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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6424/2017 & CM APPL. 26604/2017**
DELHI TRANSPORT CORPORATION Petitioner
Through **Ms. Maheranish Rein, Adv.**

versus

SHRI VIJAY KUMAR Respondent
Through **Nemo.**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **28.07.2017**

CM APPL. 26604/2017

This is an application filed on behalf of the petitioner seeking exemption from filing the complete tribunal record.

Exemption allowed, subject to just exceptions. The application is disposed of.

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Initial submissions made on behalf of the petitioner.

The petitioner has assailed the impugned Award dated 01.03.2017 of the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) whereby the management / the petitioner herein was directed to pay a sum of Rs.2,98,828/- after deducting income tax of Rs.7,344/- from the total sum of Rs.3,06,172/-, which is the admitted amount of the compensation as per the calculation chart submitted by the management / the petitioner herein before the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) and as

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observed vide paragraph 10 of the said impugned Award dated 01.03.2017 with the further direction to the management / the petitioner herein to pay the said amount to the workman / the respondent herein within a period of one month from the date of the impugned Award dated 01.03.2017 failing which it was directed that the management / the petitioner herein would be liable to pay interest @9% per annum till the date of realization. The parties were also directed to bear their own costs.

Vide the impugned Award dated 01.03.2017, it is brought further that the claimant / the respondent herein had joined the management / the petitioner herein as Conductor in 1982 and he developed some defects in his eyes which hampered his duty as a Conductor and he made a representation to the management / the petitioner herein on 02.08.2006 but it went unreplied and that he again gave a representation on 04.05.2007 asking the management / the petitioner herein to refer him to the Medical Board for the check up of his eyes and that the management / the petitioner herein asked him vide letter dated 24.07.2007 to appear before the Medical Board and that the claimant / the respondent herein was asked by the doctors of the Medical Board that he should get checked his eyes from the Guru Nanak Eye Centre, New Delhi and he appeared before the doctors of the Guru Nanak Eye Centre and, thereafter contacted the Medical Board constituted by the management / the petitioner herein but the Medical Board refused to accept Guru Nanak Eye Centre's report and vide letter dated 06.08.2007, the management / the petitioner herein again asked him to appear before the Medical Board. Thereafter, he appeared before the Medical Board and he was given three months medical rest w.e.f. 08.08.2007. The management /

the petitioner herein again asked him vide letter dated 08.11.2007 to appear before the Medical Board and he was given three months rest w.e.f. 12.11.2007. Vide letter dated 08.02.2008, he was asked by the management / the petitioner herein to again appear before the Medical Board and he was given medical rest w.e.f. 11.02.2008. Again vide letter dated 10.04.2008, he was asked by the management / the petitioner herein to appear before the Medical Board and again the Medical Board gave him three months medical rest w.e.f. 11.04.2008 and finally, the Medical Board declared him medically unfit for the job of a Conductor w.e.f. 13.10.2008 vide letter dated 04.12.2008 against which he made a representation dated 19.12.2008 asking the management / the petitioner herein to provide him an alternative post. Thereafter, he gave several representations to the management / the petitioner herein to provide him an alternative job but his representations were not considered. Thereafter, he filed an application under the Right to Information Act, 2005 on 05.06.2009 due to which he was given an alternative post of table duty on 23.06.2009 but the management / the petitioner herein did not pay him wages from 01.06.2007 to 22.06.2009 which come out to Rs.3,12,000/- for which he had filed LCA No. 357/16.

As observed in the impugned Award, pursuant thereto the respondent was reinstated on 23.06.2009 and was posted in PLD-III and in order to harass him, he was transferred to Sri Niwas Puri Depot from PLD-III vide letter dated 22.09.2011 and when he reached Sri Niwas Puri Depot on 24.09.2012, he was asked to perform the duty of conductor which he refused as he had been declared medically unfit by the management / the petitioner herein vide letter dated 04.12.2008. Thereafter, he was sent back to PLD-III,

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but he was not assigned any duty. He sent the management / the petitioner herein a representation dated 25.09.2012 to give him duty and also reminder letters dated 26.10.2012, 18.07.2013 and 01.10.2013 but those went unreplied. The management / the petitioner herein was not giving him duty w.e.f. 24.09.2012 but the claimant / the respondent herein could not be forced to work as Conductor as he had already been declared medically unfit for the post and his wages from 25.09.2012 to 31.10.2013 come out to Rs.3,29,000/-. The management / the petitioner herein however contended that the claimant / the respondent herein having been declared medically unfit by the Medical Board of the management / the petitioner herein, to perform duty, there was no question of paying him any arrears and all his representations were dealt as per rules and as the claimant / the respondent herein did not perform the duty which was given to him and hence, he was not entitled to any salary.

Qua the contentions raised, the issue framed on 20.07.2015 by the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi to the effect : -

“1. To what amount, if any, the claimant is entitled to recover from the management? OPW”

was considered on the basis of the evidence led by the parties and the representations of the workman / the respondent herein and letters of the management / the petitioner herein and the depositions of the management's Depot Manager Sh. Avinash Kumar examined as MW1 and as per the impugned Award, the available evidence on record established that the claimant / the petitioner herein had been declared medically unfit for the job of Conductor w.e.f. 13.10.2008 and was given an alternative post of table

duty on 23.06.2009 by the management / the petitioner herein and pursuant thereto, the respondent was reinstated on 23.06.2009 and was posted in PLD-III and was transferred to Sri Niwas Puri Depot from PLD-III vide letter dated 22.09.2011 and when he reached Sri Niwas Puri Depot on 24.09.2012, he was asked to perform the duty of conductor which he refused as he had been declared medically unfit by the management / the petitioner herein vide letter dated 01.12.2008 and that he was sent back to PLD-III but he was not assigned any duty and the management / the petitioner herein did not take him back and the respondent continuously remained jobless till the impugned Award.

The averments made before the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) and the observations of the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) on the basis of the evidence led before it, brings forth that despite the factum that the respondent was declared medically unfit by the Medical Board for the post of the Conductor due to which he was assigned table duty on 23.6.2009, again thereafter he was transferred from PLD-III and was asked to perform the duty of a Conductor and on his refusal to do so he had been declared medically unfit and was remained jobless w.e.f. 24.09.2012. The contention of the management / the petitioner herein that the respondent did not perform his duty deliberately cannot be accepted in view of the fact that he was as per the Medical Board of the members of the management / the petitioner herein itself, declared medically unfit to perform the duty of a Conductor.

A submission is now made by the learned counsel for the petitioner on
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behalf of the petitioner that the management / the petitioner herein had once again asked the workman / the respondent herein to appear before the Medical Board on approval by the C.G.M. (P) on 05.10.2012 for re-examination as the medical report was of the year 2008 to ascertain the percentage of the physical disability under the provisions of Section 47 of the Disability Act but the respondent had chosen not to appear before any such Medical Board. The impugned Award dated 01.03.2017 makes it apparent that there was no such assertion put forth by the management / the petitioner herein before the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) and the said stated document is not found placed on the record ever with the present petition.

A submission is made on behalf of the petitioner seeking permission to place the said document on record now which cannot be accepted and is disallowed.

On a consideration of the entire available record and the facts and the evidence led before the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13) , it is apparent that there is no infirmity in the impugned Award dated 01.03.2017 of the Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in LCA 225/16 (Old No. LCA 34/13)

The W.P.(C) 6424/2017 is thus dismissed.

ANU MALHOTRA, J

JULY 28, 2017/MK