

(2018) 02 DEL CK 0165

In the Delhi High Court

Case No : Civil Writ Petition No. 6691 Of 2017, Civil Miscellaneous Application
No. 27870 Of 2017

M/S Delhi Transport Corporation

APPELLANT

Vs

Surendra Pal

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full
Participation) Act, 1995 — Section 47

Citation : (2018) 02 DEL CK 0165

Hon'ble Judges : Hima Kohli, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Vibhor Mathur, Salil Srivastava, Anuj Aggarwal, Deboshree Mukherjee

Judgement

Sd/-

21/5/14

Manager PLD (DTC)", "Sd/-

21/5/14

Dr. Harish Mansukhaniâ??", "Sd/-

Dr. S.P.Gupta

12. We have examined the documents filed by learned counsel for the petitioner/
DTC and carefully perused the impugned judgment. What appears to,,

have prevailed with the Tribunal for allowing the O.A. filed by the respondent was
that he had continued working as a Driver with the petitioner/DTC,,

for over six years before he was retired. Weightage was also given to the
certificate issued in favour of the petitioner by the Department of Physical,,

Medicine and Rehabilitation of AIIMS Hospital, declaring him fit to drive a six

wheel vehicle.",,

13. We have examined the certificate dated 21.06.2013 issued by the AIIMS Hospital. The OT assessment of the concerned Doctor states that,,

â??patient should be able to drive six wheeler vehicle in the present conditionâ?. It was on account of the said certificate that the previous O.A. filed,,

by the respondent (O.A. No.2502/2013) was disposed of by the Tribunal by issuing direction to the Chief Secretary, GNCTD to constitute a Medical",,,

Board to have the respondent examined in consultation with petitioner/DTC. The only role assigned to the petitioner/DTC in the said order was to fix a,,

convenient date for the respondent to appear before the Medical Board. It was not as if any liberty was granted to the Chief Secretary, GNCTD to",,,

join the petitioner/DTCâ?s Doctors in the Review Medical Board. Contrary to the directions issued by the Tribunal, the Review Medical Board was",,,

constituted which comprised of three members out of which one of the Members, was Mr. S.P. Gupta, CMO of DTC Hospital, who had earlier",,,

declared the respondent unfit. The report submitted by the Review Medical Board had recorded the deformity of the respondent and gone on to take a,,

note of Regulation VII (h) that refers to Standard of Physical Fitness but had failed to give any finding in respect of free and perfect motion of all,,

joints in the case of respondent and his capability of performing the duties of a driver.,,,

14. It is for the said reason that the Tribunal elected to ignore the report of the Review Medical Board and instead, preferred to rely on the report of",,,

AIIMS Hospital where the respondent was examined by a specialist in the field. Further, the anxiety expressed by the petitioner/DTC that the life and",,,

limbs of the passengers must not be put at stake by permitting the respondent to discharge his duties as a Driver, would have cut ice had the",,,

petitioner/DTC withdrawn the respondent from the subject post immediately after conducting his medical examination on 06.06.2013 and retiring him,,

from service. However, vide Memo dated 18.6.2013, the petitioner/DTC informed the respondent that he would be retiring from service w.e.f.",,,

31.07.2013, on attaining the age of 55 years without withdrawing him from duty. Since the respondent had suffered a deformity while on duty, it",,,

cannot be urged by the petitioner/DTC that the management was unaware of the said deformity for seven long years i.e. w.e.f. 2007, when in all this",,,

duration he had continued discharging his duties as a Driver and continued driving six wheeler vehicles and was not found deficient in any manner.,,

15. We are of the opinion that the decision in the case of Jai Singh (supra) relied upon by the learned counsel for the petitioner cannot be of any,,

assistance in the light of the fact that it does not refer to the nature of disability that the petitioner therein was suffering from due to which he was,,

superannuated on attaining the age of 55 years. The said judgment only mentions that he was not found fit for further extension and it was in this,,

background that the Division Bench observed that an employee cannot claim service upto 60 years as a matter of right. There can be no quarrel with,,

the aforesaid legal proposition but given the facts of the present case as narrated above, where the respondent was not found with a physical disability",,,

but only a deformity of the phalange of the little finger of his right hand and nothing has been filed to demonstrate that the said deformity had impaired,,

his driving skills. The aforesaid judgment is therefore distinguishable on facts and would not apply to the present case.,,

16. In the above facts and circumstances, we are of the opinion that the impugned judgment does not warrant any interference. Accordingly, the",,,

present petition is dismissed along with the pending application with costs of Rs.10,000/- imposed on the petitioner/DTC. The said costs shall be paid to",,,

the respondent within four weeks from today.,,

17. As we are informed that the respondent has not attained the age of 60 years yet and shall superannuate only on 31.7.2018, he is directed to report",,,

for duty to the Regional Manager, DTC (HQ) within ten days from today. The petitioner/DTC shall make compliance of the impugned judgment",,,

forthwith.,,

18. Before parting with the present case, we wish to express our concern on the stand taken by the petitioner/DTC that once a person is employed to",,,

the post of a Driver in the DTC, he is medically examined only when he attains the age of 55 years. In other words, if after the date of his induction, a",,,

Driver suffers from a medical condition/physical disability of a nature that would make him unfit to perform his duties, there is no procedure laid down",,,

for testing his fitness, by assigning a standard of physical fitness for a Driver. The aforesaid aspect is of great importance since a Driver of a bus is",,,

responsible for the safety of all the passengers and any laxity on his part can

result in loss of precious lives of those on board and on the road, apart",,,
from causing damage to the vehicle.,,

19. This being the position, we deem it appropriate to direct the petitioner/DTC to examine the rule position and if there are no norms, lay down norms",,,

with regard to conducting regular medical examination of a Driver posted in the DTC. The petitioner/DTC must ensure that all its drivers undergo,,

regular medical check-ups annually/bi-annually or over a reasonable time as may be considered appropriate and if found physically unfit to discharge,,

their duties as a Driver, they be shifted to some other post, as per the provisions of the Persons with Disabilities (Equal Opportunities, Protection of",,,

Rights and Full Participation) Act, 1995 particularly, Section 47 of the said enactment, which is a beneficial legislation and should be given effect to in",,,

the broadest possible sense.,,

20. A copy of this order shall be placed before the Chairman, DTC for perusal and compliance. Affidavit of compliance be filed within eight weeks.",,,

21. List on 18.04.2018 for the said purpose.,,