

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

+ W.P.(C) 15981/2004

GIAN CHAND CONDUCTOR Petitioner
Through Mr. Anil Mittal, Advocate.

versus

D.T.C. Respondent
Through Ms. Anupama Beriwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
22.04.2008

1. The petitioner Mr. Gian Chand is working as a Conductor with Delhi Transport Corporation. On 12th March, 1997 while on duty on the bus en route from Delhi to Dadri he suffered multiple fracture on his left leg after the bus caught fire. The respondent-DTC stopped paying salary to the petitioner with effect from 1st May, 1997.

2. On 6th October, 1998, the petitioner was asked to appear before the Medical Board and pursuant to the recommendation made was asked to take rest for 120 days. The petitioner was again examined by the Medical Board on 5th April, 1999, but was declared unfit for the post of Conductor. By order dated 12th April, 1999, the petitioner was prematurely retired on

medical grounds.

3. The petitioner challenged premature retirement by filing CW No. 4476/1999. The said writ petition was allowed by judgment dated 26th February, 2002 by the learned Single Judge of this Court relying upon Section 47 of the Persons with Disabilities (Equal Opportunity etc.) Act, 1995. The operative portion of the said judgment is as under:-

“The writ petition is thus allowed and the order of termination dated 12.4.1999 is hereby quashed (sic). Respondents are directed to take the petitioner back into service and pay his salary from the date when the respondents stopped paying full salary after termination of his service. The petitioner would be treated in continuance employment without any break in service. In case the petitioner is not fit to perform the duty which he was performing since his initial appointment till his disability, the respondent shall deal with the case of the petitioner in terms of proviso to section 47 of the said Act.

The petitioner is also entitled to costs of Rs.3000/-“

4. The respondent-DTC has accepted the said judgment and reinstated the petitioner by order dated 12th November, 2002. The petitioner has also been paid a sum of Rs.2,60,761/-.

5. The petitioner is aggrieved and submits that judgment dated 26th February, 2002 has not been fully complied with. It is stated that the petitioner has not been paid his full salary and other benefits in spite of

order of premature retirement dated 12th April, 1999 being quashed. The petitioner has made the following claims:-

- “ (i) Bonus for the period 1997 to 2002;
- (ii) Leave encashment for the period 1997 to 2002;
- (iii) Arrears of salary w.e.f. 17-3-1997 till 5-11-2002;
- (iv) Rs.1,00,000/- with interest as Group Insurance as per the policy;
- (v) Medical allowance @ Rs.100 per month from March, 1997 till Nov. 2002;
- (vi) Reimbursement of medical bills submitted by the petitioner to the respondent for treatment of his fractured leg;
- (vii) Washing allowance @ Rs.30 per month from March, 1997 till Oct. 2002;
- (viii) Arrears of Time Scale Promotion Scheme w.e.f. August 2002 to July, 2003.”

6. The respondent has disputed the claim for bonus on the ground that the petitioner did not work for 30 days in the years 1997 to 2002 and accordingly he is not entitled to bonus under the Payment of Bonus Act, 1965. I do not find any merit in the said contention. The petitioner was always ready and willing to work with the respondent-DTC, who had passed an illegal order dated 12th April, 1999 prematurely terminating services of the petitioner contrary to the provisions of Persons with Disabilities (Equal Opportunity etc.) Act, 1995. The petitioner was not at fault and cannot be blamed as the respondent had prevented the petitioner from working with them. Order dated 12th April, 1999 has been set aside

and quashed by judgment dated 26th February, 2002. The petitioner is, therefore, entitled to bonus for the years in question.

7. Leave encashment is paid at the time of retirement. Order of premature retirement in the case of the petitioner has been quashed. Therefore, the petitioner continues to be in service. I do not think the petitioner will be entitled to leave encashment while in service. Learned counsel for the petitioner has not been able to point out any provision or Rule framed by the respondent-DTC under which the petitioner is entitled to leave encashment while even in service.

8. The petitioner has claimed arrears of salary with effect from 17th March, 1997 till 5th November, 2002. Learned Single Judge in the judgment dated 26th February, 2002 had directed payment of full salary. The petitioner, therefore, should be paid full salary for the period after the accident till the date he was reinstated. Amounts paid to the petitioner will have to be adjusted and deducted from the salary, which is payable. The respondents have admitted that salary was paid for the month of March-April, 1997 and have stated that thereafter the petitioner was paid injury leave for the period 24th April, 1997 till 2nd October, 1998 in accordance with the provisions of Workmen's Compensation Act but thereafter no salary has been paid for the period upto 12th April, 1999, when the service

of the petitioner was prematurely terminated. The respondent-DTC has not complied with directions issued by this Court in its judgment dated 26th February, 2002 disposing of CW No. 4476/1999. The respondent-DTC is admittedly an “establishment” as defined in Section 2(k) of the Persons with Disabilities (Equal Opportunity, etc.) Act, 1995. Section 47 of the said Act stipulates that no establishment can dispense with or reduce rank of an employee, who acquires disability during service. The first proviso further stipulates that an employee who after acquiring disability is not suitable for the post he was holding, can be shifted to another post but with the same pay scale and service benefits. The second proviso states that if it is not possible to adjust the employee against any post, he shall be kept on a supernumerary post till a suitable post is available or till he retires, whichever is earlier. The petitioner has to be given full benefit and protection of the said Section as directed by this Court in its judgment dated 26th February, 2002. Benefits under Section 47 as directed by this Court cannot be denied to the petitioner on the ground that under Workmen’s Compensation Act, the petitioner is entitled to a different amount. The judgment dated 26th February, 2002 has attained finality and should be complied with. The respondent-DTC did not raise any plea under the Workmen’s Compensation Act when the CW No. 4476/1999 was

decided. The respondent-DTC, therefore, should comply with directions contained in the said judgment and cannot unilaterally claim that a different amount is payable.

9. The petitioner has claimed medical allowance @ Rs.100/- per month. This is part of the salary payable to the petitioner. The said amount is payable regardless of whether an employee undergoes treatment or incurs any expenditure. The petitioner is accordingly held entitled to Rs.100/- per month towards medical allowance.

10. The petitioner has also claimed reimbursement of medical bill. Details of the bills have not been enclosed with the petition. The respondents in their counter affidavit have stated that bills for reimbursement were submitted for the first time only on 16th January, 2003. Reference is made to Office Order No. 16, which requires submission of bills for medical reimbursement within three months from the date of completion of treatment. It is further stated that belated claim requires sanction of CMD. The petitioner in the earlier CW No. 4476/1999 did not raise any claim towards medical reimbursement. It will be difficult for the respondents to verify the bills at this belated stage and make payment. Delay in submission of the medical bills from 3rd October, 1998 till 16th January, 2003 is unexplained. In these circumstances, I am not inclined to

direct the respondents to consider the alleged medical bills and reimburse the so called treatment expenses. I may note here that in the earlier CW No. 4476/1999, no such claim was made. It is difficult to believe that the petitioner would have given up his claim for medical reimbursement when he filed the first writ petition. Similarly, the claim for washing allowance cannot be allowed. Washing allowance is payable for maintenance and upkeep of the dress/uniform made available to employees. It is an allowance which is to offset the actual expenditure, which an employee incurs on washing his uniform. The petitioner did not work and was not provided with any uniform during the period March, 1997 till October, 2002.

10. Another issue raised by the petitioner is with regard to payment of Group Insurance. The amount claimed is Rs.1,00,000/-. Group Insurance is not part of salary and is payable by a third party i.e. the insurance company. The stand taken by the respondent-DTC in their counter affidavit is that the petitioner did not fill up the requisite form and submit the same within the specified time limit as prescribed by the scheme. He raised his claim only on 3rd July, 2003, which was forwarded to the insurance company on 10th July, 2003 but has been rejected on the ground that it is barred by limitation. The petitioner, however, claims that the Group Insurance Scheme was propounded by the respondent-DTC and the

premium was deducted from the salary payable to the petitioner. It was for the petitioner to comply with the requisite formalities and submit his claim within the prescribed time under the scheme. As the petitioner has committed default by not submitting the claim and complying with the formalities within the requisite time limit, the burden cannot be passed on and shifted to the respondent-DTC. It is not the case of the petitioner that after the petitioner had completed the formalities and submitted the form, there was delay on the part of DTC. The petitioner was aware that he is covered by the Group Insurance Scheme and should have complied with the terms and conditions of the said scheme. Learned counsel for the petitioner submitted that the amount payable under the Group Insurance Scheme is covered by the judgment dated 26th February, 2002 and, therefore, respondent-DTC is liable to make the said payment. I do not agree with the said contention. By the judgment dated 26th February, 2002, the petitioner is entitled to payment of full salary with a further direction that he shall be treated in continuous employment without break in service. Amount payable under the Group Insurance Scheme is not salary and has no connection with the direction given by this Court that the petitioner will be treated in continuous employment. The petitioner's claim is also barred in view of the provisions of constructive res judicata as his claim could have

and should have been raised when the CW No. 4476/1999 was filed. The petitioner did not specifically raise that claim. The claim was made with the respondent-DTC for the first time in the year 2003. The claim was belated and as per the Group Insurance Scheme, barred by limitation. This claim, therefore, cannot be allowed.

11. The last claim made by the petitioner is for payment of arrears under the Time Scale Promotion Scheme. It is pointed out by the respondent in their counter affidavit that Time Scale Promotion Scheme was introduced on 12th August, 2002 and the Committee constituted for the purpose held its first meeting only in October, 2002 while the petitioner was reinstated on 5th November, 2002. It is accordingly stated that the petitioner is not entitled to Time Scale Promotion prior to 5th November, 2002. The stand taken by the respondent-DTC is not justified and cannot be accepted. Order of premature retirement dated 12th April, 1999 already stands quashed by judgment dated 26th February, 2002. The Court has directed that the petitioner will be treated in continuous employment without break in service. The petitioner will be accordingly entitled to arrears of pay and benefit under the Time Scale Promotion Scheme with effect from the date he became eligible, without taking into consideration the order dated 12th April, 1999. For the purpose of Time Scale Promotion Scheme, the petitioner will be treated to be in service during the period 1997 till 12th August, 2002. I may also note here that the petitioner was reinstated in service with all benefits. The respondents will examine the Time Scale Promotion Scheme and subject to the terms of the said Scheme, the petitioner will be paid his arrears.

12. With the aforesaid directions, the writ petition is partly allowed. The respondents will comply with and make payment of the arrears as directed above within a period of two months from today.

SANJIV KHANNA, J.

APRIL 22, 2008
VKR/P