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

+ **W.P.(C) 4932/2016 & CM APPL. 20525/2016**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms.Manisha Tyagi, Adv.

versus

VINOD KUMAR

..... Respondent

Through: Mr. Aditya Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER
12.10.2017

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1. The petitioner/ DTC has preferred the present writ petition to assail the order dated 09.04.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.27/2015. The tribunal has allowed the said O.A. preferred by the respondent. The petitioner was directed to offer regular appointment to the respondent on the basis of the selection held in 2009-10, if the respondent was found eligible otherwise.
2. The background in which the O.A. was preferred by the respondent was that he was initially engaged as a driver by the DTC on contractual basis with effect from 12.04.2010. At that stage, a medical board was also

held to examine the fitness of the respondent on 04.03.2010 and he was found medically fit to be appointed as a driver. His contractual appointment was extended from time to time – the last extension being from 13.10.2014 to 12.05.2015.

3. The petitioner issued an advertisement in the year 2009 to recruit 5000 drivers. The respondent, who is a scheduled caste candidate, appeared in the written examination as well as the skill test. Though he cleared both the written examination and the skill test, he was still declared medically unfit on the ground that he was not having the requisite height of 162 cms as stipulated in the advertisement issued by the petitioner. The respondent was found to be of 159 cms height as per the medical examination report dated 24.12.2010.

4. The respondent was not satisfied with the said medical board and, therefore, another medical examination was conducted on 17.10.2012. He was again found to be medically unfit for the same reason. Consequently, the respondent preferred the aforesaid O.A., wherein he assailed the medical report dated 17.10.2010 and 24.12.2010, whereby he was declared to be medically unfit for the post of driver in DTC. He also sought a direction that he should be given regular appointment by the DTC with consequential benefits.

5. The tribunal allowed the O.A. preferred by the respondent by placing reliance on a decision of this court in *Sunder Dev. V. UOI & Ors.*, 23 (1983) DLT 115. In this decision, the court held that where relaxation has been granted regarding height while recruiting constables by Delhi Police at the time of initial appointment, the lack of requisite height as stipulated by

the Delhi Police would not come in the way of promotion of such constables.

6. The submission of learned counsel for the petitioner is that since the respondent did not meet the requisite height stipulation, he had no right to regular appointment as a driver in the DTC. We may observe that when the writ petition was initially listed on 27.05.2016, this court while issuing notice in the writ petition directed that the respondent should continue to work as a driver. The petitioner was also asked to explain as to why the requirement of minimum height of 162 cms in respect of drivers had been incorporated in the service condition. The court observed that the said condition was apparently incorporated about 40 years back. The petitioner was asked to state whether the height requirement was reviewed in view of the present day technology.
7. The petitioner filed a status report, wherein it was stated that during the year 2014 the issue regarding the height of female bus drivers was considered by a committee constituted by the competent authority consisting of the CMO, DTC; CGM (P), Deputy General Manager (Mechanical) and Addl. CAO-II. The committee held its meeting on 14.10.2014 and 20.10.2014 to, inter alia, decide the issue regarding the height of female bus drivers.
8. The committee required three females of different heights i.e. 5.1", 5.2" and 5.3" to sit on the driver seat of the low floor bus. After adjudging the ground clearance from subject to object and also visibility zone in the light of material, the committee came to the conclusion that the height of female candidates should be 162 cms, so that there is no compromise on

safety of passengers/ public on road.

9. When the matter was listed on 06.07.2017, this court observed that the status report filed by the petitioner was not satisfactory. A better status report was called for on the basis of scientific data and materials to justify the fixation of the said high criteria. Despite the said direction, no further status report has been filed. We are not inclined to grant any further time for the said purpose.

10. The status report as earlier filed and referred to above is neither here nor there. Firstly, the same relates to female bus drivers and not to the male bus drivers. Secondly, there is absolutely no explanation as to how the respondent was found to be medically fit to perform the same function i.e. as a DTC bus driver on contractual basis since 2010, while not being medically fit for performing the same function as a bus driver on regular basis.

11. It could not be said that the respondent is medically fit to perform the same job on contractual basis, while not being so fit to perform the job on regular basis. The status report filed by the petitioner relates to the exercise conducted in the year 2014 i.e. even before the passing of the order dated 27.05.2016 above referred to.

12. The submission of learned counsel for the petitioner is that compliance of the directions issued by the tribunal in the case of the respondent would be disadvantageous to others who have not been considered on account of height requirement of 162 cms.

13. We are not concerned with the said aspect since it was the respondent who went to the tribunal and assailed the rejection of his candidature for

regular appointment as a bus driver in the DTC. Others have not approached the tribunal or any other forum. Accordingly, we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

OCTOBER 12, 2017

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