
(2013) 02 DEL CK 0288
In the Delhi High Court
Case No : Writ Petition (C) 1257 of 2013

Islam

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0288

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Shailender Bhardwaj, for the Appellant; Latika Chaudhary, for the Respondent

Judgement

Pradeep Nandrajog, J.—Heard learned counsel for the parties. Employed as a Driver with DTC in the year 1979 and subjected to medical fitness as per the fitness norms notified on April 08, 1976 the petitioner had a right to serve DTC till he attained the age of 55 years and thereafter had a right to be considered for further retention till he attained the age of 60 years but upon being found medically fit.

2. It is not in dispute that in the year 1986 revised medical fitness norms were notified by DTC on July 02, 1986, making substantial departure from the previous "Standard of Physical Fitness" notified on April 08, 1976.

3. As per the revised medical fitness norms the condition of fitness became: "No infirmity whatsoever in the body. Pertaining to Drivers, the revised norm was that there should be movement of all body parts without sensory loss or locomotor disability.

4. As noted above when the petitioner joined service as a Driver in the year 1979 he was medical examined and applying the norms of 1976 was found fit notwithstanding a segment of the phalanx of the middle finger of the right hand being partially amputated, but with the nail at the base being intact, and as per photographs Annexure P-4 the top phalanx being amputated by about 20% of

the segment of the phalanx.

5. Petitioner attained the age of 55 years in the year 2011 and was sent for medical evaluation. Applying the revised norms of the year 1986 he was found unfit for service to be extended, and for which fact the question of law which arises is: Whether the respondents had to test the suitability on medical evaluation with reference to the norms as of the year 1976 or the revised norms.

6. Suffice would it be to state that if a norm of suitability is revised, it is said norm which will govern suitability if the Rules require suitability to be tested on a date after the revised norms have been enforced.

7. But we find that with reference to the medical norms notified on July 02, 1986 an Office Order was issued on February 09, 1989 which reads as under:-

Slight injury resulting in loss of pulp but nail being intact to any one of the finger including thumbs and toes of both hands and feet or malunited fracture of shaft of any one of phalanges of both hands and feet but movements at interphalangeal joint being intact with firm grip or hand can be considered for relaxation by the Medical Board provided above conditions do not interfere in the performance of duty.

8. Apparently, the Review Medical Board has ignored the said Office Order dated February 09, 1989 inasmuch as a slight injury resulting in loss of pulp but nail being intact in any finger with interphalangeal joint being intact would not render the person unfit as long as the hand retained a firm grip. Accordingly, we dispose of the writ petition directing petitioner to be brought before the Review Medical Board once again with a direction that the Board would take into account the Office Order dated February 09, 1989. If the petitioner is found medically fit his services would be reengaged and the petitioner would be entitled to wages for the period interregnum. If the opinion of the Board is against the petitioner, reasons thereof with reference to the Office Order dated February 09, 1989 would be recorded and petitioner would be entitled to remedy as per law. No costs.