
(2010) 08 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C) No. 8579 of 2007

Delhi Transport Corporation.

APPELLANT

Vs

Mohinder Pal Sharma

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(4A), 2
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 59

Citation : (2010) 172 DLT 161 : (2012) 3 SLJ 510

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Jitender Kumar, for the Appellant; Bharat Bhushan Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking the order for quashing the award dated 26.05.2007 passed by POLC No. VII in ID No. 116/04. The facts leading up to the filing of the present writ petition are that the respondent was appointed as a Retainer Crew Conductor w.e.f. 15.02.1978 and was brought on monthly rates of pay w.e.f. 15.02.1978. He proceeded on leave from 13.02.2001 to 26.02.2001 on account of sickness. The respondent was directed to report to DTC Medical Board for a medical checkup on vide memo dated 04.09.2001 and after the checkup on 07.09.2001 the respondent was advised by the Medical Board to rest for two months.

2. On 12.11.2001 the respondent again appeared before the Medical Board as he was required to do so and on that date he submitted a permanent visual disability certificate issued to him by the Gurunanak Eye Centre, Maulana Azad Medical College, New Delhi, according to which the respondent has a permanent disability vision of 30%. Therefore the Medical Board, vide order dated

18.12.2001, declared him unfit for duty and the respondent was given premature retirement under Clause 10 of the DRTA (Condition of Appointment and Services) Regulations, 1952. Subsequently he was given compensation of Rs. 1,64,406/- vide cheque No. 070858 dated 20.02.2002. The respondent had opted for DTC pension and presently he is getting pension of Rs. 2,472/-per month. The respondent has already received an amount of Rs. 1,58,832/- of total pension from his retirement till September 2007.

3. In 2004 the respondent filed an application under Sub-Section 4A of Section 10 of the Industrial Disputes Act, 1947 directly before the Labour Court praying to revoke his pre-mature retirement order dated 18.12.2001 and to reinstate him with full back wages and continuity of service.

4. By the impugned award dated 26.05.2007, the learned Labour Court, set aside the premature retirement of the respondent and declared it to be illegal, unjustified and applied Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to the facts of the present case and awarded a compensation of Rs. 1,50,000/- to the petitioner as an alternative to reinstatement with back wages. Aggrieved by the said award the petitioner has filed the present writ.

5. One of the grounds of the present writ petition is that the Industrial Tribunal does not have the authority to exercise any power for the enforcement of rights under the Persons with Disabilities Act, 1995 because as per the said Act any complaint with regard to deprivation of rights of persons with disabilities is to be made before the Chief Commissioner u/s 59 of the Act. It is further stated by the petitioner that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is not applicable to the facts of the present case as the said Act stipulates specific cases which would be covered under the Act considering the degree and nature of disability. Non-fitness for the post does not translate into the cover of the Disabilities Act, 1995 unless other conditions as to the applicability of the said Act are fulfilled. Section 2(t) clearly stipulates a disability of not less than 40% to be covered under the Disabilities Act.

6. In the counter affidavit filed on behalf of the respondent it has been stated that the respondent developed Low Vision during the period of service and is covered under Sub-section (u) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which reads as under:

2(u). Person with Low Vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

7. It is also pointed out in the counter that on 28.04.2007 Sh. Gopak Shukla M.W-1 stated in his cross examination that as per the report of the medical

board the respondent has not been declared unfit for any other post. He also accepted in his cross-examination that the respondent was not issued any chargesheet or notice before his termination. The notice dated 18.12.2001 under reference No. DGD/PFC (Cond) /2001/3268 declaring the respondent unfit for the post and recommending his pre-mature retirement was in contravention to the Rules & Regulations framed by the petitioner. As per the respondent, since he sustained loss of vision during the course of employment with the petitioner he was entitled to re-employment on a different post on an equivalent salary.

8. It appears from the record that the petitioner, while considering the report of the Medical Board without issuing any show cause notice, communicated to the respondent by way of letter dated 18.12.2001 declaring him unfit to continue to the post of conductor and recommended premature retirement from the service of the petitioner corporation in terms of Clause 10 of the DRTA (condition of appointment and service) Regulation 1952 w.e.f. 12.11.2001. The said notice of premature retirement is in contravention to the rules and regulations framed by the petitioner corporation which is resolution No. 23 issued by the Financial Establishment Sub Committee in their meeting held on 15.10.1973 which reads as under:

That the employees who are rendered unfit on medical grounds, to perform their duties may be considered for re-employment on lower post or equivalents posts on which they may be found suitable keeping in view the merits of each case.

9. It is not denied by the petitioner that the respondent developed low vision during the period of service and he is covered under Sub-section (u) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The decision for premature retirement by the petitioner is prima facie arbitrary and against the law as the respondent developed low vision to the extent of 30% during the course of his service. As per the medical certificate the said low vision does not affect prima facie the working potential of the respondent. The trial court, in lieu thereof, has granted Rs. 1,50,000/- as compensation apart from the payment already received by the respondent from the petitioner.

10. Considering the overall facts and circumstances of the matter, it appears that the said amount of compensation awarded by the trial court in the order dated 26.05.2007 is reasonable and the finding cannot, therefore, be interfered with. The petitioner is directed to pay the said amount of Rs. 1,50,000/- along with interest at the rate of 9% from the date of award till the date of payment within six weeks from today.

11. The writ petition is dismissed with cost of Rs. 5,000/- which shall be paid by the petitioner to the respondent along with the abovementioned amount.