

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

+ **W.P.(C.) No. 4795/2006**

% **Date of Decision: 27th August, 2009**

THE MANAGEMENT OF M/S DELHI TRANSPORT CORPORATION
..... PETITIONER

! Through: Ms. Arati Mahajan, Advocate.

VERSUS

\$ SHRI MEHAR SINGH
(THROUGH HIS LRs)

.....RESPONDENT

^ Through: Ms. Amita Gupta, Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

This writ petition filed by Delhi Transport Corporation (hereinafter to be referred as DTC) is directed against an award of the Industrial Adjudicator dated 26.07.2004 by which it has been directed to treat the workman Mehar Singh in service and to give him all consequential benefits including pension and promotional benefits treating his date of birth as 01.07.1937.

2. The deceased workman Mehar Singh was an ex-serviceman. After his discharge from the service of the Army, he was employed by the petitioner as a Driver. He was initially appointed on short-term basis and was later on taken as Retainer Crew Driver w.e.f. 29.01.1968.

3. The case of the DTC is that the deceased workman Mehar Singh

had furnished an affidavit dated 21.02.1967 stating his date of birth as 10.09.1937. Later on the petitioner had furnished his Discharge Certificate given to him by the Army in which his date of birth was mentioned as 01.07.1937. However, the date of birth of the deceased workman in his Service Book was mentioned as 10.09.1937, being the date of birth disclosed by him in his affidavit furnished on 21.02.1967. Later on the petitioner got the deceased workman examined from its Medical Board, in whose opinion the age of the petitioner in 1975 was 45 years. On the basis of the said opinion of the Medical Board, the date of birth in the service record of deceased workman was rectified and changed from 10.09.1937 to 01.01.1930. This was done without giving any opportunity to the workman or holding any inquiry regarding correct date of birth of the workman. The workman was retired by the petitioner w.e.f. 31.12.1987, as on that date he reached the age of superannuation of 58 years taking his date of birth as 01.01.1930 against the date of birth 10.09.1937 disclosed by the workman in the affidavit furnished to the petitioner much before he was taken as a Retainer Crew Driver on 29.01.1968.

4. The workman aggrieved by his premature retirement had raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. The Labour Court in its impugned award has returned findings in favour of the workman and against the petitioner to the effect that the petitioner acted illegally in treating the date of birth of the workman as 01.01.1930 in stead of 01.07.1937 mentioned in his Discharge Certificate of Army Ex. WW-1/3.

5. The workman has expired on 07.04.2005 after the date of the award but before filing of the present writ petition. His legal heirs have been arrayed as parties respondents in the present writ petition.

6. The respondents, being the legal heirs of the deceased workman, have produced the school record of the workman before this Court which contains the details of date of birth not only of the deceased workman but of many other students who have taken admission in the school around the same time when the workman took admission in the school. A perusal of the school record (extract of which is at page 164 of the Paper Book) shows the date of birth of the deceased workman to be 01.07.1937. The same date of birth is mentioned in his Army Discharge Certificate Ex. WW-1/3. It is an admitted fact on record that opportunity was not given to the deceased workman before changing his date of birth in the service Book from 10.09.1937 to 01.01.1930. This change of date of birth in the service record of the deceased workman is in complete contravention of principles of natural justice. It seems that the petitioner has acted most arbitrarily in changing the date of birth in the Service Book of the deceased workman from 10.09.1937 to 01.01.1930 and in retiring him prematurely about 7 years before the actual date of his retirement. In that view of the matter, I do not find any illegality or perversity in the impugned award that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India.

In view of the above, this writ petition fails and is hereby dismissed.

AUGUST 27, 2009
'bsr'

S.N.AGGARWAL, J