
(2018) 09 CAT CK 0039

In the Central Administrative Tribunal

Case No : Original Application No. 3166 Of 2013

Sukhbir Singh

APPELLANT

Vs

Delhi Transport Corporation And Ors

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 47

Citation : (2018) 09 CAT CK 0039

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : MS Rohilla, Aariti Mahajan

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. The applicant has filed this Original Application (OA), seeking the following reliefs:-

"a) declare that the medical report dated 05.11.2011 of Dr. Ram Manohar Lohia Hospital to the respondents along with letter dated 21.11.2011 and letter dated 16.12.2011 of the respondents are untenable, illegal and non-est and are liable to be quashed on account of non compliance of the orders of this Hon"ble Tribunal and in the absence of the constitution of proper Committee of Experts.

b) declare that the said medical report is non-est and unenforceable because of the contrary report given by the Dr. Rajender Prasad Central of Ophthalmic Sciences of All India Institute of Medical Sciences, New Delhi.

c) Declare, without prejudice to the above, that the applicant is entitled for re-employment and/or continuity of service on account of the protection granted by Disabilities Act of 1995 and that he is entitled to be continued in service on any other supernumerary or equivalent post carrying the same pay scale and allowances, pursuant to the orders dated 10.05.2010 passed by this Hon"ble

Tribunal, which has not been set aside as such and vide which the original order of compulsory retirement on the same grounds had been set aside;

d) Declare that the applicant is entitled to all the arrears of pay and allowances for the intervening period and that he is entitled to continue in the service till the age of superannuation i.e. at 60 years;

e) pass any other order or any other relief which this Hon"ble Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the applicants;

f) Grant cost of the proceedings in favour of the applicants."

2. The key facts of the case are that while working as Driver with the respondents, the applicant received a communication dated 08.06.2009 directing him to report to Medical Board of DTC at Banda Bahadur Marg Depot Complex for medical examination on 11.06.2009 for the purpose of getting benefit of enhanced age of retirement.

Accordingly, the applicant underwent medical examination on 11.06.2009 but was declared "Colour Blindness" and "unfit" for extension of service. On the basis of the said medical report, the respondents passed orders of compulsory retirement of the applicant w.e.f. 31.07.2009 on 19.06.2009. Thereafter the applicant went to Dr. Rajender Prasad Centre for Ophthalmic Science and All India Institute of Medical Sciences, Delhi for medical examination where the applicant was declared "fit" for work and fit for driving and his colour vision being "within normal limits". On the basis of this medical report, the applicant made a representation/appeal on 16.07.2009 to the respondents, which was dismissed by respondents on 17.11.2009. The applicant again underwent medical examination/eyesight test at Guru Nanak Eye Centre, New Delhi of the Delhi Government and upon examination his colour vision was found to be "within normal limits". The applicant challenged the said order before the Tribunal vide OA No.515/2010 which was allowed vide order 10.05.2010. Thereupon, the respondents have filed the RA No.1/2011, which was allowed and original order dated 10.05.2010 was modified by the Tribunal directing the respondents to refer the applicant for another medical check up before a Committee of Experts chaired by the Head of the Eye Department of Ram Manohar Lohia Hospital. In pursuance thereto, the respondents referred the applicant to independent medical board and after getting the report of independent medical board, passed the order dated 16.12.2011 declaring the applicant "unfit" for extension of service. Being aggrieved, the applicant filed MA No. 536/2013 for execution of the order dated 10.05.2010 in OA No. 515/2010 which, too, was dismissed by the Tribunal on 10.05.2013. The applicant thereafter filed WP(C) No. 4116 of 2013 before the Hon"ble High Court of Delhi but the same was dismissed as withdrawn with liberty to file the substantive Application challenging the decision of the Medical Committee on 03.07.2013. Hence, the present OA.

3. Opposing the OA, the respondents have filed their reply. The respondents have

contended that as per Office Order dated 07.10.1963, the drivers can be granted extension of service up to the age of 58 years provided they are found fit in every respect after a through medical examination to be conducted by DTC Medical Board every year after attaining the age of 55 years. Accordingly, vide communication dated 08.06.2009, the applicant herein was directed to report to DTC Medical Board for medical examination wherein the Medical Board declared him "unfit" for extension of service due to colour blindness vide medical report dated 11.06.2009. The applicant preferred the appeal against the said order which was rejected by the appellate authority on 17.11.2009. The applicant thereafter filed the OA No. 515/2010 which was though allowed vide the Tribunal's order dated 10.05.2010 but the said order was modified as a consequence of filing RA No.1/ 2011 to the extent that the respondents were directed to refer the applicant for another medical check up before a Committee of Experts chaired by the Head of the Eye , Department of Ram Manohar Lohia Hospital to examine with reference to the prescribed standards of the DTC meant of a driver in a public bus service. It is further contended that in pursuance of the directions of the Tribunal vide order dated 18.08.2011 in RA No.1/2011, the applicant was medically re-examined by said RML Hospital where he was again found "unfit" and the applicant was informed about the same as per intimation received from Addl. Medical Supdt. of the said hospital on 21.11.2011. The respondents have also drawn our attention to an MA No. 536/2013 filed by the applicant for execution of the order dated 10.05.2010 in OA No. 515/2010 which was also rejected by the Tribunal on 10.05.2013. The respondents have, thus, prayed for dismissal of the OA.

4. It is noted that the respondents, in compliance with the decision of this Tribunal in RA No.01/2011, have passed the order dated 16.12.2011 (Annexure A-1) enclosing therewith the order dated 21.11.2011 received from Addl. Medical Supdt. Dr. RML Hospital about the re-medical examination of the applicant and also report of Medical Board whereby the applicant was declared "unfit" for the post of Driver. A perusal of the order dated 21.11.2011 issued by Adl. Medical Supdt. of Dr. Ram Manohar Lohia Hospital, New Delhi, clearly reveals that the Medical Superintendent has constituted a Medical Board to examine the applicant and on the basis of the medical report (pg. 42 of the OA), the applicant was declared "unfit" for extension of service. A perusal of the Medical Report dated 05.11.2011 clearly indicates that a Committee of Experts was constituted, as per the modified order of this Tribunal passed in RA, which found the applicant "unfit" for the post by prescribing that "CV defective by (illegible) chart" in his medical report. It is also found that the Tribunal, while deciding the MA No. 536/2013 filed by the applicant, has also noted this fact and passed the orders as under:-

"11. This Tribunal by its order dated 18.08.2011 in RA No.1/2011 while disposing of the same, modified the order dated 10.05.2010 in OA No. 515/2010, for the reasons mentioned therein and finally directed the respondents to subject the applicant for another medical check up and to consider the question of

reappointment on the basis of the results of the medical examination. Since the applicant was again declared medically 'unfit' for the post of Driver in DTC, by the Medical Board, constituted in pursuance of the orders of this Tribunal, the respondents informed the same to the applicant vide Annexure A4 dated 16.12.2011. Hence, there is no requirement to pass a separate order, as contended by the learned counsel for the applicant in MA, declining reappointment to the applicants." (emphasis supplied).

5. In the case of Delhi Transport Corporation v. Shri Dharam Pal (Ex. Driver) [2009(160) DLT 555], the Hon"ble High Court has held as under:-

"18. In the light of the aforesaid observations of the division bench, the submission of the workmen/drivers that Section 47 of the disability act being a welfare legislation extends the age of their superannuation up to 60 years or in the alternative having been appointed to a lower post on account of benefits extended under section 47 of the Disabilities Act which post carries the age of retirement as 60 years, they should also be retired at the age of 60 years is again unacceptable for the simple reason that the drivers joins the Corporation as drivers and were supposed to perform the duties as drivers till the age of 55 years. As a matter of policy keeping a lower age of retirement for posts like that of a driver cannot be faulted and being a matter of policy cannot even otherwise be interfered with by this court. Moreover it is on account of the disability incurred by them before reaching the age of superannuation, i.e., 55 years which would have enabled the management to turn them out of service by retiring them prematurely but which could not be done because of coming into force of the Disability Act, which confers the benefit of retention in service may be at a lower post or by providing them salary till the age of their superannuation. However this does not in any way entitles them to have another 5 years of service having originally agreed for the retirement at the age of 55 years, being a driver. The benefit of extension as is being conferred by the office order issued by the Management is only an enabling provision in the case of drivers who are fit to be retained in service and does not ipso facto increases the age of superannuation. In fact accepting the contentions of the drivers would be putting premium to their disability which is not the mandate of the Disability Act."

6. In view of the above factual position, nothing remains to be decided in this OA and the same is hereby dismissed. No costs.