five thousand only) will be imposed upon him at the time of settlement of his dues in accordance with the instruction as contained in the same office order.

[As per record he has not opted for DTC pension scheme and his nominee is Smt. Savita Sharma (Wife)."

4. The case of the applicant is that though the applicant was declared unfit in the medical examination but, however, he appeared before DTC training school for evaluation test on 02.06.2014 and he had passed the driving test and by a license issued by the NCT of Delhi on 17.06.2014 he was even allowed to drive Heavy Transport Vehicle (HTV) and he was due for promotion in the promotional post of Assistant Traffic In-charge (ATI) and once he is promoted was not required to drive and there was no need to medical fitness certificate and on that basis he requested for recalling his retirement order and thereafter he filed an appeal before the appellate authority of DTC in vain and therefore filed this OA for seeking above said reliefs.

5. The counsel for the applicant vehemently and strenuously submitted that though the Medical Board had to examine the applicant but it is the medical officer who has examined the applicant and he further submitted that even though the applicant is declared unfit for driving on the basis of medical report in view of the provisions of Section



47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, he should have been posted in a suitable alternative post. In support of his contention, the counsel for the applicant relied upon the law laid down in the following judgments of Hon'ble Supreme Court and Hon'ble High Court:

1. **Narendra Kumar Chandla Vs. State of Haryana and Others** (1994) 4 SCC 460)
2. **Andhra Pradesh State Road Transport Corporation rep by its Managing Director and Ors. Vs. B.S. Reddy** (2017 AIR (SC) 1621)
3. **Kamlesh Kumar Kamal Vs. Union of India** (Delhi High Court) W.P (C) No. 1252/2010)
4. **Rajpal Vs. Delhi Transport Corporation** (Delhi High Court) W.P (C) 12867/2006)
5. **M/s Delhi Transport Corporation Vs. Surendra Pal** W.P (C) 6691/2017."
6. The counsel for the respondents equally vehemently contended that the appointment of the applicant was only upto the age of 55 years as Driver in DTC and he can be retained in service after the normal retirement age if he is found fit medically in every respects after thorough medical examination by a medical officer every year based on Office Order no. 99 dated 04/07.10.1963. The relevant para of the order dated 4/7.10.1963 is extracted below:-

"(f) The drivers of the DTU shall get the benefits of the enhanced retirement age subject to their being found fit in every respect after thorough medical examination by the Medical Officer/Officers of the



DTU every year after they have attained the age of 55 years. The first examination shall be carried out immediately after or before they have attained the age of 55 years. If as a result of such medical examination they are found unfit for further service, they would be retired from the service of the Undertaking without any notice."

By subsequent orders dated 30.06.1998 and 11.03.2008, the above said condition was reiterated. He further submitted that as the applicant has attained 55 years of age his further extension of service is based on medical fitness and it is not the case of acquiring any disability during his service period before attaining the age of 55 years, as such he submitted that the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are not applicable in the present case. The relevant paragraphs of the counter in this regard relied upon by the counsel for the respondents are extracted below:

"4.4.It is submitted that, as the applicant was going to attain his age of superannuation i.e. 55 years on 04.06.2014, the answering Respondents vide its letter dt. 08.05.2014 referred the applicant to the TC Medical Board for getting himself medically examined so that he could be granted the benefit of extension of his service beyond 55 years in terms of clause (f) of Office Order no. 99 dt. 04.10.1963. The applicant appeared before the DTC Medical Board on 22.05.2014 who after examining the applicant held him as temporarily unfit for extension of service due to defective distant vision and defective near vision (DDVDNV). A copy of his medical report dt. 22.05.14, 29.05.2014 is annexed as Annexure R-1 colly.

He once again appeared before the DTC Medical Board on 29.05.2014 who after re-examining the applicant declared him as medically "UNFIT" for doing Driving duty under para h



of the guidelines for medical standard for fitness laid down for DTC employees. A copy of the guidelines for medical standard for fitness laid down for DTC employees are annexed as Annexure R-2.

4.5. The contents of pra 4.5 are wrong and denied. It is submitted as far as the X-ray report is concerned there is nothing on record to show that the applicant was declared as physically fit from orthopedics point view to work. However, the DTC medical board only after going through all the records i.e. the medical reports, "X" ray report etc. concluded that the applicant is not fit for further driving duties.

4.6-4.7: The contents of para 4.6-4.7 are wrong and denied and needs no reply in view of the submissions made in para 4.4-4.5 herein above which are not repeated for the sake of brevity. In any case once the DTC Medical Board has declared the applicant as medically unfit for doing driving duties he in no manner be granted extension of his services. In any case a person suffering from DDV DNV and who is having restricted movement cannot be allowed to do driving duty beyond 55 years which is the age of superannuation in DTC."

In support of his contention, the counsel for the respondents relied upon the orders passed in the following cases:-

- (1). **Jai Singh Vs. DTC through its Chairman and Ors** (CAT-PB= OA 1664/2014)
- (2). **Rajender Singh Vs. Delhi Transport Corporation** (W.P (C) 2470/2014)
- (3) **Delhi Transport Corporation Vs. Dharam Pal** (Ex.Driver)(LPA 1214/2007 with connected LPA/WP(C))

He particularly referred to the following paras in the case of Jai Singh (supra) in which the Tribunal has held:



“5. In the present case, the DTC, Medical Board found restriction in movement of left little finger of the applicant. Such view was also taken by the Rehabilitation Department of V.M.M.C & Safdarjung Hospital, New Delhi in the following words:-

inability of flux distal part of middle finger of left hand.

Even other wise also, it is not so that the applicant has been retired from service prematurely. The retirement age of DTC driver is 55 years and further retention is subject to medical fitness. In such cases, the concerned driver cannot have any impression that he has been medically de-categorized, as the object of medical examination is only to assess the suitability grant extension of service and not to Board out the employee. In other words, while examining an individual, the medical board needs to see that the fitness of a person is of such level that he deserves to be retained in service beyond the age of superannuation.

6. In the case of Delhi Transport Corporation v. Dharam Pal (Ex. Driver) (160 (2009) Delhi Law Times 555 (DB), Hon'ble High Court observed thus:-

35. To conclude, we hold that the age of superannuation of a driver under the management is 55 years. Section 47 of the Disability Act does not ipso facto extends the tenure of service of a driver with Delhi Transport Corporation, the benefits granted to such drivers despite incurring disability during tenure of his service that is upto 55 years would not extend his service beyond 55 so as to enable him to continue in service may be at a lower post for which the normal age of retirement is 60. This is because the benefit of such post has been made available to the said person as per the provisions of Section 47 of the Act and not otherwise.



The Delhi Transport Corporation Drivers have to drive the heavy vehicles (buses) at busy roads and the judgment regarding their fitness to continue in service beyond the age of 55 years should be left at the wisdom of DTC, Medical Board which has answerability in this regard. Misplaced sympathy in such cases can be counter productive. Once the retention in service beyond the age of retirement i.e. 55 years is subject to medical fitness and the DTC medical board found the applicant unfit to be retained in service beyond such age, there is no scope of interference in the matter by the Tribunal. The OA is found devoid of merit and is accordingly dismissed."

He further referred to the following paras of the judgment in the case of Dharam Pal (Ex.driver) (supra) in which the Hon'ble High Court has held:

"18. In the light of the aforesaid observations of the division bench, the submission of the workmen/drivers that Section 47 of the disability act being a welfare legislation extends the age of their superannuation up to 60 years or in the alternative having been appointed to a lower post on account of benefits extended under section 47 of the Disabilities Act which post carries the age of retirement as 60 years, they should also be retired at the age of 60 years is again unacceptable for the simple reason that the drivers joins the Corporation as drivers and were supposed to perform the duties as drivers till the age of 55 years. As a matter of policy keeping a lower age of retirement for posts like that of a driver cannot be faulted and being a matter of policy cannot even otherwise be interfered with by this Court. Moreover it is on account of the disability incurred by them before reaching the age of superannuation, i.e. 55 years which would have enabled the management to turn them out of service by retiring them prematurely but which could not be done because of coming into force of the Disability Act, which confers the benefit of retention in service may be at a lower post or by providing them salary till the age of their superannuation. However this does not in any way entitles them to have another 5 years of service having originally agreed for the retirement at the age of 55 years, being a driver. The benefit of extension as is being conferred by the office order issued by the Management is only an enabling provision in the case



of drivers who are fit to be retained in service and does not ipso facto increases the age of superannuation. In fact accepting the contentions of the drivers would be putting premium to their disability which is not the mandate of the Disability Act.

19. There is merit in the submission of the management that sub Section I of Section 47 of the Disabilities Act clearly indicates that the benefits will be available to the employees till he attains the age of superannuation. The said Act does not add any additional benefit to a person who has suffered accident for Continuance in service beyond the age of 55 years because of his being medically unfit on reaching that age as he cannot steal advantage over other persons because of his disability. The fact is that whilst an employee would be entitled for payment in the pay scale and would receive service benefits of a driver till he is superannuated irrespective of the fact whether he is medically fit or not, but he will have to retire once he attains the age of 55 years. Thereafter he cannot say that on account of provisions contained under Section 47 of the Disabilities Act he is entitled to continue in service up to 60 years as is being pleaded because this is not the mandate of Section 47 of the Disabilities Act.

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24. In this case the petitioner was appointed as a driver by the DTC on 25.06.1985 after he retired from Indian Army. While the petitioner was driving the bus on which he was deputed, it met with an accident. A case was registered against him under Section 279 for which he was chargesheeted. A disciplinary enquiry was also conducted against him where he was found guilty. Consequently he was removed from service on 07.03.1995. Subsequently he was acquitted of the charge and thus was reinstated in service on 09.11.2005. At that time he was subjected to medical test and was found to have developed some defects in his eye-side making him unfit to drive the vehicle by the DTC medical board. Therefore he was retired on 31.03.206 after he attained the age of 55 years which is the age of superannuation of a driver. He wanted his retirement at the age of 60 years and, therefore, filed the aforesaid writ petition which was transferred to this Court.



25. The case of this petitioner is no different than that of Trilochan Singh (supra). In this case also the petitioner joined as a driver and attained the age of superannuation, which as per service regulation is 55 years and thereafter he was found unfit to work as a driver due to colour blindness could not have been retained in service claiming benefit of Section 47 of the Disability Act. Admittedly the petitioner has been retained in service up to the age of 57 years as he was given extension based on year to year assessment of his physical condition. However, as he was not found fit subsequently, for further extension of service, he is left with no right to claim further extension. Accordingly, his writ petition is also dismissed."

8. In view of the facts and circumstances of the case and in view of the fact that applicant had attained the age of 60 years as on 30.06.2019, he cannot be granted any relief, particularly in view of the judgment passed by the Hon'ble High Court in the latest case of Surendra Pal (supra) filed by the counsel for the applicant. The relevant portion of the order in the above case is extracted below:

"17. As we are informed that the respondent has not attained the age of 60 years yet and shall superannuate only on 31.7.2018, he is directed to report for duty to the Regional Manager, DTC (HQ) within ten days from today. The petitioner/DTC shall make compliance of the impugned judgment forthwith."

In view of the peculiar facts and circumstances of the case referred to above, we are of the view that the relief prayed for by the applicant cannot be granted.

9. Accordingly, OA is dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

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(S.N.Terdal)
Member (J)