

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C)28/2010**

Date of decision: 06.01.2010

HARBHAJAN SINGH ...PETITIONER
Through: Mr.Narottam Vyas, Advocate

Versus

DELHI TRANSPORT CORPORATION & ANR. ...RESPONDENTS
Through: Ms.Avnish Ahlawat, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. The short point involved in this matter is as to, "whether the petitioner can claim his superannuation at the age of 60 years merely because he was asked to perform duties as that of Vehicle Examiner, in which case the retirement age is 60 years, after he met with an accident and became disabled to act as a driver for which post he was employed having age of superannuation of 55 years as provided for vide Regulation 10 of DRTA (Conditions for Appointment of Service Regulations), 1952." It is a matter of record that later he was not found fit to work as a driver and was thus not retained as driver on year to year basis after the age of superannuation.

2. The second question which requires consideration is whether the provisions

contained under Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Disability Act') mandates retaining the petitioner in service till the age of superannuation of the post of vehicle examiner i.e. the post at which he had been asked to continue working after becoming to disable to work as driver.

3. Briefly stating, the facts of this case are that :-

(i) The petitioner had joined as a Driver in Delhi Transport Corporation (DTC) in the year 1983 and met with an accident while on duty on 11.4.1996 and he became disabled to work as driver. The applicant was, therefore, directed to perform the duties as Vehicle Examiner in compliance with an order dated 10.12.1999 of this Court passed in W.P. No. 3015 of 1999 directing the respondents to allow him to perform the duties of an alternative post in accordance with his suitability in view of the provisions contained under Section 47 of the Disability Act.

(ii) As a driver he was to retire at the age of 55 years, which is extendable on year to year basis till 60 years in case the petitioner had been fit to work as a driver, which he was not.

(iii) Vide respondent's letter dated 16.12.2005, the petitioner was asked to appear before a DTC Medical Board on 19.12.2005 as he was attaining the age of 55 years on 24.12.2005. He appeared before the Medical Board which declared him 'unfit' for retention in service as a Driver and was accordingly retired from service after attaining the age of 55 years vide order dated 29.12.2005.

(iv) The petitioner therefore, filed a writ petition in the High Court which was transferred to Central Administrative

Tribunal registered as TA No.202/2009 praying for his retention in service up to the age of 60 years which is the age of superannuation for the post of vehicle examiner, which was dismissed vide order dated 05.06.2009. The present petition has been filed by the petitioner aggrieved by said order.

4. It is the case of the petitioner that he joined service with the respondent as a driver, however, after becoming disable to work as driver he was asked to perform the work of Vehicle Examiner in view of the provisions contained under Section 47 of the Disability Act. The said provision reads 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."

5. The plea of the petitioner is that though the age of superannuation for the post of the driver is 55 years but the age of superannuation for the post of Vehicle Examiner is

60 years and therefore, the petitioner is entitled to continue in service till the age of 60 years irrespective of his inability to work as a driver. It has also been submitted that the medical examination of the petitioner at the time when he was going to attain the age of 55 years for determining his ability to act as a driver was uncalled for and that superannuating him at the age of 55 years instead of 60 years is contrary to the provisions of the Disability Act as stated above. It has also been submitted that the aforesaid act of the respondents is in violation of the law laid down by the Hon'ble Supreme Court and this Court in various judgments in respect of the provisions contained in the Disability Act.

6. The petition has been opposed by the respondents who have submitted that the benefit of Section 47 of the Disability Act does not confer any rights on the petitioner to seek extension of service beyond the age of superannuation though he is entitled to be retained in service and draw salary and allowances as were payable to the post of driver on account of Section 47 of the Disability Act. It has also been submitted that this is also the law laid down by this Court.

7. We have examined the merits of the case and find that the issue raised by the petitioner is no more res integra. A Division Bench of this Court in the case of *DTC Vs. Rajbir Singh [100 (2002) DLT 111]* while interpreting the provisions of Section 47 of the Disability Act and while answering the precise question as to whether the incumbent can be retained in service despite attaining the age of superannuation for the post of driver for which he was initially appointed and was allowed to work on an alternative post after becoming disable during the course of his service, can claim his

superannuation as per the age of superannuation of the alternative post, has held that the benefit of Section 47 of the Disability Act does not confer any change of service condition and therefore, the such an employee working as driver has to retire after attaining the age of 55 years. His services can be extended only if he is found fit and if he continues his duty as driver on year to year basis in view of the subsequent circulars issued by the respondent. Similar view is taken by this Court in *Delhi Transport Corporation Vs. Shri Dharam Pal (Ex. Driver)* [2009 (160) DLT 555], where it has been held:-

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.

19. There is merit in the submission of the management that sub Section 1 of Section 47 of the Disabilities Act clearly indicates that the benefits will be available to the employees till he attains the age of superannuation. The said Act does not add any additional benefit to a person who has suffered accident for Continuance in service beyond the age of 55 years because of his being medically unfit on reaching that age as he cannot steal advantage over other persons because of his disability. The fact is that whilst an employee would be entitled for payment in the pay scale and would receive service benefits of a driver till he is superannuated irrespective of the fact whether he is medically fit or not, but he will have to retire once he attains the age of 55 years. Thereafter he cannot say that on account of provisions contained under Section 47 of the Disabilities Act he is entitled to continue in service up to 60 years as is being pleaded because this is not the mandate of Section 47 of the Disabilities Act.

20. Thus we are of the considered opinion that there is nothing in the Disability Act which permits extension of the service of an employee. The protection afforded under Section 47 is to an employee who incurs a disability during the period of his service which certainly means from the date of recruitment and the date of superannuation. If the date of superannuation is 55 years which is extendable on year to year basis subject to medical fitness it cannot be said that service of the employees must be extended on account of the provisions of the aforesaid Act even if he is unfit for the Job i.e. to act as a driver.

21. It is no doubt true that the provisions under Section 47 forms part of a welfare legislation. However, the provisions cannot be interpreted in a manner which is not permissible by the Rules or the interpretation or which extends the provisions of the Act in a territory which is not permissible in law. Applying the aforesaid principles to section 47 of the Disabilities Act, in the context of regulation 10 of the service regulations governing the age of superannuation of the drivers in accordance with the office order No. 99/63 of 4.10.1963, it cannot be said that the age of superannuation of the drivers is 60 years. The benefit of extension is only to extend the services of those drivers, who otherwise retire at the age of 55 years but can act as a driver subject to their medical fitness on year to year basis which initially could have been up to 58 years and now up to 60 years. Such a situation is possible in the case of a driver whose disability incurred earlier may have been cured by the lapse of time. Looking to the nature of job

which a driver is to perform by plying heavy vehicles like a bus which carries number of passengers, the benefit of extension is a beneficial provision taken by the management suo moto but this cannot be availed as a matter of right by the drivers who have to retire at the age of 55 years and are not medically fit to drive further. No case has been brought to our notice of discrimination in this regard. The provision is applied in general and not by way of exception, as is the case of the Management. Keeping a lower retiring age for such an strenuous job cannot be termed as either arbitrary or illegal. Hence we answer all the three questions as framed in para one above against the workmen and in favor of the management. Now we shall consider each of the cases separately:

35. To conclude, we hold that the age of superannuation of a driver under the management is 55 years. Section 47 of the Disability Act does not ipso facto extends the tenure of service of a driver with Delhi Transport Corporation, the benefits granted to such drivers despite incurring disability during tenure of his service that is up to 55 years would not extend his service beyond 55 so as to enable him to continue in service may be at a lower post for which the normal age of retirement is 60. This is because the benefit of such post has been made available to the said person as per the provisions of Section 47 of the Act and not otherwise.

8. Now, coming to the judgment cited by the petitioner we find that in the judgments it has not been held that while conferring benefits of Section 47 of the Disability Act to a person like the petitioner, the age of superannuation will also increase to which an extensive reference has been made by the petitioner.

9. The petitioner has referred to a judgment of a Single Bench of this Court in *Civil Writ Petition No. 4278 of 1999 with 4304/1999, 4166/1999, 3015/1999, 3032/1999, 2002/1998 and 5470/1998* titled as *Baljeet Singh Vs. Delhi Transport Corporation* decided on 10.12.1999, wherein it has been observed:-

Section 47 in clear terms mandates that no establishment shall dispense with or reduce in rank the employee who acquires the disability during his service. Even if he is not suitable for the post he was holding, as a result of disability, he is to be shifted to some other post with same pay scale and service benefits. Even when he cannot be adjusted against any other post he is to be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. The intention of Section 47 is clear and unambiguous, namely, not to dispense with the service of the person who acquires disability during his service. The purpose is not far to seek. When the objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of education, employment, etc. it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. Therefore their employment is protected even if the destiny inflicts cruel blow to them affecting their limbs. Even if he is not able to discharge the same duties and there is no other work suitable for him, he is to be retained on the same pay scale and service benefits so that he keeps on earning his livelihood and is not rendered jobless.

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I may mention here that even when the aforesaid legislation was not enacted courts have been passing appropriate orders for rehabilitation of such employees who suffered disabilities during the course of their employment. In Special Leave Petition (Civil) No. 1575 of 1991 titled as Shri VEDI Prakash Singh, Conductor Vs. DTC and Ors., Supreme Court gave directions vide order dated 5th August, 1991 to the effect that he should be posted against an equivalent post and be also paid salary for the intervening period. Similarly, in the case of State of Haryana Vs. Narendra Kumar Chawla reported in 1994(4) SCC 460 the Apex Court held that in case of employees rendered physically handicapped due to disease the Court has power to give directions regarding absorption of such employee carrying a pay scale equal to that of his original post. A known essential requirement for appointment to that post can also be relaxed. It is further observed in that judgment that such an employee has right to protection of pay. Even when he is absorbed in a lower post, he is entitled to protection of the pay scale of his original post in view of Article 21 of the Constitution of India.

10. There is nothing in the aforesaid judgment which may reflect that benefits were conferred to retain the incumbent in service after attaining the age of superannuation of

the post on which he was initially appointed when he incurred disability.

11. In the present case, the petitioner contracted disability on 11.04.1996 while working as a driver. Thereafter, in view of the provisions contained under Section 47 of the Disability Act, he was allowed to work as Vehicle Examiner till the age of his superannuation as driver i.e. 29.12.2005 since on that date he was not found fit to act as a driver. Merely because he was retained in service and was asked to perform duties as that of Vehicle Examiner of which post the retirement age is 60 years, the petitioner cannot claim as a matter of right to superannuate at the age of 60 years.

12. We have also gone through the judgment of the Central Administrative Tribunal. The Tribunal has discussed all these aspects and have very categorically stated after relying upon a judgment in *Shri Trilochan Singh Aujla Vs. Delhi Transport Corporation* [LPA No. 1251 of 2007, decided on 09.01.2009] that the retirement cannot be claimed as a matter of right at the age of 60 years as has been claimed by the petitioner. It has been held that even the benefit of Section 47 of the Disability Act does not entitle the petitioner to claim service beyond 55 years unless the petitioner had been fit to perform the duties of driver. The relevant portion of the judgment of the Central Administrative Tribunal is reproduced hereunder:-

7."At the outset, the respondents' counsel brought to our notice the judgment passed by the Hon'ble High Court of Delhi in **Shri Trilochan Singh Aujla v. Delhi Transport Corporation** [LPA No. 1251 of 2007, decided on 9.01.2009]. In this case, the following questions came up before the Court for consideration:

(i) Whether Section 47 of the Disabilities Act (ibid) also mandates that the drivers working in DTC be retained in service till the age of 60 years even after they reached the age

of their superannuation which is 55 years as provided for vide Regulation 10 of DRTA (ibid) and were not found fit to by a medical board to act as a driver after that age.

(ii) Whether Officer Order No.99 dated 4.10.1963 and the circular dated 30.06.1998 issued by the DTC by virtue of Section 4(e) of Delhi Road Transport Laws (Amendment) Act, 1971 providing for the extension of the service of the drivers beyond 55 years of age on year to year basis subject to medical fitness upto 60 years is discriminatory in view o the age of superannuation of other employees who retires at 60 years.

(iii) Whether the workmen/drivers who retired prematurely from services of the management from the post of driver on having incurred physical disability before reaching the age of superannuation at 55 years, but retained in service till that age, on account of the benefits made available to them by Section 47 of the Disabilities Act by assigning theme either a lower post or otherwise with the pay and allowances as admissible to a driver are also entitled to superannuate at the age of 60 years as a matter of right despite being unfit to act as a driver after the age of superannuation by claiming parity with other employees of the DTC who retires at 60 years.

In the said case, in similar circumstances like the present one, the Hon'ble High Court of Delhi, after extensively dealing with Section 47 (ibid), Regulation 10 of DRTA (Conditions for Appointment of Service) Regulations 1952 (ibid), Office Order No. 99 dated 4.10.1963 (ibid) and after careful consideration of the law on the subject, held as under:

35. To conclude, we hold that the age of superannuation of a driver under the management is 55 years. Section 47 of the Disability Act does not ipso facto extends the tenure of service of a driver with Delhi Transport Corporation, the benefits granted to such drivers despite incurring disability during tenure of his service that is up to 55 years would not extend his service beyond 55 so as to enable him to continue in service may be at a lower post for which the normal age of retirement is 60. This is because the benefit of such post has been made available to the said person as per the provisions of Section 47 of the Act and not otherwise.

[Emphasis supplied]

8. In the case on hand the same questions that arose in Shri Trilochan Singh Aujla's case (supra), have come up for consideration. We see no reason to again deal with the contentions raised by the applicant that have already been dealt with in the said judgment. The contention of the applicant raised in his rejoinder that the "case of Trilochan Singh vs. DTC referred in this paras is not applicable to the case of the petitioner because while the petitioner retired after coming into force of Section 476 of the Act. The Person with Disabilities etc., Act but Trilochan Singh had retired earlier viz. in 1994", is not tenable.

9. We are bound by the decision of the Hon'ble High Court in **Shri Trilochan Singh Aujla** (supra). The present TA is, therefore, dismissed in line with the decision in that case. No costs.

13. The learned counsel for the petitioner has not been able to show any illegality and irregularity in the judgment of the Tribunal which would require interference by this Court in the facts and circumstances. Therefore, we find no infirmity in the aforesaid approach of the learned Tribunal and accordingly, dismissed the writ petition.

MOOL CHAND GARG, J.

ANIL KUMAR, J.

January 06, 2010
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