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

% *Date of Decision: 19th December, 2022*

+ W.P.(C) 17016/2022

SHRI SATYA NARAIN Petitioner

Through: Mr. S. Sunil, Advocate

versus

DISTRICT AND SESSIONS JUDGE,
TIS HAZARI COURT

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Laavanya
Kaushik and Ms. Aliza Alam, Advocates
with Mr. Ashish Bhardwaj, Judicial
Assistant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking quashing of order dated 20.09.2019, communicated *vide* letter dated 12.03.2020, whereby the Respondent has rejected Petitioner's request for grant of transport allowance at double the normal rates, prescribed for physically handicapped persons by the Government of India and a writ of mandamus is sought directing the Respondent to grant the said allowance to the Petitioner.

2. The brief and relevant facts as brought forth in the petition are that Petitioner was registered with the employment exchange on 14.01.1977 under the category of physically handicapped persons. On 11.02.1980, Petitioner was appointed as 'Dak Peon' for a period of 3 months from the date of his joining the service, in pay-scale of

Rs.196-232 plus allowances, in the office of Administrative and Special Judge, Tis Hazari Courts, Delhi. On 11.03.1986, 5 persons were promoted as LDCs including the Petitioner and all the 5 were physically handicapped. Petitioner was subsequently promoted as UDC and finally retired as Senior Judicial Assistant on 30.09.2016.

3. During his service, Petitioner approached the Respondent seeking benefit of O.M. dated 03.10.1997, issued by the Government of India whereby transport allowance at double the normal rates was made admissible to those employees who were blind or orthopedically handicapped with disability of lower extremities. In response to Petitioner's application, Respondent *vide* letter dated 25.03.2014, asked the Petitioner to furnish the original disability certificate.

4. It is the case of the Petitioner that he was unable to search the original disability certificate for which he even lodged an FIR on 08.07.2014. Petitioner also followed up the matter with Loknayak Hospital but they were unable to assist as the records were old and weeded out. Having no option, Petitioner got himself medically tested and a fresh disability certificate was issued to him on 22.10.2014, by Hindu Rao Hospital which certified that he had 41% disablement relating to both upper and lower limbs. Petitioner candidly admits that this certificate was not placed before the Competent Authority before the passing of the impugned order on 20.09.2019.

5. Post the retirement of the Petitioner, the impugned order was passed on 20.09.2019, denying the benefit of the transport allowance double than the normal rent on the ground that he had applied for the same after his retirement and that no disability certificate had been provided by the Petitioner. Upon receiving the order, Petitioner requested for a review/reconsideration of the decision. Petitioner

thereafter received a letter dated 20.10.2021 from the Respondent for producing the original disability certificate so that the matter could be processed further. Receiving no response on the review application, Petitioner has approached this Court by filing the present petition.

6. Petitioner's contention is that Government of India has issued an O.M. dated 03.10.1997, wherein special provision has been made for granting double transport allowance to those with certain specified physical disabilities and since the Petitioner is orthopedically 41% disabled, which is supported by the disability certificate, there is no reason why the benefit should be denied to him.

7. It is further submitted that from reading of the impugned order it is discernable that the only reason for depriving the Petitioner of the benefit is non-receipt of the disability certificate, which has since been given to the Competent Authority.

8. Mrs. Avnish Ahlawat, learned Standing Counsel appearing on behalf of Respondent No. 1, *per contra* submits that the stand of the Petitioner that he was appointed as a physically handicapped person is wholly incorrect and there is nothing on the official record to substantiate this position adopted by the Petitioner. According to Ms. Ahlawat, Petitioner was appointed in the year 1980 after he was declared medically fit by the LNJP hospital. Therefore, in the absence of a disability certificate, which is a pre-requisite for grant of double transport allowance, no benefit can be granted to the Petitioner and the impugned order was rightly passed.

9. Having heard the learned counsels for the parties, it appears that there are various disputed questions that are arising at this stage: (a) appointment of the Petitioner allegedly as a physically handicapped person; (b) nature and extent of his alleged disability; and (c) whether

the disability certificate has been given by the Petitioner to the Competent Authority and if so, when. It is also not denied by the Respondent that the review filed by the Petitioner is still pending consideration before the Competent Authority.

10. In the above facts and circumstances, this Court deems it appropriate to direct the Respondent to treat the present writ petition as a representation and take a decision thereon. A reasoned and speaking order shall be passed by the Respondent, within a period of four weeks from today.

11. Needless to state that the decision shall be communicated to the Petitioner, who is at liberty to take recourse to remedies available in law, in case of any surviving grievance thereafter.

12. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 19, 2022/rk