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

+ W.P.(C) 1357/2020
SH. RISHI PRAKASH

..... Petitioner

Through Mr. Bhavesh Kumar Sharma, Advocate.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through Mrs. Avnish Ahlawat, Standing Counsel
for GNCTD (Services) with Mr. N.K.
Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **05.02.2020**

CM APPL. 4740/2020 (exemption)

1. Exemption is allowed, subject to just exceptions.
2. Application stands disposed of.

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3. The present petition is directed against order dated 09.08.2018 passed by Central Administrative Tribunal ('Tribunal') by which the O.A. filed by the petitioner stands dismissed.
4. Notice to show cause as to why the petition be not admitted. Mrs. Avnish Ahlawat, learned Standing Counsel accepts notice on behalf of the respondent.
5. In this case, the petitioner was appointed as a Retainer Crew Driver (R/C Driver) in the respondent/Delhi Transport Corporation (DTC) w.e.f. 03.09.1998. However, on account of the petitioner remaining absent for more than 710 days without leave, his services were terminated.

6. The petitioner raised an industrial dispute being ID 61/2008; and a consent award was passed by the Industrial Tribunal, the relevant portion of which reads as under :

“6. The parties who appeared in the mediation entered into an agreement settling the matter which terms of mutual agreement as noted by the Ld. Mediator are as under:-

- a. That the workman will be appointed in the Corporation as a R/C driver afresh subject to possessing the valid driving licence and medical fitness from DTC Medical Board.*
- b. That he will not be given any benefit whatsoever for the intervening period i.e. from the date of termination till afresh appointment.*
- c. The workman will withdraw the cases if any pending before any courts.*
- d. Both the parties undertake to remain bound by the terms of settlement.*

7. After perusing the agreement reached between the parties in the mediation and upon hearing the parties, I find that the management is willing to take the workman on duty. The statement of the AR for the workman without oath is recorded. Hence, I pass the following award.

AWARD

The reference is answered as settled between the parties as per the terms of agreement reached between the parties before the Mediation Cell recorded in its report dated 19.08.09.

Both the parties shall abide by the terms of settlement reached.

Copies of this award be sent to the appropriate government for publication. File be consigned to record room.”

7. After the award, the petitioner was examined by the Medical Board of DTC and was found to be medically ‘unfit’. Since the petitioner submitted a contrary medical report issued from the Satyawadi Harish Chander Hospital, another Medical Board of DTC was constituted for review ; and

the petitioner was directed to appear before the said Medical Board and even this medical board declared the petitioner medically ‘unfit’.

8. Counsel for petitioner submits that action of the respondent is arbitrary, fanciful and is liable to be struck down; and the prayer made in this petition should be allowed.
9. We have heard learned counsel for the parties and have considered their submissions.
10. In view of the opinion rendered by the Medical Board, we would not substitute our opinion for the decision of the review Medical Board, whereby the petitioner already stands declared medically ‘unfit’. In view of the above discussion, no ground is made-out to entertain the present writ petition. Accordingly, the same is dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 05, 2020/ck/

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