

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3348/2014

Reserved on : 04.11.2016
Pronounced on : 08.11.2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)**

Surender Pal,
S/o Shri Naubat Ram,
Aged 56 years,
House No.B-210,
Gali No.10, Phase-10,
Shiv Vihar, Karaval Nagar,
Delhi-110094. .. Applicant

(By Advocate: Shri Anuj Aggarwal)

Versus

1. Delhi Transport Corporation,
Govt. of NCT of Delhi,
Through its Chairman,
DTC Headquarters, I.P. Estate,
New Delhi-110002.
2. The Depot Manager,
Millennium Depot-IV,
New Delhi.
3. The Medical Board,
Delhi Transport Corporation,
Govt. of NCT of Delhi,
BBM Dispensary,
BBM DTC Depot Complex,
Delhi-110009.
4. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
ITO, Delhi-110002.

5. Dr. S.P. Gupta,
Chief Medical Officer/Incharge,
DTC Medical Board,
DTC Headquarters,
I.P. Estate,
New Delhi-110092.
6. Dr. L.M. Singh,
SAG, General Physician,
Chief Medical Officer/Incharge,
Lal Bahadur Shastri Hospital,
Mayur Vihar Phase-II,
Near Kalyanvas Colony,
Khichripur, Delhi-110091.
7. Dr. Harish Mansukhani,
SAG, CMO, Orthopaedics,
Lal Bahadur Shastri Hospital,
Khichripur, Near Kalyanvas Colony,
Mayur Vihar Phase-II,
Delhi-110091. .. Respondents

(By Advocate : Ms. Ruchira Gupta for R-1 to 3 and
Shri Vijay Pandita for R-4, 6 & 7)

O R D E R

By Mr. P.K. Basu, Member (A)

The applicant was working as a Driver in Delhi Transport Corporation (DTC) having been confirmed in service in 1988. It is stated by the applicant that in 2007, he sustained an injury in the little finger of his right hand after getting hit against the wall, which resulted in physical deformity, known as 'flexion deformity' in medical terms. He, however, emphasized that there is no functional disability of any sort caused by such accident.

2. The DTC has a rule that the drivers are retired at the age of 55 years and beyond that age, their services are extended on a year to year basis in terms of regulation No.10 of the DRTA (Conditions of Appointment & Services) Regulations, 1952 after they are found medically fit. When he was sent for medical examination, he was found 'unfit' by the Medical Board of DTC. He was directed to get an X-ray of his right hand conducted. He was re-examined by the Medical Board on 06.06.2013, which examined his X-ray report and declared him 'unfit' due to flexion deformity in little finger of his right hand. As a result, he was served with notice dated 18.06.2013 and ordered to be retired from the services of DTC w.e.f. 31.07.2013, on attaining the age of 55 years.

3. The applicant was examined by Doctors in the All India Institute of Medical Sciences (AIIMS), Out Patient Department, and though, on inspection, flexion deformity was detected, it was certified that the applicant may be considered fit for driving Six Wheeler (HMV) and a certificate to that effect was issued by the Senior Resident of Department of Physical Medicine and Rehabilitation, AIIMS dated 21.06.2013.

4. The applicant had filed an O.A. No.2502/2013 in the month of July, 2013 praying, inter alia, for reinstatement in service, which was disposed of by the Tribunal vide order dated 09.01.2014 with a

direction to the Chief Secretary, Govt. of NCT of Delhi to constitute a Review Medical Board. The Review Medical Board was constituted and the applicant appeared before this Board on 21.05.2014. Thereafter, the respondents issued the impugned order dated 22.05.2014 rejecting his request for reinstatement in services.

5. Aggrieved by this order, the applicant has filed this O.A. with the following prayer(s):

- “(i) Call for the records of the previous O.A. No.2502 of 2013 filed by the Applicant which was disposed of by this Hon’ble Tribunal vide order dated 09.01.2014;
- “(ii) Allow the present Original Application;
- “(iii) Declare the constitution of the so-called independent medical board to be illegal;
- “(iv) Quash and set aside the alleged Speaking Order No.PLD-III/(Dr./DSSSB)/2014/2080 dated 22.05.2014 issued by the Respondents and Medical Examination Reports dated 21.05.2014 issued by the Respondent No.3;
- “(v) Direct the Respondents Nos. 1 and 3 to take strict action against the Respondents No.4 for exercising bias and causing grave prejudice to the rights and interests of the Applicant;
- “(vi) Direct the Respondents to retain the Applicant in service as a driver without any break-in-service as if in continuous employment, with all consequential benefits of pay, seniority, increments, back wages, etc. after taking into consideration the Medical Reports issued by the AIIMS on 21.06.2013;
- “(vii) Direct the Respondents to pay the arrears of salary from the date when the Respondents have stopped paying full salary;

(viii) Direct the Respondents to pay the costs of the present litigation; and

(ix) Pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case."

6. The applicant's main grounds are as follows:

(i) That the Review Medical Board also included one doctor, who was a member of the earlier Board and, therefore, there was ample scope of prejudice.

(ii) The respondents did not give due consideration to the report of AIIMS.

(iii) The respondents have failed to bring home the purport of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 read with Articles 14 and 16 of the Constitution of India, according to which the applicant couldn't have been discriminated against the other similarly placed employees/drivers serving the Respondent-DTC, merely owing to certain deformity not even constituting a disability.

(iv) After the so-called disability occurred in 2007, the respondent – DTC had allowed him to function as a Driver for a period of more than six years.

7. The learned counsel for the applicant relied on the following judgments:

- (i) Mahabir Prasad vs. Delhi Transport Corporation, WP(C) No.2216/2014, dated 23.07.2014;
- (ii) Manorma Verma (Smt.) vs. State of Bihar and others, 1994 Supp(3) SCC 671.
- (iii) Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324;

8. In their reply, the learned counsel for the respondents has cited the standard of physical fitness required by DTC employees, which is quoted below:

“VII : Standard of Physical Fitness:

For all the categories, viz. Ministerial and Supervisory Staff, Drivers, Conductors and Class IV Employees.

The candidate must be in good health and free from any disability likely to interfere in the efficient performance of duty. It should however be ensured.

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h) That his/her limbs, hands, feet are well formed and developed and that there is free and perfect motion of all joints and there should be no contracture of any part of the body. There should not be motor or sensory loss of any part of the body.”

9. It is further stated that in compliance of the direction of the Tribunal in O.A. No. 2502/2013, an independent medical board was constituted comprising of three doctors, who examined the applicant and declared him ‘unfit’ for the post of Driver in DTC. The

respondents have also relied upon the judgment of the Hon'ble High Court of Delhi in **Raj Singh vs. Delhi Transport Corporation** in WPC No.635/2004, which held as follows:

“There is no dispute that the Regulations of the DTC required the petitioner, who was a driver, to be medically examined by the medical board of the DTC. Undoubtedly, this medical board would consist of experts who would be best placed to give an appropriate opinion with regard to a medical disability which may be suffered by a candidate seeking to render service with the DTC. It is this medical board which would be the expert for giving the opinion bearing in view the requirements of the service which an employee of the DTC is required to render and the special needs which the service may demand. Undoubtedly, the opinion given by the medical board would bind this court over and above the medical opinion given by any other experts who may be otherwise competent to opine on fitness of a person.”

In view of this judgment, it is stated that the medical board of DTC, which would be considered as the expert body, would bind this Tribunal over and above the medical opinion given by any other experts who may be otherwise competent to opine on fitness of a person.

10. Heard the learned counsel for both sides and perused the pleadings as well as judgments cited by both the sides.

11. It is a fact that we are bound by the judgment of the Hon'ble High Court in the case of **Raj Singh** (supra), but it would be seen from the aforesaid judgment that the petitioner therein, Shri Raj Singh, suffered from two disqualifications, one on account of amputation of his finger in his right hand and second on account of problem in his vision. The services of Shri Raj Singh had been

terminated by the DTC on 31.08.1991. However, in the present case, the applicant's disability is only 'flexion deformity' in his right little finger. Moreover, in the case of Shri **Raj Singh** (supra), the court had called for the medical reports of the petitioner of the years 1971 and 1975 and these records did not reflect that the petitioner had suffered from amputation of any part of the body at the time when he had undergone these medical examinations. In fact, both these medical records show that there was no problem with the vision of the petitioner as well.

12. It would be clear that the facts of the case are completely different and, therefore, the judgment of the Hon'ble High Court in **Raj Singh**'s case will not act as precedence. Moreover, in this case before the applicant attained the age of 55 years, the DTC has been utilizing the services of the applicant as a Driver for over six years, despite the deformity having arisen in 2007. It is not the case of the respondents that in these six years, there had been any complaint against the applicant regarding his driving skill. The AIIMS, which is a premier institute not only in this country but in Asia and perhaps in the world, after examining the applicant in the specialized Department of Physical Medicine and Rehabilitation, after noting the fact that the applicant's case is a case of right little finger's flexion deformity, certified that the applicant should be able to drive Six Wheeler (HMV). The applicant has also appeared before

us and we examined the said little finger deformity. It appears to be a mild deformity. However, since we are not medical experts, we do not place much reliance on our visual examination, but the fact that he had continued driving DTC buses for more than six years before his retirement and also the certificate of Department of Physical Medicine and Rehabilitation, AIIMS, we are of the opinion that the O.A. has merit and needs to be allowed.

13. The O.A. is allowed and the order dated 22.05.2014 is quashed and set aside and the respondents are directed to reinstate the applicant as Driver w.e.f. 01.08.2013 with notional benefit of seniority and pay fixation. Actual salary and allowances would be paid to him from the date he assumes the charge of the post of Driver. No order as to costs.

(P.K. BASU)
Member (A)

(JUSTICE M.S. SULLAR)
Member (J)

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