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

+ **W.P.(C) 11891/2016**

Date of decision: 21st December, 2016

BIRPAL SINGH

.... Petitioner

Through Mr. Kishore Kumar Patil, Advocates.

versus

DELHI TRANSPORT CORPORATION & ORS.

..... Respondent

Through Mr. Santosh Kumar Tripathi,
Standing Counsel with Mr. Rizwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

Having heard the counsel for the petitioner-Birpal Singh, we are not inclined to interfere with the impugned order.

2. The petitioner was working as a Driver in respondent No. 1-Delhi Transport Corporation and had retired on 31st January, 2012 after attaining the age of 55 years. As per policy dated 4-7th October, 1963, amended vide letter dated 30th June, 1998, it was decided by the respondent-Corporation that Drivers could be allowed to work up to the age of 60 years, subject to medical fitness.

3. The petitioner was examined by a medical board on 29th December, 2012, who vide their opinion dated 13th December, 2012, had declared the petitioner as "unfit" on account of restrictive movement of his left shoulder.
4. The petitioner had then filed OA No.1840/2012, relying upon report dated 12th January, 2012 from the Swami Dayanand Hospital, Dilshad Garden, Shahdara, Delhi. This OA was disposed of vide order dated 10th July, 2013, directing that the respondent-Corporation would constitute another medical board.
5. Consequently, the petitioner had appeared before the medical board on 12th August, 2013 and was medically examined. He was again declared unfit to perform duty as a Driver. The report records that x-ray of the petitioner's left shoulder was not available. However, the clinical examination had confirmed restricted movement of the left shoulder joint. The petitioner was, therefore, declared unfit.
6. The petitioner thereupon filed OA No.1669/2014, which has been dismissed by the impugned order dated 20th July, 2016 passed by the Principal Bench of the Central Administrative Tribunal.
7. The petitioner again relied upon the medical report of the Swami Dayanand Hospital, Dilshad Garden, Shahdara, Delhi dated 2nd September,

2013. The Tribunal noticed that the said document is an outpatient ticket and records that the patient had restricted left shoulder movement. The OPD prescription states that the patient had full range of movement in both shoulders with good muscle power and no distal neurovascular deficit. A reading of the said report would clearly indicate that the Orthopaedic Surgeon, who had examined the petitioner, was not aware that the petitioner was working as a Driver and the nature of job/work requires consistent and repeated shoulder movement. The question whether the restrictive shoulder movement would hinder and would have compromised and weakened his reflexes/movement as required for a driver of a bus were not considered. A driver is responsible for safety of the passengers as well as those on the roads. Overruling the decision of the medical board in such cases requires more affirmative and clinching evidence and proof. We would, in this background, hesitate and not interfere with the impugned orders.

8. The Tribunal in the impugned order has examined and considered the two opinions of the medical board constituted by the respondent Corporation. In the first OA, the matter was remanded for fresh consideration. The medical board after re-examining the petitioner reaffirmed their earlier opinion that the petitioner was not fit to perform

onerous and assiduous duties as a Driver. The petitioner would be 60 years of age in January, 2017. Directing appointment on re-examination by another medical board would be a futile and worthless exercise.

9. In view of the aforesaid, we do not think that the matter requires any interference. The writ petition is dismissed. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

DECEMBER 21, 2016
NA

