

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-187/2014

Reserved on : 08.02.2016.

Pronounced on : 11.02.2016.

Hon'ble Mr.V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Islam,
S/o Sh. Nasru,
Driver B.No. 8185, T.No. 15285,
R/o H.No. 43, Gali No.1, Village Dabri,
New Delhi-110052.

..... Applicant

(through Sh. Mukesh Yadav, Advocate)

Versus

1. Delhi Transport Corporation
Through its General Manager,
DTC Headquarters, I.P. Estate,
New Delhi.

2. The Depot Manager,
DTC Hari Nagar Depot-II,
New Delhi.

..... Respondents

(through Sh. N.K. Singh for Smt. Avnish Ahlawat, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant joined DTC as a driver in 1979. According to him, he has been working with the respondents to the entire satisfaction of his superior officials and has an unblemished service record. On 30.06.2008, the respondents issued a Circular by which the drivers, who were earlier being retired at the age of 55 years, were allowed to continue upto the age of 60 years subject to being found medically fit by the Medical Board of the respondents on year to year basis. The applicant was due to retire on attaining the age of 55 years on 31.05.2011. However, before that the respondents vide their letter dated 19.05.2011 directed him to appear before a Medical Board for

extension of service as per the Circular dated 30.06.2008. The applicant was declared medically fit and continued for one more year, which was expiring on 31.05.2012. On 07.05.2012, the respondents again directed him to appear before a Medical Board for continuation in service for one more year. Accordingly, his medical examination was conducted on 07.05.2012 but he was declared medically 'unfit'. The operative part of the medical report reads as under:-

"Terminal phalanx of RT middle finger amputated."

Consequently, the respondents issued an order dated 11.05.2012 retiring the applicant from the services on the basis of this medical report. The applicant then filed OA-1853/2012 before this Tribunal. This was disposed of on 03.11.2012 dismissing the plea of the applicant. The applicant filed Writ Petition (C) No. 1257/2013 before Hon'ble High Court of Delhi, which was decided on 26.02.2013. The operative part of the order reads as follows:-

"8. But we find that with reference to the medical norms notified on July 02, 1986 an Office Order was issued on February 09, 1989 which reads as under:-

"Slight injury resulting in loss of pulp but nail being intact to any one of the finger including thumbs and toes of both hands and feet or malunited fracture of shaft of any one of phalanges of both hands and feet but movements at interphalangeal joint being intact with firm grip or hand can be considered for relaxation by the Medical Board provided above conditions do not interfere in the performance of duty."

9. Apparently, the Review Medical Board has ignored the said Office WP(C) 1257/2013 Page 3 of 3 Order dated February 09, 1989 inasmuch as a slight injury resulting in loss of pulp but nail being intact in any finger with interphalangeal joint being intact would not render the person unfit as long as the hand retained a firm grip. Accordingly, we dispose of the writ petition directing petitioner to be brought before the Review Medical Board once again with a direction that the Board would take into account the Office Order dated February 09, 1989. If the petitioner is found medically fit his services would be reengaged and the petitioner would be entitled to wages for the period interregnum. If the opinion of the Board is against the petitioner, reasons thereof with reference to the

Office Order dated February 09, 1989 would be recorded and petitioner would be entitled to remedy as per law.

10. No costs."

2. In compliance thereof, the respondents directed the applicant to appear before Medical Board of I.P. Depot on 08.05.2013. The Medical Board finally gave their report on 22.05.2013 (page-76 of the paper-book) and declared him 'unfit' for the post of driver. The respondents communicated the aforesaid report of the Medical Board to the applicant vide the impugned order dated 29.05.2013. The applicant has now filed this O.A. before us challenging the aforesaid medical report and seeking the following relief:-

"(A) Directing the respondents to place the relevant records pertaining to the present petition before their lordships for the proper adjudication in the matter.

(B) To quash and setting aside the impugned Memo bearing No. HND-II/GO/2013/2234 dated 29.5.2013 issued by the Depot Manager, DTC, Hari Nagar Depot-II, New Delhi whereby the applicant was declared medically unfit for the post of Driver and the order dt. 11.5.12 retiring the applicant from services w.e.f 31.5.12 on the basis of the medical report of medical board after 33 years of services with the same amputated terminal phalynx of right middle finger, with all other consequential benefits and allow the applicant for further extension in service is accordance with the relevant rules and instructions on the subject after declaring the actions of the respondents ignoring the case of the applicants in such a manner is a illegal, unjust, arbitrary, malafide unconstitutional against the principles of natural justice violative of articles 14,16 & 21 of the constitution of India and against the mandatory provision of law.

(C) Allowing the OA of the applicants with all other consequential benefits and costs.

(D) Any other fit and proper relief may also be granted."

3. The contention of the applicant is that the medical report was arbitrary, unjust and contravenes the instructions of the respondents in that regard. The Medical Board consisted of doctors, who were just MBBS and not experts. They failed to examine the applicant in accordance with the directions of Hon'ble

High Court of Delhi. The applicant has further submitted that he has been serving the respondents to the entire satisfaction of his superior officials and had completed 32 years of service. The medical disability pointed out by the Medical Board was due to an injury sustained by him during his childhood. This deficiency had not interfered in discharge of his duties during the 32 years of satisfactory service. Hence, it was absolutely unjust, arbitrary and illegal on the part of the respondents to have not granted him further extension.

4. The respondents have filed their reply opposing the averments made by the applicant. After narrating the facts of the case as stated above, they have submitted that the order passed by the respondents was legal and valid in the eyes of law. They have relied on the judgment of this Tribunal in **OA-3223/2011** (Dharam Singh Vs. DTC) dated 20.04.2012 with OA-3152/2011 in which according to them the facts were identical to the present case. The Tribunal had dismissed that OA observing as hereunder:-

"The Tribunal has to go by the expert medical opinion in such matters and the scope of judicial interference is limited to the rarest of rare cases which are *prima facie* perverse or malicious."

5. We have heard both sides and have perused the material placed on record. It is seen that the medical re-examination of the applicant was conducted under orders of Hon'ble High Court of Delhi in Writ Petition (C) No. 1257/2013. The operative part of the order has been extracted above. Hon'ble High Court had directed re-medical examination after observing that the Medical Board had perhaps ignored the Office Order dated 09.02.1989. On going through the fresh medical report available at page-76 of the paper-book, we notice that after radiological examination of the right hand of the applicant the Medical Board has observed that Terminal phalanx of right middle finger of the applicant was not seen and only a part of Bony fragment was seen.

Thereafter, it is written in the report that the case was not covered by the office order dated 09.02.1989. From this report, it is quite clear that the medical re-examination has been conducted by the Medical Board keeping the orders of Hon'ble High Court in mind and taking note of the relaxation that could have been granted in terms of Office Order dated 09.02.1989. The Medical Board, however, did not find the applicant to be covered under the aforesaid Office Order. Thus, it is quite clear that the medical examination has been conducted in accordance with the directions of Hon'ble High Court of Delhi and there is no merit in the applicant's contention that the respondents lost sight of Hon'ble High Court's directions. The applicant further contended that the doctors in the Medical Board were not experts and were only MBBS and that the respondents should have included an Orthopaedic Expert and a Radiologist in the Medical Board. However, we find that Hon'ble High Court had not given any such directions. We also notice that the applicant was appointed in DTC in the year 1979 in terms of the medical standards laid down on 08.04.1976. Thereafter, these standards were revised on 02.07.1986 and were made more stringent. As per new norms, the condition of fitness was "no infirmity whatsoever in the body". While the applicant was appointed on the basis of old medical norms and continued to discharge his duties till the age of 55 years in accordance with those norms, his re-medical examination under orders of Hon'ble High Court has been conducted under new Medical Fitness norms and unfortunately the applicant has been found to be 'unfit'. As far as applicant's contention that the respondents did not follow the office order dated 09.02.1989, we notice that it contains provision for relaxation of medical standards by the Medical Board in certain conditions. In the instant case, the Medical Board did not find the applicant suitable for such relaxation. The Courts in such matters have to accept the report of the Medical Experts and cannot compel the Medical

Board to grant relaxation in medical standards particularly considering the fact that in applicant's job as a driver safety of passengers as well as those using the road was involved.

6. We, therefore, do not find any merit in this O.A. and the same is dismissed.

No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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