

(2020) 02 CAT CK 0041

In the Central Administrative Tribunal

Case No : Original Application 100, 3754 Of 2015

Manish, Driver, B.No.27001, MD

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 47
Delhi Road Transport Authority (Appointment And Service Regulations), 1952 — Regulation 9(a)(i)

Citation : (2020) 02 CAT CK 0041

Hon'ble Judges : R.N. Singh, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Sushant Sharma

Final Decision : Allowed

Judgement

R.N. Singh, Member, J

1. Heard Sri Anil Mittal, learned counsel for the applicant and Sri Sh. Sushant Sharma, learned proxy counsel for Sh. Manish Garg, learned counsel for the respondent.

2. In the present OA, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the Show Cause Notice dated 11.03.2014 (Annexure A-1) wherein the Depot Manager, Delhi Road Transportation Corporation (hereinafter referred as DTC), Government of NCT Delhi Millennium Depot No.4, New Delhi, after arriving at a tentative opinion that the applicant be removed from service of the DTC under Regulation 9 (a) (i) of the Delhi Road Transport Authority (Appointment and Service Regulations), 1952, has given an opportunity to the applicant for making a representation, if any, within 10 days of receipt of such notice against the proposed action and also the order dated 31.03.2014 (Annexure A-2) by which the said Depot Manager has terminated the

services of the applicant w.e.f. 31.03.2014 under Regulation 9 (a) (i) of the Delhi Road Transport Authority (Appointment and Service Regulations), 1952.

3. The brief facts leading to the present OA are under:-

The applicant was appointed as a driver with the DTC vide letter of appointment dated 12.03.2012 (Annexure A-3) on being selected for such post by DSSSB and on being found medically fit by the Medical Board of DTC against under the OBC category in the Pay Band of Rs.5200-20200 GP Rs.2,000 and other allowances as admissible thereon to the DTC employees on fulfilling the terms and condition provided under the order of appointment dated 12.03.2012 The applicant was on probation for the period of 2 years.

On 22.08.2013, while the applicant was returning to his house on his motorcycle his motorcycle is claimed to have slipped on road resulting into serious injuries to the applicant's hand. On being directed by the respondent, the applicant appeared before the Medical Board on 03.03.2014 on 05.02.2014, he was declared medically unfit for the post of driver. The respondent issued a show cause notice dated 11.03.2014 wherein it was proposed that the applicant be removed from service of the respondent under Regulation 9 (a) (i) of the Delhi Road Transport Authority (Appointment and Service Regulations), 1952 in view of the fact that the Medical Board of the respondent has declared him unfit for the post of driver. In response to the said show cause notice, the applicant has submitted his reply on 25.03.2014 (Annexure A-5) wherein he has informed about the accident and also the fact that he has informed the respondent about such accident vide his letter dated 23.08.2013 and has submitted leave application along with medical certificate for the period 22.08.2013 to 10.09.2013, followed by medical certificate for the period 10.09.2013 to 26.09.2013 and medical fitness certificate on 27.09.2013 and reported for duty. No duty was assigned to him and he was directed to appear before the Medical Board of the respondent who had advised him medical rest for three months about which he had informed to his depot and again when he reported for duty after three months, the applicant was required to appear before the Medical Board which the applicant complied. The Medical Board declared him 'unfit' for the post of driver. The applicant has submitted that he is the only bread earner of his family consisting of eight members therefore he requested the respondent not to terminate him from the services. However, the respondent has passed the impugned order dated 31.03.2014 vide which they have terminated the services of the applicant w.e.f. 31.03.2014 (Annexure A-2). Hence, this OA.

4. The learned counsel for the applicant argues that the impugned order is in violation of policy guidelines of the respondent which is issued vide circular dated 20.03.2006 (Annexure A-4) and the same reads as under:-

"No. Adml (Misc.)/PLD/2006/136-

DATED: 20-3-2006

CIRCULAR

The Hon'ble High Court of Delhi vide its order dated 12-9-2005 in CWP No.869 of 2000 has directed the DTC to comply with the provisions of Section 47 of the Persons with Disability Act, 1995. A copy of the aforesaid order is enclosed herewith.

The Corporation has decided to comply with the aforesaid order of Hon'ble High Court.

Section 47 of the Persons with Disability Act, 1995 which lays down as under:-

"No establishment shall dispense with or reduce in rank an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring the disability is not suited for the post he was holding could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

It is further directed that henceforth the provision of Section 47 of the Persons with Disability Act, 1995 should be complied in all cases where an employee acquires Disability during his service career and or being declared unfit by the DTC Medical Board.

This issues with the approval of the competent authority.

(Manohar Lal)

Dy. Manager (Admn.)"

5. He further argues that the impugned order is in violation and in contrary to the spirit of Section 47 of the Persons with Disability Act, 1995. The benefit of Section 47 of the Persons with Disability Act, 1995 is available to the employees who had suffered disability while still under probation in view of the judgment of Hon'ble High Court of Delhi in Pawan Kumar vs DTC in Writ Petition No.4261/2013, decided on 16.01.2015 and reported in 2015 (1) LLJ 644 Delhi and also in view of the judgment/order dated 10.05.2016 of a co-ordinate Bench of this Tribunal in O.A.No.3484/2014 titled Vinod Kumar versus DTC delivered on 10.05.2016.

6. In response to the notice from the Tribunal, the respondent has filed reply. In the reply the respondent has not disputed the fact of appointment of the applicant to the post of driver. However, the respondent has stated that the applicant was absent from duty and he had sent leave application for the period 22.08.2013 to 10.09.2013 and therefore respondent directed him to appear before the Medical Board in case he was unwell. The applicant appeared before the said Medical Board and was advised for three months rest and again after

three months when on respondent's direction he appeared before the Medical Board on 03.03.2014, the applicant was declared medically 'unfit' for the post of driver (Annexure R-1). The respondent has contended that the applicant was under probation when he met with the accident and was declared medically unfit by the Medical Board and therefore, his termination under Regulation 9 (a) (i) of the Delhi Road Transport Authority (Appointment and Service Regulations), 1952 is as per the Rules. It is further contended in the reply that the benefit of Section 47 of the Persons with Disability Act, 1995 are not available to the employees under probation.

7. We have perused the pleadings on record and have also considered the submissions made by the learned counsels for the parties. We have also gone through the judgment of this Tribunal in Vinod Kumar (supra) .

8. We are of the considered view that the issue involved in the present case is as to whether an employee who is still under probation and has acquired disability or has been declared medically unfit is entitled for the benefits of Section 47 of the Persons with Disability Act, 1995 or not.

9. In Vinod Kumar (supra), the issue was identical to the one in hand and the same would be evident from very first paragraph thereof Vinod Kumar (supra) which reads as under:-

" 1. Whether an employee who is still under probation and who acquired disability/declared medically unfit, during probation, is entitled for the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter called as 'disability Act, 1995] is the short question falls for our consideration in this OA."

10. The Tribunal after considering the provisions of DRTA Regulation, 1952, the provisions of Section 47 of the Persons with Disability Act, 1995 and the judgment of Hon'ble High Court in Pawan Kumar (supra) and the judgment of Hon'ble High Courts and Hon'ble Supreme Court in various other cases had ruled as under:-

"16. Even if the contention of the respondents counsel that the applicant's services were terminated for his misconduct is to be accepted, as per the settled position of law, the same case stigma and the impugned order is liable to be quashed on the ground of non following the due procedure before terminating the services of the applicant.

17. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned order is quashed and the respondent-DTC is directed to act as per the provisions under Section 47 (1) i.e. by reinstating him in an alternative post with the same pay scale, continuity of service, and other service benefits and in accordance with the capabilities, appropriate work be assigned within a period of six weeks from toady. Since the petitioner was on probation and had not yet completed the period of probation of two years, therefore, the petitioner be put

on probation as per the applicable rules on the alternative post for the remaining period of probation under the respondent who shall further deal as per the rules. However, the petitioner has not worked as an employee of the respondent since the day on which he acquired the disability and, therefore, to meet the ends of justice, he shall be paid 50% of back-wages with due increments within a period of twelve weeks from today. In the event of non-payment within twelve weeks, the DTC is liable to pay interest on that amount @ 9 % p.a. till date of payment. No order as to costs."

11. The judgment of this Tribunal in Vinod Kumar (supra) has attained finality inasmuch as on being challenged before the Hon'ble High Court in WP (C) No.8146/2016, the Hon'ble High Court has dismissed the writ petition vide order/judgment dated 23.09.2016 and has held that an officer on probation would also be entitled to the benefit of Section 47 of the Persons with Disability Act, 1952. The SLP filed against the judgment in Vinod Kumar (supra) being SLP No.(C) 6223/2017 along with SLP No.(C) 15585/2015 titled has been dismissed vide a common order of the Hon'ble Apex Court dated 28.07.2017. Moreover, the respondent has themselves issued a Circular dated 20.03.2016 (Annexure A-4) providing therein that henceforth the provisions of Section 47 of the Persons with Disability Act, 1952 should be complied in all cases wherein an employee acquires disability during his career and on being declared unfit by the the DTC Medical Board. The said circular does not make any distinction between employees under probation and confirmed/permanent employees.

12. In view of the aforesaid facts and discussions and law settled by the Hon'ble High Court of Delhi in Pawan Kumar (supra) as well as in the case of Vinod Kumar (supra), we are of the considered view that the OA deserves to be allowed. Accordingly, we quash the impugned notice dated 11.03.2014 (Annexure A-1) and order dated 31.03.2014 (Annexure A-2). The respondent is directed to reinstate the applicant in any alternative suitable post with the same pay scale, continuity of service and other service benefits keeping in view of his capabilities and under the provisions of Section 47 of Persons with Disability Act, 1952. The applicant's probation shall be considered by the respondent in accordance with the relevant rules on the subject. However, as the applicant has not worked since date on which he acquired disability, the applicant shall be paid 50% back-wages with due increments. The aforesaid exercise shall be completed by the respondent within a period of eight weeks from the date of receipt of a certified copy of this order. However, in the facts and circumstances, no order as to cost.