

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

% Judgment Reserved on: August 30, 2013
Judgment Pronounced on: September 09, 2013

+ **W.P.(C) 5111/2011**

SHYAM LAL Petitioner
Represented by: Mr.Anuj Kumar Ranjan, Advocate.
versus

DELHI TRANSPORT CORPORATION Respondent
Represented by: Mr.J.S.Bhasin, Advocate.

W.P.(C) 4386/2012

NAR SINGH & ANR. Petitioners
Represented by: Mr.Anuj Kumar Ranjan, Advocate.
versus

DELHI TRANSPORT CORPORATION Respondent
Represented by: Mr.J.S.Bhasin, Advocate.

W.P.(C) 4393/2012

BALWAN SINGH Petitioner
Represented by: Mr.Anuj Kumar Ranjan, Advocate.
versus

DELHI TRANSPORT CORPORATION Respondent
Represented by: Mr.J.S.Bhasin, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Writ petitioner of WP(C) No.5111/2011, Shyam Lal, was born on November 11, 1955 and was appointed as a Driver with DTC in the year 1984. As per him, during his childhood when he was aged four years, he had suffered an injury on the wrist of his right hand due to which his right hand became slightly bent towards the inside. When appointed as a Driver in the year 1984 said handicap was not found a hindrance in his ability to efficiently function as a driver.
2. Writ petitioners of WP(C) No.4386/2012, Nar Singh (Petitioner No.1) and Dharam Pal (Petitioner No.2) were born on March 02, 1954 and May 15, 1954 respectively and were appointed as Drivers with DTC in the year 1980 and 1979 respectively. As per them, during their childhood when they were aged four or five years they had suffered an injury on the index finger of their right hand resulting in the top phalynx of the finger being amputated. When appointed as a Driver in the year 1980 and 1979 respectively said handicap was not found a hindrance in their ability to efficiently function as a driver.
3. Writ petitioner of WP(C) No.4393/2012, Balwan Singh was born on July 01, 1995 and was appointed as a Driver with DTC in the year 1982. As per him, during his childhood when he was aged six years he had suffered an injury on the middle finger of his left hand resulting in the top phalynx of the finger being slightly amputated. When appointed as a Driver in the year 1982 said handicap was not found a hindrance in his ability to efficiently function as a driver.

4. The problem which the four writ petitioners highlight is that when they turn 55 years of age, all of them were required to undergo a medical examination to determine their fitness for continued employment as a Driver in DTC because of the fact that as per applicable Service Rules, Drivers employed by DTC superannuate on attaining the age of 55 years but have a right to serve till the age of 60 years, subject to being declared medically fit on attaining the age of 55 years; further extension being on year to year basis for five years and in each year fitness to be assessed by a Board of Doctors.

5. The reason is obvious. As one ages, the eye sight deteriorates. The bones become weak. Calcification around the cartilage, tendons and ligaments of the joints impairs limb movement; and for some the deterioration is steep. Those who drive heavy duty vehicles, such as buses, have to be subjected to the rigors of a physical fitness evaluation when they cross a certain age, which DTC has set at 55 years.

6. Brought before the Medical Boards, when they turned 55 years of age, the opinion of the Members of the Board was that the petitioners were not physically fit to drive heavy duty vehicles and based upon the said opinion, the petitioners were superannuated when they attained the age of 55 years and were not granted the benefit of extension in service.

7. It is not in dispute that the '*Standard of Physical Fitness*' norms were revised on July 02, 1986 and the same made a substantial departure from the erstwhile '*Standard of Physical Fitness*' norms notified on April 08, 1976.

8. As per the revised medical fitness norms the condition of fitness became: '*No infirmity whatsoever in the body*'. Pertaining to Drivers, the

revised norm is that there should be movement of all body parts without sensory lost or loco-motor disability.

9. As we have noted hereinabove, all petitioners had joined as Drivers prior to July 02, 1986 i.e. when the '*Standard of Physical Fitness*' norms notified on April 08, 1976 were in force. Notwithstanding the physical disability from which they suffered, applying the norms of 1976, they were opined to be medically fit to serve as Drivers.

10. Suffice would it be to state that if a norm of suitability is revised, it is said norm which will govern suitability if the Rules require suitability to be tested on a date after the revised norms have been enforced.

11. As we have already noted hereinabove, age takes a toll on the human body. A physical impairment may not be a handicap when one is young and even middle aged. But with passage of time, the impairment may aggravate and as one enters the middle age and reaches the middle of the middle age, the aggravated physical impairment may render a person unfit for a particular kind of a job.

12. It is for the experts to determine what the standards would be. A Court is no place to determine what should be the physical fitness standard for a person to be appointed as a Driver. A Court would be no place to determine as to whether a physical infirmity has or has not aggravated to a level where further retention as a Driver, without jeopardizing the interest of the passengers of a bus and the people on the street, is required or not.

13. In matters pertaining to administrative decision the role of a Court is limited to determine whether the procedures of the law have been complied with.

14. The petitioners rely upon an Office Order dated February 09, 1989 which reads as under:-

“Slight injury resulting in loss of pulp but nail being intact to any one of the finger including thumbs and toes of both hands and feet or malunited fracture of shaft of any one of phalanges of both hands and feet but movements at inter phalangeal joint being intact with firm grip or hand can be considered for relaxation by the Medical Board provided above conditions do not interfere in the performance of duty.”

15. We have perused the pleadings in the Original Application(s) filed by the petitioners and we do not find any challenge made to the report(s) of the Medical Experts in the pleadings constituting the Original Application(s); save and except to the fact pleaded that the physical infirmity was present when the applicants joined service. We highlight that the writ petitioners had not questioned the report(s) by the expert Doctors who were of the opinion that as per the revised ‘Standard of Physical Fitness’ norms the petitioners were unfit to be retained in service beyond the age of 55 years in the context of the revised norms. Further, the opinion of the experts was not challenged with reference to the known medical jurisprudence on the subject. We have already highlighted hereinabove that physical disabilities tend to aggravate as one ages and thus merely because when one is in the age of the youth a particular physical disability is opined as not adversely impacting the fitness the same fact would be irrelevant if a fitness has to be re-opined when one crosses the middle age.

16. We concur with the view taken by the Tribunal as per the impugned decisions that there is no illegality in the decision taken by DTC not to continue employment of the petitioners beyond the age of 55 years.

17. The writ petitions are dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 09, 2013

skb