

Central Administrative Tribunal  
Principal Bench

OA No.1669/2014

New Delhi this the 20<sup>th</sup> day of July, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)**  
**Hon'ble Mr. V.N. Gaur, Member (A)**

Birpal Singh,  
S/o. Shri. Anoop Singh,  
Driver Batch No. 14945,  
Pay Token No. 48251  
R/o. Vill. & P.O. Saroorpur Klan,  
Baghpat, Distt. Merrut (U.P.).

.....Applicant

(By Advocate : Mr. K. K. Patel, Advocate)

Versus

1. Delhi Transport Corporation,  
Through its Chairman,  
I. P. Estate, New Delhi.
2. The Depot Manager,  
Delhi Transport Corporation,  
Nand Nagri,  
Delhi-110 093.
3. Dr. Rajinder Gupta,  
Medical Board,  
Delhi Transport Corporation,  
BBM Complex (Depot)  
Banda Bhadur Marg,  
New Delhi.

....Respondents

(By Advocate : Mr. Manish Garg)

**ORDER (ORAL)**

**Mr. Justice M.S. Sullar, Member (J):-**

The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant Original Application (OA), filed by the applicant, Birpal Singh, S/o Shri Anoop Singh and emanating from the record, is that, he was working as

Driver in Delhi Transport Corporation (DTC). The DTC formulated a Policy dated 4-7/10.1963 and further amended, vide letter dated 30.06.1998, enhancing the retirement age of Drivers at 60 years, subject to medical fitness. Such medical fitness/examination of Drivers, is conducted every year after attaining the age of 55 years.

2. In pursuance of the Policy, the Depot Manager, DTC, Nand Nagri Depot, directed the applicant to appear before the Medical Board on 29.12.2011, for medical examination at B.B.M. Depot Complex, vide letter dated 13.12.2011 (Annexure A-5 Colly). After examination, the Medical Board opined "restricted movement of left shoulder" and found the applicant "unfit", vide medical report dated 29.12.2011 (Annexure A-5 Colly.)

3. Thereafter, suitability of the applicant was stated to have been examined by the Government Hospital, i.e. Swami Dayanand Hospital, Dilshad Garden, Shahdara, Delhi. There, the Medical Board found that, X-ray was normal, but there was mild restrictions of movements of the left shoulder and Physiotherapy was advised vide report dated 12.01.2012 (Annexure A-5 Colly).

4. Taking the benefit of second medical report dated 12.01.2012, the applicant moved applications/representations dated 13.01.2012 and 20.01.2012 (Annexure A-6 Colly.), requesting the respondents again to arrange the Medical Board

for re-examination of his medical fitness, but no action was taken in this regard by the respondents.

5. Dissatisfied thereby, the applicant previously filed OA bearing No.1840/2012, before this Tribunal. Shri K.K. Patel, the same very counsel for applicant, espoused that he would be satisfied if direction is given to the respondents to subject the applicant for further medical examination.

6. Although the respondents seriously opposed the prayer of the applicant, but taking into consideration the observations/orders of Hon'ble Delhi High Court in ***Surinder Pratap Singh Vs. U.O.I. & Others AISLJ 2013 (1) 101 [W.P. No.66150/2011]*** and ***DTC Vs. Kamal Kumar [W.P. (C) No.13922/2009]*** decided on 17.12.2009, the OA was partly allowed and respondents were directed to get the applicant medically re-examined once again by prescribed medical Board of DTC by virtue of order dated 10.07.2013 (Annexure A-7), by a Coordinate Bench of this Tribunal. The operative part of the order reads as under:-

"3. We have carefully looked at the registration slip of Swami Daya Nand Hospital, Dilshad Garden and also the prescription slip placed on record as Annexure a-5 collectively. In the said slips/typed copies of prescription, it is nowhere stated that the applicant is fit for driving. However, in the prescription slip dated 12.01.2012, it is indicated that he is normal. Vide his representation dated 13.01.2012 (Annexure A-6), the applicant requested Depot Manager, DTC, Nand Nagri Depot, Delhi to send him for re-medical examination. It is the DTC authorities who would be answerable for the act of inefficiency of DTC driver or the medical board of DTC, which declared the driver fit to perform driving duty even after attaining the age of 55 years, may also have some answerability. Thus, due credence should be given to the view of such prescribed medical board of DTC only regarding a person to continue in service as driver after attaining the normal age of superannuation. Nevertheless, justice should not only be done but should be seen to be done. Thus, in view of the indication given in prescription slip (Annexure A-5), we direct (sic) the respondents to get the applicant medically re-examined once again by prescribed medical Board of DTC. Said Board would form an independent opinion regarding suitability of the applicant to

continue in service. Such examination would be done within four weeks and outcome of the same would be communicated to the applicant within two weeks thereafter. OA stands disposed of. No costs.”

7. In compliance of order of this Tribunal, the applicant was again directed to appear before the Medical Board for re-examination at B.B.M. Depot Complex on 12.08.2013, by means of letter dated 10.08.2013 (Annexure A-2). Consequently, he was re-examined and the prescribed Medical Board, after re-examination, declared the applicant “unfit” to perform the duty of the Driver, by means of impugned medical certificate dated 12.08.2013 (Annexure A-2), which was conveyed to him through impugned letter dated 14.08.2013 (Annexure A-1).

8. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned medical report and order dated 14.08.2013, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

“5.1 Because the impugned medical report declaring the applicant unfit for services is illegal, arbitrary and mala fide.

5.2 Because the medical report after two weeks issued by the Govt. hospital declares the applicant fit for services.

5.3 Because the applicant has not been considered while re-examining him for his medical fitness by a competent doctor i.e. Orthopaedic Surgeon nor X-ray was conducted on the applicant.

5.4 Because the applicant has been discriminated against identical and similarly situated driver employees while considering for re-examination of medical fitness.

5.5 Because the applicant was found fit in all the medical standards prescribed under the medical theory. Declaring him unfit on a nonest ground is contrary to law.”

9. The applicant termed the impugned medical reports as illegal and arbitrary. On the strength of the aforesaid grounds,

the applicant sought to quash the medical reports, in the manner, indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant, filed their reply, inter alia, pleading certain preliminary objections of maintainability of the petition, cause of action and locus standi of the applicant. On merits, it was pleaded that as per medical report dated 29.12.2011 (Annexure A-5 Colly.), the applicant was found unfit to drive the vehicle and he was not entitled for extension in service beyond the period of 55 years. Even as per medical report of Swami Dayanand Hospital, Dilshad Garden, he was advised Physiotherapy for restricted movements of his left shoulder and **was not declared fit for driving.**

11. According to the respondents, that in compliance of the order of this Tribunal, applicant was again re-examined and was found “unfit” by the DTC Medical Board, which is final, in case of extension of retirement age of the Drivers. Hence, he was not eligible for the post of Driver beyond the age of 55 years, as twice opined by the Medical Board of DTC. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the present OA and prayed for its dismissal.

12. Controverting the allegations of reply filed by the respondents and reiterating the grounds contained in the O.A,

the applicant filed the rejoinder. That is how we are seized of the matter.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

14. Ex-facie, the argument of learned counsel that since the applicant was not medically re-examined by any competent Orthopaedic Surgeon, so the impugned medical report should not be accepted, is not only devoid of merit, but misplaced as well.

15. As is evident from the record that, in pursuance of letter dated 13.12.2011 (Annexure A-5 Colly.), the applicant was medically examined by Board of Doctors for the purpose of extension in service beyond 55 years. The Board, duly examined him and found him unfit vide medical report dated 29.12.2011 (Annexure A-5 Colly.). Even, as per medical report dated 12.01.2012 (Annexure A-5 Colly) of Swami Dayanand Hospital, Dilshad Garden, no doubt X-ray was found normal, but still restricted movements of left shoulder were there, Physiotherapy was advised and he was never declared fit for driving by the Doctors of that Hospital.

16. This is not the end of the matter. The same very learned counsel for the applicant, while arguing the previous OA,

espoused that he would be satisfied if the direction is given to the respondents to subject the applicant for further medical examination. In that view of the matter, respondents were once again directed to re-examine the applicant by the prescribed Medical Board of DTC, vide order (Annexure A-7) by this Tribunal. Therefore, once the applicant was medically re-examined in compliance of the order of this Tribunal, then he is estopped from claiming re-examination time and again and if the respondents are again and again directed to arrange the medical re-examination of the applicant, without any rhyme or reason, then there will be no end to it.

17. Moreover, in pursuance of order dated 30.11.2015 of this Tribunal, the respondents have filed the additional affidavit, depicting the constitution of Medical Board of DTC (Annexure P-1 Colly.), which is as under:-

“Delhi Transport Corporation  
Office of the CMO (Incharge)  
B.B.M. Dispensary, Delhi-110009

The following Medical Board are manned by the undersigned with the help of P.T.M.Os.

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| 1. | BBM<br>(Medical Board) - Dr. Mittal<br>P.T.M.O./<br>Dr. Sikka<br>P.T.M.O.) | Long Leave and fresh Medical Examination and Referral Medical Board (Specialised Medical Scheme) on Wednesday and Friday       |
| 2. | BBM<br>(Medical Board) - Dr. Saxana<br>P.T.M.O./<br>Dr. Sikka<br>P.T.M.O.) | Extension of Drivers + Referral Medical Board (Specialised Medical Scheme) on Monday and Thursday and Scrutiny Medical Board). |
| 3. | (Dr. Sikka<br>P.T.M.O.)  | Ref. Medical Board (Specialised Medical Scheme), SPD Dispensary on Tuesday Ist. Half.  |

4.	(Dr. Mrs Wasnik) (P.T.M.O.)	Ref. Medical Board (Specialised Medical Scheme), Wednesday, Saturday IInd Half, Sc. House.  Friday & Saturday Scrutiny Medical Board) at BBM Complex.
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Besides above other related Administrative work of Medical Board and duty assigned by Management i.e. Polio Duty, Medical of DSSSB Drivers at other Govt. Hospital etc.

(Dr. S.P. Gupta)  
Chief Medical Officer I/c."

18. What cannot possibly be disputed here is that, a person should be perfectly medically fit in all respects to drive the buses of DTC. Not only that the safety of passengers, but also the safety of public at large is at stake. Such apparent and calculated risk possibly cannot be taken either by DTC or by this Tribunal. Moreover, duty of a Driver of DTC bus indeed, cannot be and should not be assigned to such medically unfit person. As mentioned above, even the Doctors of Swami Dayanand Hospital, Dilshad Garden, Shahdara, Delhi, has found the X-ray normal, but never opined that the applicant was fit to drive the DTC buses. On the contrary, there are medical reports dated 29.12.2011 & 12.01.2012 (Annexure A-5 Colly.), declaring the applicant unfit to drive the DTC buses. Thus seen from any angle, no interference is warranted in the matter by this Tribunal.

19. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.



20. In the light of the aforesaid reasons, there is no merit and the OA deserves to be and is hereby dismissed as such. However, the parties are left to bear their own costs.

**(V.N. Gaur)**  
**Member(A)**

**(Justice M.S.Sullar)**  
**Member(J)**

Rakesh