

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

+ **W.P. (Civil) No. 6180 of 2010**

% ***Date of Decision: 10.2.2011***

Delhi Transport Corporation *Petitioner*
Through Ms. Saroj Bidawat, Advocate

Versus

Vir Singh *Respondents*
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has sought for quashing the impugned order dated 12th March, 2010 passed by Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 508/ 2009 titled Vir Singh Vs Delhi Transport Corporation directing the petitioner herein to re-designate the respondent as Ticket Talley Clerk (TTC) w.e.f. 07.07.1992 with all consequences, as admissible in law.

2. The material facts of the case are that the respondent is employed with the petitioner after he was selected for the post of driver vide memo No. PLD-II-I (5)/84/15527 dated 16.10.1984. The respondent after undergoing the prescribed training was appointed as Retainer Crew Driver on 20.5.1985 at daily rates of pay and was thereafter appointed on probation at monthly wages for one year w.e.f. 1.12.1985 vide memo dated 05.08.1986. After successful completion of probation period he was confirmed in the regular post of Driver w.e.f. 30.11.1986 vide memo dated 02.12.1986. While discharging his duties as Driver he was declared medically unfit vide report No. AB/IPD/582 dated 23.08.1989 by the Medical Board of the petitioner corporation. Subsequently an order bearing No. PLD-IV/Re-design/89/311 dated 11.01.1989 was passed with regard to the re-mustering of incapacitated employees. The said order stipulated that the incapacitated employees who are rendered unfit to perform duties of Driver and Conductor, be utilized by the units concerned with any duty other than the steering duty, like Gate duty, Distribution and ensuring of proper display of destination boards before the bus is out shedded, till such time there cases for re-designation are finalized. In consonance with this order, the request of the respondent was sought for re-designation vide letter No. PLD (E)/Re-designation/89/3686 dated 1.9.1989 issued by the Assistant Personnel Officer (East) of the petitioner corporation and in

the meanwhile the petitioner decided to deploy the respondent on some other duty till the case of the respondent was finalized to re-designate him. Accordingly, a letter dated 26.9.1989 was issued to the respondent seeking his un-qualifying consent to be considered for the post of TTC to which he replied in affirmative within the prescribed time limit as on 29.9.1989. Consequently, he was posted as TTC and was also utilized in other analogous posts such as Assistant Store Keeper, depending upon the need and urgency.

3. On 7.7.1992, while on duty the respondent was asked to proceed on leave without giving any reasons and under the threat that non compliance to the direction will lead to the order for his premature retirement. Aggrieved by this, the respondent filed a civil Suit No. 272/ 1992 for declaration that the respondent has a right to continue to work with the petitioner corporation in the capacity in which he was and had been working as on 7.7.1992 and on other analogous posts with consequential relief of permanent injunction. The suit was decreed in favor of the respondent vide judgment and decree dated 07.03.2002 granting the following relief:

“....It is decided that the plaintiff has a right to continue to work with the defendant in the same scale in which he was working on 07.07.1992 and has also entitled to be occupied in any other analogous post carrying the same scale. The defendant is further restrained permanently

from removing the plaintiff from the post held due to the reason of his disability....”

4. The petitioner corporation did not challenge the decree passed in favor of the respondent. Rather in compliance with the judgment and decree dated 07.03.2002, the petitioner vide letter No. YVD/PFC (Dr.)/2002/1933 dated 29.11.2002 issued by the Depot Manager passed the following order stating as under:

- (i) the respondent will continue to work in the same scale in which he was working on 7.7.1992 and is still working in the same scale;
- (ii) he will not be removed from the post held due to the reason of his disability.
- (iii) he will also be entitled to be occupied in any other analogous post carrying the same scale.
- (iv) he will receive amount of Rs 48,878/- his salary for the period from 08.7.1992 to 24.3.1994.

5. The petitioner also re-designated the respondent as TTC with immediate effect from 12.12.2003. The respondent aggrieved by prospective re-designation w.e.f. 12.12.2003, filed a writ petition bearing WP(C) No.14421 of 2004 contending that he should be granted seniority in the post of TTC with effect from 07.07.1992 along with all consequential benefits and not prospectively from 12.12.2003 as had been discharging the duties of TTC since 07.07.1992. He took the following grounds inter alia that the actions of the petitioner are arbitrary, illegal and malafide and contrary to

the Service Rules of the petitioner corporation which are also violative of Articles 14, 16 and 21 of the Constitution of India and are also violative of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 and Rules 1996. He stated that vide the judgment and decree of Civil Judge he had been granted right to continue with the petitioner corporation in the same scale in which he was working on 07.07.1992 and permanent injunction was also passed against the petitioner restraining the petitioner corporation from removing him from the post held due to the reason of his disability, i.e., from the post of TTC. According to the respondent Civil Judge relied on the established fact that he was working as TTC w.e.f. 07.07.1992. He also placed reliance on the two letters dated 25.08.1998 and 11.10.2001 issued by the petitioner corporation in which the petitioner had stated that the respondent has been working as TTC since 07.07.1992. Respondent contended that he started working at this post pursuant to option given to him consent given by him before his re-designation from the post of Driver to TTC vide order dated 26.09.1989. The respondent had been working as TTC till 07.07.1992 when he was asked to proceed on leave without disclosing any reason to him. Aggrieved by arbitrary and illegal action of the petitioner he had filed the Civil Suit No. 272/1992 which was decided in his favor. As a result of that he was restored to

the post of TTC by the petitioner corporation, however, from 12.12.2003. The respondent further contended that he is still working as TTC. The respondent also asserted that in view of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 no establishment can dispense with the services of an employee or reduce him in rank, if such an employee acquires any disability during his service. Even if such an employee is not suitable for the post due to his disability, he is to be shifted to some other post with same pay scale and service benefits. If such an employee 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. It was contended that the intention of the provision is clear that the service of the person who acquires disability during his service is not to be dispensed with. The objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of employment etc. He further stated that it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. Therefore, employment of such an employee is to be protected if any disability is acquired, even if he is not able to discharge the same duties and there is no other work suitable for him, but under said provision he is still to be retained on the same pay scale and service benefits so

that he keeps on earning his livelihood and is not rendered jobless. The respondent also relied on various cases of High Court and Supreme Court in his support of his plea. The cases relied on by the respondent are Baljit Singh v Delhi Transport Corporation, 83 (2000) Delhi Law Times 286; Vedprakash Singh (Conductor) v DTC, S.L.P. (C) No. 1575 of 1990 (decided on 5.6.1991); Shri Jaswant Singh v DTC, SLP (Civil) No. 5734/ 1997 (decided on 22.7.2002); Shri Shyam Bihari v DTC, CWP No. 6206/2000 (decided on 17.11.2003). In all these cases the Courts granted medically disabled/ handicapped employees with continuity of service and consequential benefits. The respondent also relied on Article 12 of the Constitution of India contending that the corporation is an instrumentality of State and as such has to provide alternate suitable job to medically handicapped persons in those cases where injury has occurred during the course of duty with continuity of service and all consequential benefits. The writ filed by the respondent was transferred to Central Administrative Tribunal and was registered as TA No. 508/ 2009 in accordance with the Notification dated 1.12.2008.

6. The petitioner opposed the petition of the respondent contending inter alia that the Ld. Civil Judge never directed the petitioner to re-designate the respondent in the post of TTC w.e.f. 7.7.1992 but has only directed to give him the same pay scale which

he was getting as on 07.07.1992 and accordingly he has been designated as TTC w.e.f 12.12.2003 as per the judgment of 07.03.2002. The petitioner further contended that the respondent has been working as Driver and on being declared medically unfit, he has been utilized in various capacities of same pay scale such as gate duty, general office, store department, TTC etc. since 07.07.1992 and he had never held the post of TTC until 12.12.2003 when he was re-designated in compliance of judgment of 07.03.2002. Both these posts are at par in terms of scale, i.e., they carry same pay scale of Rs.3200-85-4900 which has been already granted to the respondent as per the judgment and decree dated 07.03.2002 of the Ld. Civil Judge for the period from 1992-2003. The petitioner corporation further contended that as alleged by the respondent that he got injured while performing duties as Driver, is wrong. In fact it was at his own request for being allowed to work on light duty on medical grounds that he was directed to appear before the Medical Board on 23.8.1989 and was declared medically unfit on the same day pursuant to which he was moved from the post of Driver and was allowed to work on various light duties like gate duty, depot store, ticket section, TTC, Assistant Store Keeper etc. and not the particular job of TTC as alleged by him, till his case for re-designation was finalized. The petitioner further contended that the respondent filed a premature suit even before his case for re-

designation to the suitable post in the petitioner corporation could have been finalized. However, pursuant to judgment and decree dated 07.03.2002, he has been granted the post of TTC w.e.f. 12.12.2003 and has also been paid sum of Rs.48, 878/- towards difference of salary for the period from 8.7.1992 to 24.3.1994 along with Rs.23.377/-. He has also been granted service benefits as admissible under A.C.P. Scheme. The respondent also averred that he was designated as TTC over and above the sanctioned strength of TTC in the staging norms.

7. The Tribunal upon considering the rival contentions of the parties passed the order in favor of the respondent directing the petitioner corporation to re-designate the respondent as TTC w.e.f. 07.07.1992 with all consequences, as admissible in law, within a period of two months from the date of receipt of a copy of order holding that:

“...respondents cannot approbate and reprobate simultaneously. As a model employer, once the certificate is issued by the Depot Manager certifying the working of the applicant despite his medical invalidation as TTC, which is in equivalent pay scale and the same is not controverted by the respondents in the reply, the different stand now taken by the respondents cannot be countenanced in law as the applicant is working as TTC from 1992 and once his request for retirement on medical grounds has been accepted, the order passed in 2003 whereby the applicant has been re-designated as TTC prospectively cannot be countenanced in law.”

8. Aggrieved by the order of the Tribunal allowing the respondent to be re-designated at the post of TTC w.e.f. 07.07.1992, the petitioner has filed the present writ challenging it the order of the Tribunal on the same grounds which were raised before the Tribunal opposing the petition of the respondent. The petitioner averred that as per the policy of the corporation, the disabled/ medically unfit employees can be considered for the analogous posts at the same pay scale that he is holding at the time of being declared medically unfit. The petitioner also stated that the respondent became medically unfit within two years of his service as Driver and it was on his request only he was deputed and utilized in various sundry capacities, i.e., TTC, Assistant Store Keeper etc. as per the requirement and urgency and had not been designated as TTC till his case for re-designation is finalized. Secondly, the respondent was re-designated as TTC w.e.f.12.12.2003, whereas as per the judgment of the Civil Judge the respondent should have been given the analogous posts available. It was further asserted on behalf of the petitioner corporation that the judgment and decree of the Civil Judge has been fully complied with by the petitioner and there is no infirmity in its implementation as the petitioner was not directed to re-designate the respondent as TTC w.e.f. 07.07.1992 but has only ordered to pay the same scale as he was getting as on 07.07.1992. Therefore, in re-designating him prospectively from 12.12.2003 and not

retrospectively from 7.7.1992, no illegality has been committed by the petitioner. The petitioner also asserted that TTC is a promotional post and the respondent could not have been re-designated w.e.f. 07.07.1992. It also averred that the respondent was given the post of TTC over and above the sanctioned strength in 1992 in consonance to the policy of the petitioner corporation and in 2002 also he has been granted the said post to comply with the judgment of the Civil Judge although it is over the sanctioned strength for the said post.

9. It is not in dispute that the respondent had served as TTC and at other analogous post since 1992. This is true that the judgment and decree passed in his favor did not direct the petitioner to re-designate him as TTC from 1992 but the judgment and decree passed in favor of the respondent directed the petitioner to continue the respondent work in the same scale in which he was working on 7.7.1992. The respondent had been granted the same scale in which he was working on 7.7.1992 by order dated 29.11.2002 of the petitioner. If that be so no cogent reason has been given as to why it cannot be held that the respondent be treated as working as TTC since 1992 especially as the Depot manager of the petitioner had certified that despite respondent's medical invalidation had worked as TTC. Though the learned counsel for the petitioner contended that that the respondent also works on the analogous post but that will

not efface the work of the respondent as TTC. If the respondent has been given the scale of TTC and on the basis of the scale given to him as TTC he has also been admitted to the benefits under the ACP scheme, no cogent reason or ground is disclosed as to why he should not be treated as TTC from 1992. The respondent worked as TTC in 1992 pursuant to the option called from him which was exercised by the respondent and thereafter he was assigned the duty of TTC also. The respondent did not stop working as TTC on his own rather he was asked to go on leave in 1992. This action of the petitioner was challenged and was not upheld. If that be so, there are no cogent grounds to hold that the respondent shall not be entitled to be treated as TTC as has been held by the Tribunal.

10. On behalf of petitioner it has also not been explained satisfactorily as to why the respondent should be designated as TTC from 2003 and not from 1992 as re-designation was to be done after the respondent was declared as medically unfit. If the petitioner corporation has done the re-designation in 2003, almost after 15 years, the consequences of this are not to be borne by the respondent. In the respondent has been granted the scale of TTC from 1992, it has not been explained as to why he should not be granted designation as TTC from 1992. In the circumstances the learned counsel for the petitioner has failed to raise any cogent

grounds which will show any illegality or perversity in the order of the Tribunal.

11. In the circumstances the petitioner has failed to show that the order of the tribunal is unsustainable or suffers from such illegality or irregularity which will require interference by this Court in exercise of its jurisdiction under article 226 of Constitution of India. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. For the foregoing reasons, the writ petition is therefore, dismissed. The parties are however, left to bear their own costs.

ANIL KUMAR, J.

February 10, 2011.

VEENA BIRBAL, J.