
(2006) 07 DEL CK 0052

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6326 of 2004

Shri Din Dayal

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2006) 131 DLT 641 : (2006) 111 FLR 101 : (2007) 1 LLJ 147

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Sajan K.Singh, for the Appellant; S.K. Tripathi, for the Respondent

Judgement

Manju Goel, J.—The petitioner was an employee of the respondent Delhi Transport Corporation. He was posted as a conductor. On 10.4.1998 he met with an accident at his residence and got burns on his face and eyes. On 25.4.1998 he was certified to have fully recovered. The petitioner thereafter reported for duty. He was asked to appear before the medical board. The medical board declared the petitioner unfit for the post of conductor. The petitioner was then served with the impugned order dated 6.1.1999. By virtue of this order the petitioner was retired prematurely from the service of the respondent Corporation with effect from 17.12.1998 under Clause 10 of DATA (Condition of appointment and service) Regulation, 1952. The petitioner is seeking relief u/s 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995) which is as under:

47. Non-discrimination in Government employment,—(1) 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 disability is not suitable 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.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

2. It is submitted on behalf of the petitioner that on being declared medically unfit for the post of a conductor the petitioner was not offered any alternative post either of equal rank or of any lower rank. The judgment of this Court in the case of Baljeet Singh Vs. Delhi Transport Corporation, is cited by the petitioner. In Baljit Singh's case the petitioners who suffered from some disability or the other during the tenure of their service with the DTC was prematurely retired. The Court applied the provisions of Section 47 of this Act, quashed the orders dispensing with the services of those petitioners and directed that those petitioners be taken back in service with pay and salary from the date their salary etc. were stopped and it was further ordered that they be treated to have been continuously in the employment without any break in service.

3. It is submitted on behalf of the respondent that the petitioner has already availed of the benefit of the premature retirement and has drawn the retirement benefit and, Therefore cannot come with the present writ petition. There can be no estoppel against the statute. Further there is nothing to show that the premature retirement was on account of an option exercised by the petitioner. The petitioner is, Therefore, entitled to the benefits given by Section 47 of the Act as held by this Court in Baljit Singh's case (supra). The petition is accordingly allowed. The impugned order is set aside. The respondent is directed to post the petitioner either in the post of a conductor or some suitable post with the same pay-scale and service benefits and in case he cannot be adjusted against any other post he be kept on supernumerary post until a suitable post is available and he attains the age of superannuation whichever is earlier. The petitioner will be deemed to have continued in service without any break and will be entitled to pay and allowances and other service benefits from the date he was retired by the impugned order till the date of this judgment. Any amount withdrawn pursuant to the impugned order will be adjusted against his salary due till date and subsequent salaries.