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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8416/2016**
DELHI TRANSPORT CORPORATION

..... Petitioner

Through Mr Sunil K. Ojha, Adv.
versus

VINOD KUMAR

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **23.09.2016**

CM 34789/2016 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 8416/2016 & CM 34790/2016 (stay)

1. The respondent – Vinod Kumar was appointed as a driver with the Delhi Transport Corporation vide letter of appointment dated 28.09.2011. The respondent was on probation for a period of 2 years. On 04.05.2013, the respondent suffered a road accident while he was driving a motorcycle and sustained serious injuries, resulting in permanent physical disability.
2. The respondent was declared medically unfit for the post of driver by the Medical Board appointed by the petitioner corporation on 22.11.2013. A show cause notice dated 28.03.2014 relying upon the opinion of Medical Board was issued under Regulation 9(a) (i) of the Delhi Road Transport Authority (Appointment and Service) Regulations, 1952. The respondent made a representation dated 17.05.2014. By the order dated 04.07.2014, the respondent was removed from service.

3. Feeling aggrieved, the respondent challenged his removal in OA No.3484/2014. The Central Administrative Tribunal vide the impugned order dated 10.05.2016 has allowed the OA, relying on Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the decision of the Division Bench of this Court in ***Pawan Kumar v Delhi Transport Corporation***, 2015 (1) LLJ 644 Delhi. The said judgment affirmatively holds that an officer on probation would also be entitled to benefit of Section 47 of the Disabilities Act.

4. Learned counsel for the petitioner has submitted that in the present case, the respondent had also absented himself from duty without intimation.

5. We have considered the said contention, but the aforesaid distinction in the present facts would not in our opinion justify interference with the impugned order. The respondent after the road accident on 04.05.2013 had suffered injuries on his head and legs. He had returned for duty on 28.08.2013. It is obvious that the respondent was unable to perform and work as a driver. The petitioner vide letter dated 01.10.2013 had asked the respondent to appear before the Medical Board. The respondent had then appeared before the Medical Board on 22.11.2013, who had declared him unfit. It is apparent and convincing that the respondent was apprehensive and concerned in view of the physical disability and the injuries suffered. Threat of removal was looming. Definitely, he was not aware of the Disabilities Act and the rights as a disabled person. We do not think that the aforesaid conduct after the accident would take the facts of the present case outside to meet the ratio expounded in ***Pawan Kumar's (supra)*** case.

6. We find no merit in the present writ petition and the same is accordingly dismissed.

7. Pending CM also stands disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 23, 2016/rd