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

+ **W.P.(C) 5129/2016 & CM No.21351/2016**

Date of Decision : 23rd March, 2017

DELHI TRANSPORT CORPORATION & ORS. Petitioners
Through **Ms. Manisha Tyagi, Advocate**

versus

SACHIN KUMAR LAMBA Respondent
Through **Mr. A.K. Trivedi, Advocate**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

The petitioners impugn the order dated 25.2.2016 passed by the Principal Bench of Central Administrative Tribunal ('Tribunal') in OA No.561/2015, holding as under:

"6. Considering the above, the O.A. is allowed. We quash the impugned orders dated 26.03.2013, 24.05.2013 and 18.09.2014 of the respondents and direct that the applicant be taken back in service. The applicant has been claiming that he was medically fit to work as a driver. The respondents may, if they are so advised, get a fresh medical examination conducted and offer a post of driver to the applicant, if he is found to be medically fit for the post. In case the respondents feel that the applicant is not fit to work as a driver they may offer him a suitable post with equal emoluments and if no such post is available, they may place the applicant on a supernumerary post till such post becomes

available. The applicant may be put on probation and be considered for confirmation in due course. He would also be entitled to consequential benefits of pay fixation and seniority as in the case of Pawan Kumar (supra). We also direct that the applicant be granted 50% of back wages for the entire period. Considering the facts and circumstances of the case, we are not inclined to allow any interest on the arrears. These benefits shall be extended to the applicant within a period of eight weeks from the date of receipt of a certified copy of this order. No costs."

2. The brief facts of the case are that the respondent was appointed in DTC as a Driver on 06.04.2011. He was put on probation for a period of two years. On 05.03.2012, he met with an accident, which rendered him unfit for performing duties as a Driver. On 11.03.2013, the respondent requested his superiors to give him light duties but his request was not acceded to. He appeared before a Medical Board on 20.03.2013 and according to him no medical examination was conducted but he was told that he will receive his medical report shortly. On 04.04.2013, the respondent was shocked to receive a show cause notice dated 26.03.2013 issued by the Depot Manager asking him to show cause why his services should not be terminated. The respondent gave a detailed reply on 15.04.2013. However, vide order dated 24.05.2013 the petitioners terminated the services of the respondent. An appeal made by the respondent on 03.06.2013 was also rejected by a cryptic order conveyed to the respondent by Depot Manager. The respondent then

approached the Tribunal by filing OA No. 2487/2014 which was disposed of on 25.07.2014 and directions were given to the Appellate Authority to pass a reasoned and speaking order within six weeks. In compliance thereof, vide impugned order dated 18.09.2014, the respondent has been informed by the Depot Manager that his appeal has been rejected by the competent authority.

3. The Tribunal, while allowing the OA and granting relief, has relied on the decision of this Court in Pawan Kumar v. Delhi Transport Corporation, in WP(C) No.4261/2013, wherein the High Court has relied on the judgment of the Supreme Court in the case of *Kunal Singh v. Union of India & Anr.*, **AIR 2003 SC 1623**. Learned counsel for the petitioners has submitted that the respondent was under probation, when he was deemed medically unsuitable for discharging duties as a driver. His services were, therefore, terminated under Standing Order and Rules/Regulation 9(a)(i) of the DTC. It is further submitted that benefit for The Persons with Disabilities (equal opportunities, protection of rights & full participation) Act 1995 ('Disabilities Act') cannot be extended to the respondent as he was not suffering from 40% disability. This Bench in its decision dated 16.3.2017 in **WP(C) No.9885/2015 titled Sunil Kumar Vs. DTC & Ors.** has gone through the aforesaid question, while relying on Section 47 of the

Disabilities Act and the decision in **Kunal Singh v. Union of India**

&Anr(supra), holding as under:-

“10. Section 47 of the Persons with Disabilities Act, 1995 stipulates:-

“47. Non-discrimination in Government Employment –

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

A reading of section 47(1) of the Persons with Disabilities Act, 1995 quoted above would show that an establishment is not authorised to reduce the rank of an employee or dispense with his services, solely on account of a disability acquired by the said employee during the course of service. The provisos to the section further stipulate that if owing to the disability, an employee is found unsuitable for the post he was holding, he would have to be shifted to another post with the same pay-scale and benefits. If that is not possible, a supernumerary post is to be created till a regular post is available or till the date of superannuation of the employee concerned, whichever is earlier.

*11. The scope and ambit of section 47 of the Persons with Disabilities Act, 1995 was elucidated upon by the Supreme Court in **Kunal Singh Vs. Union of India and Anr.** (2003) 4 SCC 524*

in the following words:-

"8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December 1992 by the Asian and Pacific countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1-1-1996. The Act provides some sort of succour to the disabled persons.

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some

other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

In view of the aforesaid reasoning and ratio, Sunil Kumar would be entitled to benefit of Section 47 of the Persons with Disabilities Act, 1995.

12. *The second ground on which the claim of Sunil Kumar has been controverted by the DTC is that he was not entitled to the benefit under section 47 of the Persons with Disabilities Act, 1995 as he was not a regular employee and was on probation at the time of acquiring the disability. This issue had come up before this Court in **Pawan Kumar** (Supra) wherein it has been held as under:-*

*"11....However, Section 47 does not make any distinction between the nature of services it protects. Relief cannot be denied to the petitioner on the ground that he was still undergoing the probation period at the time of acquisition of the disability. In this regard, the Bombay High Court in **Union of India Vs. Pramod Sadashiv Thakre**, 2012 (2) ALLMR 468, upheld this view in the following terms:*

"It was, however, urged by Mr. Sundaram, learned counsel for the petitioners, that the respondent's services cannot be protected by Section 47 of the Act since the respondent was a

temporary employee on probation. Section 47 of the Act, reproduced above, protects the services of an employee and makes no distinction between the nature of the services it protects. The purpose and intention of the provisions is to protect an employee from unemployment on the ground that he has incurred disability. Parliament has in its wisdom accommodated the possibility that an employee may not be able to discharge the duties of office prescribed for him and to that effect a provision has been made that an employee shall be employed in some other post with same benefits."

*"12. Moreover, it is immaterial as to whether the injury was caused to the petitioner in the course of his employment as a driver or otherwise. This Court in the case of **Shri. Sunil Kumar v. Delhi Transport Corporation & Anr.**, 120 (2005) DLT 499, made the following observations:*

"...decisions of Courts have held that it is wholly immaterial where the injury is caused while on duty or at any other time. The Disabilities Act is a beneficial enactment. No person will welcome an injury to his person..."

In light of the aforesaid decision, the contention of the DTC that protection and benefit under Section 47(1) of the Persons with Disabilities Act, 1995 would not be available to Sunil Kumar cannot be accepted. Rule 9(a)(i) of the 1952 Regulations has to be interpreted in a reasonable manner and not as conferring absolute and unguided discretion to the authorities to terminate the services of an employee. Grant of absolute and unchecked discretionary power is an anathema to the Rule of Law. Pertinently, the termination in the present case was made for a reason, the reason being medical unfitness of the employee as concluded by the DTC Medical Board. It is in this context that we have to examine whether the order of termination dated 19.07.2013 violates Articles 14, 16, and 21 of the Constitution.

13. In view of the aforesaid, the impugned order of termination dated 19.07.2013 terminating Sunil Kumar being untenable in law is quashed and set aside. Accordingly, we allow W.P.(C) No. 9885/2015 filed by Sunil Kumar with the direction that he would

be given alternative employment in a suitable post. On the question of payment of back wages, the DTC is directed to pay 50% back wages to Sunil Kumar but the period between termination and reinstatement would not be treated as a break in service, and the salary on re-employment would include the increments that he would have earned. Compliance with the aforesaid directions will be made within 10 weeks from the date of this judgment and delay, if any, would entitle Sunil Kumar to interest at the rate of 9% on the amount payable till date of payment.”

4. In view of the aforesaid circumstances, facts of the case and the law laid down in this regard, the writ petition is accordingly dismissed, with no order as to costs. CM No.21351/2016 is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 23, 2017

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