

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

OA-3300/2014

Reserved on : 28.03.2018.

Pronounced on : 10.04.2018.

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Jamil Ahmed,
S/o Sh. Babloo Ahmed,
92, Patparganj, Delhi-91.

.... Applicant

(through Mr. Parmod Kumar with Mr. Amod Kumar for Ms. Kitu Bajaj,
Advocate)

Versus

Delhi Transport Corporation
Through its Chairman,
I.P. Estate, New Delhi.

.... Respondent

(through Sh. Anurag Sharma with Ms. Mona Sinha for Ms. Ruchira
Gupta, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

Briefly stated, the facts of the current O.A. are that the applicant, while working with the respondents was run over by a Maruti Car on 30.05.1992. He was admitted in St. Stephens Hospital where he underwent an operation in left foot, which resulted in shortening of his left leg by 1.5 cms. The operation was successful and the applicant continued with his service as "Driver" with the respondent Corporation.

2. On 13.01.2005, he was directed to undergo a Medical Test prescribed for the post of driver. The Medical Board, after examining, found him 'Medically fit' to continue as a driver on 14.01.2005.

3. On attaining the age of 55 years, he was again called upon to appear before the Medical Board on 24.06.2013. On the said date, only one doctor was present who held that the applicant had shortening of left leg by 1.5 cms and on this account, held him "medically unfit" to continue as driver. The applicant retired w.e.f. 30.06.2013 vide order dated 26.06.2013.

4. The applicant submits that independent doctors of other institutes like AIIMS and Safdarjung Hospitals certified that the applicant was fit for driving any four wheeler. The findings are dated 12.12.2013 and 27.12.2013, respectively.

5. Aggrieved by the action of the respondents, the applicant has filed this O.A. seeking the following relief:-

- “(i) Quash the order dated 12.06.13 and direct the Respondent to continue the Applicant as driver till he attains the age of 60 years.
- (ii) All consequential benefits i.e. seniority, ACP, wages, increments, etc. be given to the Applicant with interest @15% p.a., compounding monthly.
- (iii) Costs of the proceedings be given to the applicant.

(iv) Any other order(s) the Hon'ble Court deems fit be also passed."

6. The respondents, without disputing the facts of the case, have averred in the counter that the applicant retired from the service of the Corporation w.e.f. 30.06.2013. The retirement age of the employees was enhanced from 58 to 60 years vide Circular No. PLD-V/Retirement/98/2145 dated 30.06.1998 in which it was stated that:-

"....The drivers of DTC shall get the benefit of enhanced age subject to their being found fit in every aspect after a thorough medical examination by the Medical Officer of DTC 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 Corporation without any notice."

7. Before attaining the age of superannuation i.e. 55 years, the applicant was directed to appear before the DTC Medical Board for medical examination. The Medical Board examined the applicant on 17.06.2013 and declared him temporarily unfit. He was again examined by the Medical Board on 24.06.2013 and declared medically unfit. Accordingly, the applicant was retired from services of the Corporation on 30.06.2013 in accordance with the Rules and Regulations of the Corporation.

8. The respondents submit that a similar issue had been raised before this Tribunal in OA-1043/2013 which was dismissed on 19.12.2013. Writ Petition (C) No. 2470/2014 filed against this order of the Tribunal was also dismissed on 06.08.2014.

9. During the course of hearing, learned counsel for the applicant Sh. Parmod Kumar argued at length that the opinion of Medical Board dated 24.06.2013 is contrary to that of medical jurisprudence, as is broadly understood. He took the Court through various medical studies conducted on the subject wherein it has been held that leg length discrepancy or limb length discrepancy (LLD) is a relatively common problem found in as many as 40 to 70 percent of the population. In a study conducted by the Apollo Hospitals in July, 2016, it has been held that:-

"Limb length discrepancy, or anisomelia or limb length inequality, is defined as a condition in which paired limbs are noticeably unequal. When the discrepancy is in the lower extremities, it is known as leg length discrepancy (LLD). LLD is a relatively common problem found in as many as 40 to 70 per cent of the population. Discrepancy in the length of upper limbs is not very disabling or noticeable unless the difference is very gross. Since LLD is clinically more relevant, our discussion shall be confined to it."

10. He further drew the attention of the Court to an Orthopedics study conducted by Richard H. Gross, MD. An abstract of which states that:-

"A survey of 74 skeletally mature patients with leg length discrepancies of 1.5 cm or more revealed that patients with less than a 2.0 cm discrepancy did not consider their short leg to be a problem in any way. As the amount of discrepancy increased, there were more problems, although there was no critical "cutoff" point. Some patients functioned well athletically with discrepancies of over 2.5 cm. A survey of pediatric orthopedists reflected the wide variety of opinion regarding indications for equalization of leg length discrepancy noted in the literature. It is concluded that there seems little indication for equalization of discrepancies less than 2 cm. For larger amounts of discrepancy, "clinical judgment" still must be weighed on an individual basis, as

individual variation among patients with leg length discrepancy confounds any precise classification of functional disability.”

11. Basing his argument on these studies, he argued that if such discrepancies (LLD) are less than 2 cm. then it is not construed as a deformity or hurdle in allowing the person to perform his day to day functioning.

12. He also alleged that the so called Medical Board, which has adjudged the applicant as unfit constituted of only one doctor, since the other two doctors were reportedly on bed rest/leave. Hence, it was the finding of a single doctor and not the Medical Board, who wrongly opined that the applicant was not fit to continue as a driver due to discrepancy in the leg length by 1.5 cm.

13. Lastly, the learned counsel again emphasized that the earlier Medical Board, for the same physical condition, had adjudged the applicant “fit” (in the year 2005) to work as a driver. Since the two reports of 2005 and 2013 are at variance, with each other effecting the livelihood of an employee, the respondents should have also taken cognizance of the reports of Government Hospitals like AIIMS and Sardarjung, before deciding the case of the applicant.

14. Learned counsel for the applicant relied upon the following citations:-

- (i) **Kumari Shrilekha Vidyarthi Etc. Etc. Vs. State of U.P. and Ors.**, 1991 AIR 537.

- (ii) **Veer Pal Singh Vs. Secretary, Ministry of Defence**, (Civil Appeal No. 5922/2012 decided on 02.07.2013 by Hon'ble Supreme Court)
- (iii) **Navin Chandra Vs. UOI and Ors.**, decided on 27.07.2006 by Hon'ble High Court of Delhi.
- (iv) **Ms. Ira Singhal Vs. DoP&T & Ors.**, (OA-2543/2012 decided on 25.02.2014 by Principal Bench of CAT).

15. Per contra, the learned counsel for the respondents, Sh. Anurag Sharma stated that irrespective of the number of doctors, who might constitute a Medical Board, it is the finding, which is relevant. In this case, the categoric finding of the Medical Board was that the applicant has a deformity, which would make him incapable of discharging his duties efficiently due to the discrepancy in the length of his left leg. He argued that even one doctor can constitute a Board and the decision taken by the respondents is absolutely just and proper and needs no intervention from the Tribunal.

16. In support of his contentions, he relied upon the following judgments:-

- (i) **Rajender Singh Vs. DTC**, [WP(C) No. 2470/2014 decided on 06.08.2014 by Hon'ble High Court of Delhi.
- (ii) **Rajender Singh Vs. DTC**, (OA-1043/2013 decided on 19.12.2013 by Principal Bench of CAT).
- (iii) **Sh. Raj Singh Vs. DTC**, [CM-417/2006 in Writ Petition(C)-635/2004 decided on 08.03.2007 by Hon. High Court of Delhi].
- (iv) **Jai Singh Vs. DTC & Anr.**, [WP(C) No. 7290/2017 & CM No. 30165/2017 decided on 23.08.2017 by Hon'ble High Court of Delhi].

17. We have gone through the facts of this case and considered the rival submissions.

17.1 The basic facts of the case are not in dispute. What is, however, interesting is that the so called deformity or the discrepancy in the length of the leg was a result of an accident, which the applicant suffered when he was run over by a Maruti Car in the year 1992. As a result of the operation, the applicant had shortening of left leg by 1.5 cm. He, however, continued to work as a driver with the respondent Corporation from 1992 onwards. From 1992 till 2005, the respondents seem to have found him fit, (though without the findings of a formal Medical Board) to continue as a driver. Thereafter, the respondents in the year 2005 constituted a Medical Board, which again found him "fit" to continue as a driver. After the applicant attained the age of 55 years, a second Medical Board was constituted by the respondents on 24.06.2013 to judge the fitness or otherwise of the applicant. This Board opined that the applicant was medically "unfit" to continue as a driver. It is surprising indeed that an employee who rendered services as a driver for over two decades i.e. 1992 to 2013 was considered medically unfit, to perform the duty as a driver on account of the same physical condition, which had existed as early as 1992. So the fate of a poor employee, it seems, lay solely in the hands of the findings of the Medical Boards, one finding him "fit" in 2005 and the second one

finding him “unfit” in 2013 on the same set of facts. Both the findings have been followed by the personnel of the Corporation without batting an eyelid.

18. Though the Courts would normally not like to interfere with the opinion of an Expert Body but when there is a glaring contradiction, (such as this), which is jarring to common sense, then a review of the decision cannot be ruled out. It seems a little incongruous a physical defect, (namely that shortening of left leg by 1.5 cm) which worked well for the applicant and the Corporation for two decades came in the way of his continuance in service 21 years later!! It is relevant to point out that the applicant was armed with the certificates of reputed Institutes like AllMS and Safdarjung Hospitals which gave the findings that the applicant was fit for driving any four wheeler, yet his case was not reconsidered by the respondents.

19. Undoubtedly, the employer (respondents) has the right to judge the medical fitness of an applicant after he attains the age of 55, as per the rules of the Corporation. However, in the instant case the “unfitness” is on account of a defect which was not new, and which was in the knowledge of the respondents since 1992. If this defect (shortening of leg length) did not come in the way of his driving in 1992, and in 2005, it is not understood as to how it could become an impediment in 2013? The respondents should have

taken into account the entire case history before hastily issuing marching orders and retiring the applicant from service.

20. In view of this background and discussions, we hold that order dated 26.06.2013 is bad in law. The same is, therefore, quashed and set aside. From the record available on file, it appears that the applicant by now, would have attained the age of actual superannuation, rendering the relief claimed by him in the OA infructuous. Hence, we direct the respondents to consider his case for granting him consequential benefits like seniority, ACP, wages, increments etc. as would have accrued to him had he not been retired from service and continued working till attaining normal age of superannuation. This exercise may be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

/vinita/