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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1756/2016

Date of decision: 1st March, 2016

DEVENDER SINGH

..... Petitioner

Through Mr. Anil Mittal and Ms. Komal Aggarwal, Advocates.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through Ms. Latika Chaudhary, Advocate for Ms. Avnish Ahlawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

In this writ petition filed by Devender Singh on 24th February, 2016, challenge raised is to the order dated 20th November, 2014, passed by the Central Administrative Tribunal in OA No.3791/2013. The said OA was directed against the show cause notice asking the petitioner to reply as to why his appointment should not be terminated under clause 9(a)(i) of the DRTA (Conditions of Appointment & Services) Regulations, 1952.

The relevant portion of the notice reads:-

“Whereas you were medically examined by the DTC Medical Board on **6.11.2008** and declared Unfit, due to **eye vision defect** for the post vide its report bearing No. MO/HQ/452/23 dated 6.11.2008.

Whereas a decision was taken by the competent authority/DTC Board, vide Resolution No.90/2009 dated 22-12-2009 to get those candidates medically re-examined at Guru Nanak Eye Centre who were declared medically Unfit by the DTC Medical Board due to the defective eye-vision. Accordingly, you were directed to the Guru Nanak Eye Centre for medical re-examination on 7.01.2009.

Whereas after your re-medical examination on being declared medically Fit by Guru Nanak Eye Centre, you were given offer of appointment on 24.4.2009 and after completion of pre-requisite formalities, you were given appointment as driver with effect from 7.12.2009 Vide letter No.PLD-III (DSSSB)/Dr. Other state/Appt./09/4064 dated 2.12.2009.

Whereas by that time, one such candidate (selected by DSSSB during 2008) who was initially declared medically unfit by the DTC Medical Board and subsequently declared medically fit by the Guru Nanak Eye Centre and was given appointment as driver, meet with an accident resulting into causing injuries. As such he was got medically examined by the DTC Medical Board and the DTC Medical Board found him again medically Unfit for the post of Driver. Taking into consideration the scenario arisen out of the instant case and in the interest of safety of the general public, it was decided by DTC Board vide Resolution No. 25/2012, to get all those drivers who were initially declared unfit by DTC Medical Board, subsequently declared Fit by Guru Nanak Eye Centre and given appointment as driver, be got re-examined by an Independent Medical Board, constituted by the Govt. of NCT of Delhi comprising 03 Doctors (02 from Govt. Hospital & 01 DTC Doctor).

Whereas, the Health & Family Welfare Department, Govt. of NCT of Delhi had nominated the members of above said Independent Medical Board, vide its Order No.

F.25/88/X/MB-DTC/H&FW/1978-1999 dated 17-4-2013. Accordingly, you were directed to appear before the Independent Medical Board at Guru Teg Bahadur Hospital, NCT Delhi-95 on 19.8.2013.

And whereas, the above Independent Medical Board constituted by the GNCTD after your medial examination in terms of laid down medical standards for the post of driver, declared you medically unfit due to eye vision defect on 19.8.2013 (copy enclosed), which proves that you have got appointed as driver by deceitful means as you are unfit for the post of driver in DTC. You being found unfit by Medical Board to drive buses on line therefore are not entitled to continue as Driver in DTC which is a public service and life of public cannot be placed in the hand of unfit Drivers.

Therefore, in view of the detailed facts as explained above, you are required to show-cause as to why your services as driver in Delhi. Transport Corporation should not be terminated before the aforesaid action of termination from the services is taken under Clause 9(a) (i) of the DRTA (Conditions of Appointment & Services) Regulations, 1952, an opportunity is being given to you for giving reply to the said show-cause notice within 7 days of the receipt of the same.”

Thus, the respondents had alleged that the petitioner had procured appointment by resorting to deceitful means, and this aspect was under consideration of the respondents.

2. The impugned order records that in the event of there being any decision by the respondents finding the petitioner or others guilty of resorting to deceitful means without holding an enquiry, it would be open to the petitioner to take an appropriate remedy in accordance with law. It records that if the services of the petitioner and others were terminated on the basis of the medical board's report, and not

on the basis of allegations of resorting to deceitful means, the decision of the respondents would be in consonance with the Delhi High Court's decision dated 31st October, 2014 in W.P.(C) No. 39/2014, *Delhi Transport Corporation Vs. Sanjay Kumar & Ors.* The plea of alternate employment was rejected, as the petitioner had questioned the show cause notice itself and pleaded that their vision was in order. The impugned order notices that the petitioner was found to be medically unfit by the DTC Medical Board at the initial stage itself and, thus, it could be held that he had developed defective vision before he had joined the service.

3. The impugned order order is clear and categorical and we do not think that a belated challenge after two years would be justified and correct. The petitioner, it is apparent to us, had accepted the said order. During pendency of the aforesaid OA No.3791/2013, the respondents had passed order dated 5th December, 2013 under clause 9(a)(1) of the Delhi Road Transport Authority (Conditions of Appointment & Services) Regulations, 1952. The petitioner did not amend the aforesaid OA and challenge this order. This order dated 5th December, 2013 was also not challenged by filing an

independent or new OA. Section 21 of the Administrative Tribunals Act, 1985 would be attracted, unless the delay is condoned.

4. The petitioner, in our view, cannot challenge the order dated 5th December, 2013 by way of the present writ petition, bypassing and ignoring the remedy available under the Administrative Tribunal Act, 1985. In fact, during the course of hearing, learned counsel for the petitioner submitted that the order dated 5th December, 2013, could have been challenged in appellate proceedings but no appeal was filed.

5. Looked from all sides, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 01, 2016
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