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

+ **WP(C) No.7290/2017 & CM No.30165 /2017**

+ **Date of Decision: 23rd August, 2017**

JAI SINGH

.... Petitioner

Through: Mr.Kishore Kumar Patel, Advocate

Versus

DELHI TRANSPORT CORPORATION THROUGH ITS
CHAIRMAN & ANOTHER

....Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition impugns the order dated 05.03.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1664/2014 whereby the Tribunal has dismissed the Original Application filed by the Petitioner herein. The Original Application had been filed by the Petitioner challenging his superannuation from service at the age of 55 years, upon being found

medically unfit for further extension of 5 years to serve till the age of 60 years.

2. The Petitioner had joined the Delhi Transport Corporation (DTC) as a temporary Driver w.e.f. 13.08.1982. As per Regulation 10 of the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952 of the Respondents/DTC, the superannuation of all DTC employees is 55 yrs. The drivers are however considered for further extension of five years and they may be retained in service upto the age of 60 years subject to their medical fitness to be certified by Medical Board of the DTC, to work as a driver.

3. The Petitioner who had been appointed on 13th August, 1982, continued to serve till the age of 55 years and vide order dated 24th May, 2013, he was directed to retire from services of the Corporation w.e.f. 30th June, 2003 on the ground that he was not found medically fit for extension by the Medical Board. It may be noticed that before his superannuation, the Petitioner was examined by a Medical Board of the Respondents on 20th May, 2013 when the Medical Board opined that he was suffering from “*restricted movement of left little finger unfit*”. Based on this medical report, the Petitioner was not

found fit for further extension and, accordingly, the order dated 24th May, 2013 had been passed, wherein it was directed that he would retire from services of the Respondents-Corporation w.e.f. 30th June, 2013. It appears from the record, that after learning about his being declared unfit by the medical board of the Respondent/DTC, the Petitioner, on his own, got himself examined by the Rehabilitation Board, V.M.M.C. & Safdarjung Hospital, New Delhi, who apparently declared him fit, and armed with this medical report, he submitted an appeal dated 10th June, 2013 to the Respondents for his re-examination by the DTC Medical Board. The Petitioner's appeal was rejected by the Respondents-Corporation vide its order dated 3rd August, 2013 leading to the filing of the Original Application before the Tribunal.

4. In his Original Application, the Petitioner challenged the order superannuating him at 55 years and also prayed for his re-examination by a Medical Board. The Respondents, however, justified their action of not granting extension to the Petitioner and contended that the retirement of the Petitioner was in accordance with the Regulations of the DTC and the findings of its Medical Board. It was contended that once the Petitioner was not found fit for the post of driver, as per

medical standards fixed by the Corporation, it would not be in public interest to grant him further extension, especially, since the sole purpose of the DTC is to facilitate the transportation, commuting and travelling of the citizens of Delhi.

5. The Tribunal, after considering the submissions of both the parties and the fact that the Petitioner had been allowed to continue in service upto 55 years of age, which was the normal superannuation age provided in the regulations of the Respondent/DTC, dismissed the Original Application by observing as under:-

“The Delhi Transport Corporation Drivers have to drive the heavy vehicles (buses) at busy roads and the judgment regarding their fitness to continue in service beyond the age of 55 years should be left at the wisdom of DTC, Medical Board which has answerability in this regard. Misplaced sympathy in such cases can be counter productive. Once the retention in service beyond the age of retirement i.e 55 years is subject to medical fitness and the DTC medical board found the applicant unfit to be retained in service beyond such age, there is no scope of interference in the matter by the Tribunal. The OA is found devoid of merit and is accordingly dismissed.”

6. Challenging the order of the Tribunal before us, counsel for the Petitioner has once again raised the same submissions which have been considered by the Tribunal. He has submitted that once the VMMC & Safdarjung Hospital found him medically fit, the action of

the Respondents in declaring him unfit was wholly arbitrary and illegal. He has further contended that the Respondents ought to have considered the medical report of a renowned Government Hospital i.e. VMMC & Safdarjung Hospital and has urged that even otherwise, at least his prayer for medical re-examination ought to have been considered by the Respondent-Corporation.

7. Having heard the submissions of the learned counsel for the Petitioner and given our thoughtful consideration, we find that it is an admitted fact that the normal superannuation age of an employee of the Respondent-Corporation is 55 years, and further extension in service is specifically made subject to medical fitness. An employee cannot claim further extension of service upto 60 years as a matter of right and, therefore, once the Petitioner has been found medically unfit by the Board of the Respondent, he cannot claim that his services must be extended by relying on the medical opinion given by some other Hospital. Even otherwise, we are of the opinion that in such cases where the Medical Board of the employer has declared an employee unfit, it would not be safe, and would be inappropriate, to rely on the reports of some other Hospital-who may not be aware of the requirements of the job. The satisfaction with regard to the medical

fitness has to be of the employer who has to take work from the employee and who is responsible to maintain the safety of its operations. No malafides have been alleged by the Petitioner against any officer, or member of the Medical Board of the Respondent. Pertinently, he does not even dispute the existence of the physical deformity found by the Medical Board, but claims that the same does not adversely affect his functioning as a Bus Driver. This call had to be taken by the Medical Board and not by the Petitioner, or the other Hospital.

8. We, therefore, find no force in the submission of counsel for the Petitioner that once the Rehabilitation Department of VMMC and Safdarjung Hospital had found him medically fit, the said reports should have been taken into consideration by the Respondents to grant him extension.

9. We find absolutely no infirmity in the order passed by the Tribunal. The petition is dismissed being devoid of merit.

CM No.30165 /2017 (for stay)

10. In view of the writ petition having been dismissed, this

application does not survive for adjudication and is dismissed as such.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

AUGUST 23, 2017/aa-