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

+ **LPA 101/2019**

DELHI TRANSPORT CORPORATION Appellant

Through: Ms.Avnish Ahlawat, Advocate.

versus

MADAN LAL

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **13.02.2019**

CM APPL. 6673/2019 (Exemption)

1. Allowed, subject to all just exceptions.

LPA 101/2019 & CM APPL. 6672/2019 (Stay)

2. Delhi Transport Corporation (DTC) has filed this appeal against the impugned order dated 3rd December 2018 passed by the learned Single Judge dismissing WP(C) 5705 of 2001 filed by it challenging an Award dated 1st March 2001 of the Industrial Tribunal No.III, Delhi (Tribunal).

3. The facts in brief are that the Respondent, whose legal heirs were brought on record after he expired on 11th February 2016, was appointed as a driver on daily wage basis on 27th October 1980. He was brought on monthly wages on 27th April 1981. During the course of his employment, on 22nd September 1986 he suffered a fracture of his right hip bone. He was hospitalized and discharged on 20th October 1986. He was examined on 26th December 1986 by the DTC Medical Board which recommended that he be given non-driving duties for a period of three months.

4. The Respondent was redeployed in the ticket section where he kept working from 3rd January 1987 to 10th March 1988. He was again examined by the DTC Medical Board on 8th February 1990 which opined that he was not fit for driving duty for a period of three months. Subsequently, when he was examined again on 8th May 1990, the Medical Board opined that the Respondent was permanently unfit for the post of driver.

5. Acting on the above opinion, on 10th September 1992, the DTC permanently retired the Respondent from services on medical grounds with immediate effect under Clause 10 of Delhi Road Transport Corporation (Conditions of Appointment and Service) Regulations, 1952.

6. Initially, the Respondent filed a civil suit which came to be dismissed on the ground of maintainability. Thereafter, he raised an industrial dispute and the legality of the premature retirement of the Respondent was referred to the Tribunal. The Tribunal answered the reference in favour of the Respondent and directed his reinstatement.

7. The DTC challenged the above Award of the Tribunal before the learned Single Judge of this Court by filing WP(C) 5705 of 2001. The learned Single Judge came to the following conclusions:

- (i) In terms of judgment of the Supreme Court in *Anand Bihari v. Rajasthan State Road Transport Corporation (1991) 1 SCC 731*, a scheme was to be evolved to provide relief to such workmen who for some reason become incapacitated to work as drivers but are not rendered incapable of taking up any other job either in the

Corporation itself or outside, and for those workmen who are at an advanced stage in their lives which would make it difficult for them to get suitable employment outside.

- (ii) Following the above decision, the DTC issued two circulars dated 13th November 1995 and 11th October 1996. The circular dated 11th October 1996 stipulated conditions applicable to employees who were rendered medically unfit by the DTC Medical Board for the posts they were appointed, and stated that “in case of injury caused by accident arising out of and in the course of employment and as a result which an employee is incapacitated for the work which he was capable of performing at the time of accident resulting in total disablement shall be rehabilitated either in the equivalent post of lower subject to the conditions that he fulfils the requisites of educational qualification and is medically fit for the new post.” This was even before the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the ‘Disabilities Act’) was enacted.
- (iii) On 4th February 1994 the decision in *Narender Kumar Chandla v. State of Haryana (1994) 4 SCC 460* was delivered where it was *inter alia* held as under:

“When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties.”
- (iv) The above principles were reiterated in *Sohan Lal v. State of*

Haryana AIR 2013 SC 1767. In the present case, the workman had performed his non-driving duties in the ticket section for a long period. It was not the case of the management that his work was not as per expectations. Therefore, it was obligatory on the part of the management to retain him at that post where he had already been posted before he was prematurely retired by the order dated 10th September 1992. Consequently, there was no illegality or infirmity in the impugned Award.

- (v) The DTC had persisted with challenge to the Award at every stage and this had contributed to waste of judicial time and undue mental and physical pain and agony to the Respondent-workman and his family members. Accordingly, an enquiry was directed against the Officers of the DTC who had dealt with the file of the workman to retire him prematurely, contest the reference and file the writ petition. The petition was accordingly dismissed with costs Rs. 1 lakh which was to be deposited in the Registry and would be payable equally to all four legal heirs of the Workman.

8. Ms. Avnish Ahlawat, learned counsel for the DTC, contended that the Disabilities Act was not applicable as the accident in question took place prior to the enactment of the same. Moreover, the Respondent had only been in service for five years when he suffered the injury that rendered him unfit for driving duties. It is also submitted that wages under Section 17B of the Industrial Disputes Act were also paid.

9. This Court finds that there is no valid explanation offered by the DTC for persisting in its challenge to the Award of the Tribunal first by filing a writ petition and then this appeal. The plea that the Disabilities Act did not apply to the facts of the case is futile because the DTC, even as per its own circulars as issued on 13th November 1995 and 11th October 1996, could have redeployed the Appellant in the ticket section if he was found medically unfit for driving duties. As noted by the learned Single Judge, the Respondent's work in the ticket section was not found to be unsatisfactory. He served there from 3rd January 1987 to 10th March 1988 without complaint. In other words, even according to the DTC, subsequent to the accident, the Appellant was not treated as redundant or entirely disabled but instead as a person with sufficient skills for the ticketing section. With there being no medical opinion that the Respondent was incapable of discharging the duties in the ticketing, section or other non-driving duties, there was no reason for the DTC to have terminated his services.

10. This Court also concurs with the learned Single Judge in the matter of imposition of costs on the DTC for the reasons indicated in the impugned judgment.

11. There is no merit in this appeal and it is dismissed as such. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 13, 2019/tr