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

+ LPA 389/2010
OM PRAKASH

..... Appellant

Through: Ms.Komal Aggarwal, proxy counsel
for Mr.Anil Mittal, Advocate

versus

DTC

..... Respondent

Through: Mr.Uday N.Tiwari and Mr.Sunil
Kr.Ojha, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **06.05.2016**

1. The appellant is aggrieved by the impugned judgment wherein the Single Judge set aside the award dated 23.03.2005 issued in favour of the appellant. The brief facts are that the appellant joined the services of the appellant i.e. Delhi Transport Corporation (DTC) as Driver on 23.05.1977; on account of an incident during the course of his employment the DTC had medically examined him, consequent upon which he was found unfit for the post of a driver. He was prematurely retired on 31.03.1988. He requested alternative employment with some other position with the DTC; the employer acceded to this request on 21.07.1980 and appointed him as Store Attendant and fixed him at a pay scale at the appropriate stage at Rs.206 per month with regular allowances etc. After coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, the petitioner claimed that he ought to be continued and readjusted in the appropriate scale

applicable to a Driver. This was not acceded to, may be in May, 2003; the dispute was referred for decision to the Industrial Tribunal (through a reference dated 26.03.2004 I.D. 33/2004). The Tribunal on 23.03.2005 took into account Section 7 and Section 47 of the Persons with Disabilities (Disabilities Act) – and held that after coming into force of the enactment, the appellant was entitled to arrears of pay from 01.02.1996 i.e. from the day the Act came into force.

2. The DTC petitioned this court under Article 226 of the Constitution of India contending firstly that the Disabilities act did not have retrospective effect and secondly that the workman had enjoyed the benefit of his compassionate alternative appointment for 18 years, and had drawn the salary and increments, and was therefore precluded from claiming the salary fixed for the position as Driver. It was lastly contended by the DTC that the Driver superannuated at the age of 55 years whereas Store Attendant retired from service upon completion of 60 years. In these circumstances, the direction of the tribunal to pay salary applicable to drivers till the appellant attained the age of 55 years and thereafter fixed him in the appropriate stage applicable to Store Attendant was anomalous. These arguments persuaded the Single Judge to set aside the award.

3. Learned counsel for the appellant urges that the object of Disabilities act is to rehabilitate and make feasible employment for those deemed unfit to discharge duties. Counsel highlights that Section 47 confers right upon employees who suffered disability not only on account of occupation related mishaps, but also who are

victims of illness or medical conditions that rendered them unemployable viz-a-viz the object or duties they currently perform. When these objectives are kept in mind the fact that the enactment came into force (on 01.02.1996) 18 years after the appellant incurred the disability does not per se preclude a claim which he made successfully before the tribunal. The Single Judge, complains the appellant's counsel, fell into error in overlooking salient aspect and set aside the award.

4. This Court has carefully considered submissions as well as the material which were considered by the Industrial Tribunal. It is not in dispute that the appellant was diagnosed with a medical condition which would render him unfit for duties as a driver. At that point of time i.e. 1988, the Disabilities Act did not exist. Yet, even then the employer was expected to act as a public employer and indeed the DTC did in conformity with mandate of Article 14 and 16 (1); offered suitable alternative employment which was duly accepted by the appellant. The Disabilities Act came into force in 1995. However the important aspect to be borne in mind is that the disability in this case occurred almost two decades before its enactment. Whilst there may be some weight in the argument that any application under the pending dispute which is proximate to the Act coming into force could be mandated, yet allowing an application in respect of past and settled transactions would yield untenable results. Having continued in employment for 25 years as Store Attendant and drawn the salary, the appellant raised an industrial dispute claiming that he was entitled to the salary payable to a Driver from 1975 onwards. Taking all these

circumstances into account, the tribunal in this case merely appears to have confined itself to the bare philosophy of disability without considering that the employee was given alternative employment at a time when there was no statutory obligation upon the DTC to continue him in its employment. It was even more stark considering that the appellant had been in service for barely an year before when this medical disability was discovered. The Single Judge took note of these circumstances and also particularly that the retirement age for the post of Store Attendant/store keeper was 60 years as opposed to that of a driver which is 55 years. The award of the tribunal that the appellant could function as a Store Attendant and yet draw the salary of driver upto age of 55 years and thereafter be treated as store keeper, was not only anomalous but utterly unsustainable. Consequently, the award was set aside. We see no reason to differ with the decision of the Single Judge who took into account all the relevant and particularly, the last factor i.e. that permitting this award to stand would mean that for five years between 55 and 60 years, the appellant would be treated as a Store Attendant/store keeper taking note of his disability and at the same time ignoring the fact that he raised dispute 25 years after the incident. Consequently, the appeal in our opinion lacks any merit; it is therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

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