

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

+ **W.P.(C) 2130/2007**

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Reserved on: 6th August, 2012

Decided on: 3rd October, 2012

RAM MEHAR SINGH

..... Petitioner

Through: Mr. Atul T.N. and Mr. Rajat Joseph,
Advocates.

versus

D.T.C.

..... Respondent

Through: Ms. Saroj Bidawat, Advocate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the award dated 28th January, 2006 wherein though the pre-mature retirement of the Petitioner was held to be unjustified, he was awarded compensation to the tune of Rs.50,000/- only.

2. Learned counsel for the Petitioner contends that since the Petitioner lost his eye sight while serving with the Respondent, he could not have been prematurely retired and the Respondent was duty bound to provide him an alternative employment in the same pay scale. The job of Store Attendant as offered by the Respondent was in a lower scale and that is why the Petitioner wanted to join the same under protest. However, the Respondent in view of the fact that the Petitioner was joining the same under protest imposed a penalty of premature retirement on him. Reliance is placed on *Delhi Development Authority vs. Omvati Kalshan*, 145 (2007) DLT 17 (DB) to contend that the Petitioner satisfies the prescription of a disabled person and de-hors Section 47 of the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995 (in short 'the Act') the Constitution mandates that no discrimination can be met with the Petitioner. Reliance is also placed on *Vijender Singh vs. Delhi Transport Corporation*, 105 (2003) DLT 261 and *MCD vs. Pushpa Rani*, LPA No. 935 of 2011 decided by this Court on 13th July, 2012.

3. Learned counsel for the Respondent on the other hand contends that since the Petitioner refused to join the alternative job of Store Attendant the Respondent was left with no option but to prematurely retire the Petitioner because the Petitioner could not perform the duties of the driver due to his low vision. No retrospective operation can be given to Section 47 of the Act as held by the Division Bench in *Delhi Transport Corporation vs. Harpal Singh*, 156 (2009) DLT 481 (DB). In view of the Office Order dated 20th January, 1992 and the Resolution No. 23 dated 15th October, 1973 since the Petitioner refused to accept the post of Store Attendant offered to him he was required to be prematurely retired under Clause-10 of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 and thus there is no illegality in the impugned order. It is also contended that the claim of the Petitioner is belated as though he was prematurely retired on 27th May, 1991 he raised the dispute in 2000 and thus no relief for the said period can be granted to him. The Petitioner has already superannuated on 31st January, 2006 and thus he cannot be directed to be reinstated.

4. I have heard learned counsel for the parties.

5. Briefly the facts giving rise to the filing of the present petition are that the Petitioner was employed as a driver with the Respondent on 6th February, 1973. On 1st February, 1991 he was directed to report to the Medical Board

for medical check up. Thereafter a memo was served on the Petitioner informing that the Medical Board has declared him unfit for the post of driver and whether he was ready to accept the post of Store Attendant. The Petitioner represented to the Respondent seeking clarification whether the post of Store Attendant carries the same pay scale as he was getting as a driver. On 17th May, 1991 another memo was sent to the Petitioner asking him to give clear consent for the post of Store Attendant. In response to which the Petitioner accepted the post so offered without prejudice to his rights of the protection of last drawn wages. However, in view of the conditional acceptance, the Respondent prematurely retired the Petitioner on 27th May, 1991. Though the order of premature retirement was passed on 27th May, 1991 the Petitioner raised a dispute in the year 2000 when a reference was sent to the learned Industrial Tribunal on the following terms:

“Whether the penalty of premature retirement of services of Shri Ram Mehar Singh vide order dated 27th May, 1991 is illegal and/or unjustified and if so, to what relief is he entitled to and what directions are necessary in this respect?”

6. After receiving the evidence of both the parties the learned Tribunal came to the conclusion that the Petitioner was entitled to compensation of Rs. 50,000/- which according to the Petitioner is inadequate. Though learned counsel for the Respondent has strenuously argued that since the acceptance of the Petitioner for the post of Store Attendant was under protest and without prejudice to his rights, it would be a conditional acceptance entailing his premature retirement, the Respondent cannot raise this issue

before this Court as the Respondent has not challenged the finding of the learned Trial Court that the premature retirement of the Petitioner was unjustified. For the same reason and as no objection of a belated claim was raised in the written statement, thus no issue was framed in this regard, the Respondent cannot now urge that the Trial Court erred in adjudicating a stale claim. Further, the law on the point is well settled in *Narender Kumar Chandla vs. State of Haryana and others*, 1994 (4) SCC 460 wherein their Lordships held that the employer must adjust the employee in a suitable post and protect his last drawn pay. Admittedly in the present case the pay scale of the Store Attendant was less than the Driver and thus the Petitioner committed no fault in accepting the post of Store Attendant under protest without prejudice to his rights. The premature retirement of the Petitioner being unjustified and the Petitioner being a regular employee, the compensation of Rs. 50,000/- awarded to the Petitioner is inadequate. The action of the Respondent in not protecting the last drawn salary of the Petitioner was clearly discriminatory hence the Petitioner is entitled to adequate compensation. Admittedly the Petitioner has attained the age of superannuation, thus he cannot be directed to be reinstated on a post with identical pay scale.

7. The learned Trial Court held that it was admitted position between the parties that the Petitioner was appointed as a driver with the Respondent on 6th February, 1973. He was declared medically unfit in 1991 and he was offered post of Store Attendant which carried a pay scale lower than that of driver and that the Petitioner acquired disability during the course of his employment. However, the learned Trial Court held that the Petitioner contributed to his premature retirement by not accepting an alternative offer

and thus was not entitled for reinstatement on the basis that the Petitioner was not justified in refusing the job offered to him, the fact that the Petitioner concealed the fact that he was offered the job of Store Attendant in his claim and in his affidavit and admitted the same only in his cross-examination and the fact that the service record of the Petitioner was gloomy as he was awarded 14 punishments. The learned Trial Court is correct in observing that the Petitioner concealed these material facts in the claim and affidavit filed before the learned Trial Court. However, the learned Trial Court erred in coming to the conclusion that the Petitioner contributed to his premature retirement by not accepting an alternative offer. The case of the parties is that the Petitioner accepted the offer without prejudice to his rights which the Petitioner was justified in doing so as his pay was not protected. The relief of reinstatement cannot be granted to the Petitioner inasmuch as he has already attained the age of superannuation. However the compensation of Rs. 50,000/- is on the lower side. The Petitioner was prematurely retired in 1991 when his substantial period of service remained.

8. In view of the facts and circumstances of the case and the fact that the Petitioner concealed facts in the claim statement and the affidavit filed by him, I deem it fit to award further compensation to Rs. 2,00,000/- in addition to Rs. 50,000/- already awarded to him in lieu of back wages.

8. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

OCTOBER 03, 2012
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