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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C).3106 /2013**

% ***Judgment dated 15th September, 2015***

CHANDER SHEKHAR Petitioner

Through : Mr. P.K. Mittal, Advocate

versus

DELHI TRANSPORT CORPORATION & ORS. Respondents

Through : Mr. Uday Vir Singh, D/Asstt. on behalf of
the Management.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge to the present writ petition is to the order dated 30.4.2012 passed by Central Administrative Tribunal (hereinafter referred to as the "*Tribunal*").
2. On 25.08.1998, the petitioner was appointed as a driver with respondent no.1. The petitioner attained 55 years age on 19.05.2010, the age of retirement fixed by respondent no.1. The petitioner was given benefit of Regulation 19(f) of the Office Order No.99 dated 04.10.1963 whereby the drivers of DTU (the earlier nomenclature of respondent no.1) were to get benefit of the enhanced age, subject to their being found fit after medical examination for a period of one year. The petitioner was granted extension for the first term having been found fit. The petitioner was also given extension for the second term upto 31.05.2012, however, before the second term could commence, he met with an accident and fractured his hands and remained under medical treatment. Although the doctors declared him fit, but he was not allowed to resume duty by respondent no.1 and was asked to appear before the Medical Board of respondent no.1 Corporation. Upon

examination, the Medical Board declared the petitioner unfit on 03.08.2011. A communication was addressed to the petitioner on 04.08.2011 informing him of the decision and he was retired prematurely from the services of the Corporation, which led to filing of an OA before the Central Administrative Tribunal. During the pendency of the OA, the petitioner also made a representation, hearing was also granted by the Corporation to the petitioner, however, the representation was rejected. On 30.04.2012, the OA filed by the petitioner was dismissed, which has led to the filing of the present writ petition.

3. The petitioner in the OA prayed that he should be permitted to continue his service till the age of 60 years or, in the alternative, he should be given an appointment against the post of Security/Ticket Tally Clerk, or any other post of equivalent pay scale. Taking into consideration that the age of retirement fixed for drivers is 55 years, the Tribunal rejected the OA filed by the petitioner herein.
4. The arguments raised before the Tribunal have also been raised before us today. The Tribunal has also taken note of the various decisions of the Delhi High Court wherein it has been held that to extend the service of the drivers who retire at the age of 55 years, can act as a driver, subject to medical fitness on year to year basis. The plea of benefit of Section 47 of the Disability Act was also considered. We find it useful to extract paras 5 and 6 of the orders passed by the Tribunal, which read as under:

“5. We have heard the learned counsel for the parties and perused the material placed on record. We are of the view that the applicant is not entitled to any relief and the matter is squarely covered by the judgment rendered by the High Court on 9.1.2009 whereby the High Court in a common judgment has disposed of LPA No.1241/2007, which judgment has been reported as 160 (2009) Delhi Law Times 555 (DB) and also the

decision rendered by this Tribunal in V.R. Sharma v. DTC & others (OA No.1897/2009) decided on 6.1.2010 and Jeet Singh v. DTC (OA No.2707/2011) decided on 15.3.2012 as also in terms of the provisions contained in office order No.99 dated 4.10.1963. At this stage, it will be useful to quote Regulation 10 (f) of the aforesaid office order, which thus reads:-

“(f) The drivers of the DTU shall get the benefit of the enhanced age subject to their being found fit in every respect after their medical examination by the medical officer/officers of the DTU. Every year after they have attained the age of 55 years. The first examination shall be carried out immediately after or before they have attained the age of 55 years. If as a result of such medical examination, they are found unfit for further service, they would be retired from the service of the Undertaking without any notice.”

6. Thus, from the perusal of the aforesaid Resolution, it is evident that age of superannuation of the driver is 55 years but the competent authority in its discretion has been authorized to give extension to the driver, who has attained the age of 55 years in case he is found fit in every respect after thorough medical examination by the medical officer of DTU and such extension shall be from year to year basis. In the instant case, the applicant, who has attained the age of superannuation on 19.5.2010, was given extension on two occasions. When the applicant met with an accident on 30.4.2011 and suffered fracture in both the hands, he was declared unfit by the medical board on 3.8.2011. He was discharged from service w.e.f. 4.8.2011 vide impugned order. Thus, according to us, the applicant has got no legal right to remain in service for a period upto 60 years or to claim alternative appointment on another post, as he has not incurred the disability before attaining the age of superannuation but he has incurred disability after reaching the age of superannuation of 55 years. Hence the applicant is not entitled to the benefits under Section 47 of the Disability Act *ibid* in terms of the decision rendered by the Division Bench of the High Court in the case of Dharam Pal (*supra*) (with connected matters) whereby in paragraph 35 the High Court of Delhi has made the following observations:

“35. The age of superannuation of a Driver, under the management is 55 years. Section 47 of the Disability Act does not ipso facto extends the tenure of service of a Driver with Delhi Transport Corporation, the benefits granted to such drivers despite incurring disability during tenure of his service that is upto 55 years would not extent his service beyond 55 so as to enable him to continue in service may be at a lower post for which the normal age of retirement is 60. This is because the benefit of such post has been made available to the said person as per the provisions of Section 47 of the Act and not otherwise.”

5. We have heard the counsel for the parties and carefully examined the judgment of the Tribunal. The Tribunal has passed a well reasoned order based on the decision rendered by this Court and correctly applied the same to the facts of this case. We find no infirmity in the impugned order.
6. Resultantly, the writ petition is dismissed. No costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 15, 2015

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