

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI**

OA No.4161/2016

New Delhi, this the 19th day of September, 2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Hon'ble Mr. Ashish Kalia, Member (J)

Harender Kumar Sharma, Appointment (Group C)

Aged about 38 years

S/o Late Sh. Radhey Shyam Sharma,

R/o C-3/170, Brij Puri, Delhi-11004

...Applicant

(By Advocate : Mr M K Bhardwaj)

Versus

1. The Chairman cum Managing Director,
Delhi Transport Corporation,
I.P. Estate, New Delhi-110002

2. The Senior Manager,
Training School, Nand Nagri Depot,
DTC, Delhi-110093

3. The Depot Manager (Personnel),
DTC, Govt. of NCT of Delhi,
IP Estate, New Delhi-110002

...Respondents

(By Advocate : Mr Sushant Sharma for Mr Manish Garg)

ORDER (ORAL)

Mr. Ashish Kalia, Member (J)

1. The applicant has filed for the post of conductor in DTC for contractual employment for one year. He was rejected by the empanelled doctors of the medical board of respondent no 1 i.e. DTC. On his request he was

again considered by review medical board and was again rejected by the board. The medical rules are annexed with the original application starting from page 47. Standards of physical fitness are as under:-

“That his/her limbs, hands and feet are well formed and developed. There is free and perfect movement 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 body.”

2. According to this if limbs, hands and feet are well formed and developed then only an appointment can be given to a person as a conductor in the DTC.
3. Feeling aggrieved, the applicant has approached this Tribunal for redressal of his grievance. He has submitted that there is the impairment in first finger of his left hand is not such that he can not perform the duty of conductor but on the contrary learned counsel for the respondents has submitted that we have examined twice the applicant medically but as per our DTC rules he is not found fit.
4. Heard both the parties at length. Learned counsel for the applicant has also produced a certificate issued by a Govt Doctor of Guru Tej Bahadur Hospital which is in his favour showing him medically fit for the said post where applicant has approached on his own. During the course of the argument Mr M K Bhardwaj, learned counsel for applicant had submitted that Hon'ble High Court has held that if an infirmity is such which cannot come in the way of the performing the duties then it can be ignored and passed the following orders:-

"Learned counsel for petitioner has drawn the attention of the Court to a decision dated 23rd August, 2013 of the learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No. 7719/2012 (Gurvinder Singh Vs Union of India). The petitioner in that case was seeking appointment as CT (Lab Assistant) in the Shasashtra Seema Bal (SSB). The Petitioner there also found to have "Dextrocardia". In that case also, as in the present case, the Petitioner qualified in the Physical Measurement (PM) and Physical Efficiency Test (PET). Thereafter he appeared in the written examination in which he qualified. He also completed a one mile race, a 11 feet long jump and 3.5 feet high jump. The High Court noted that 'for all purposes, the Petitioner is medically fit but only for the reason that his heart is situated on the right side of the body she has been denied unfit'. The High Court found that once a candidate is physically tested and his physical efficiency was also tested then obviously it 'cannot be said that the appointment can be denied the Petitioner on the ground that his heart is situated in the right side of the body'. In that case also the Respondents were unable to give a satisfactory answer to the query of the Court whether "as per the medical jurisprudence the said Dextrocardia condition is coming in the way of performing duties as CT (Lab Assistant)." In the present case too the respondents have not been able to state that the medical condition of the Petitioner would come in the way of the efficient discharge of her duties as HC (CM).

For the aforementioned reasons, the Court sets aside the impugned letter dated 9th May, 2018 of the Respondents rejecting the Petitioner's request for compassionate appointment. A direction is issued to the Respondents to issue the Petitioner a letter appointing her as HC (CM) within a period of eight weeks from today."

5. This has been referred to a medical board of the Government hospital.

We have no hesitation to apply the ratio laid on the Secretary, Ministry of Home. We hereby direct the respondents to refer the case of the applicant for re-medical examination by a Government Hospital within a period of 30 days. With this observation, OA is dismissed.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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