



2024:DHC:9741-DB



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

+ **W.P.(C) 284/2017**

SURAJ PRAKASH SHARMA AND ORSPetitioners
Through: Mr. Kishore Kumar Patel, Adv.

versus

**DELHI TRANSPORT CORPORATION
THROUGH ITS CHAIRMAN AND ANR**Respondents
Through: Mr. LK Passi and Ms. Ruby,
Adv.

+ **W.P.(C) 513/2017**

SURAJ PRAKASH SHARMAPetitioner
Through: Mr. Kishore Kumar Patel, Adv.

versus

**DELHI TRANSPORT
CORPORATION & ANR.**Respondents
Through: Mr. LK Passi and Ms. Ruby,
Adv.

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE GIRISH KATHPALIA**

JUDGMENT (ORAL)

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28.11.2024

C. HARI SHANKAR, J.

WP (C) 284/2017

1. The petitioners in this writ petition joined the services of the

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Delhi Transport Corporation¹ as Drivers. While so serving, they sustained disabilities as defined in Section 2 of the Persons with Disabilities Act, 1995². Consequent thereon, they were given alternate postings of Store Assistant, Chowkidar, Gatekeeper and the like.

2. *Vide* Circular dated 30 June 1998 the decision taken by the DTC in its Board Resolution 84/98 was notified. By the said Circular, the retirement age of employees of the DTC, was enhanced from 58 to 60 w.e.f.³ 27 May 1998. In respect of Drivers, however, the circular stipulated that their entitlement to the benefit of enhanced retirement age was subject to their being found fit in all respects after a thorough medical examination by the Medical Officer of the DTC every year after the age of 55. In the event of their not being found fit in the medical examination, the Circular stipulated that they would be retired without further notice.

3. The petitioners instituted OA 4179/2014, before the Central Administrative Tribunal⁴, praying that para 3 of the circular dated 30 June 1998, to the extent it did not distinguish between Drivers who were continuing to work as Drivers, and those, who, owing to their having suffered disabilities, were posted in alternate postings, be declared illegal and ultra vires Section 47 of the PWD Act.

4. Alternately, it was prayed that the requirement of yearly medical examination, as applicable to Drivers, be not applied to

¹ "DTC", hereinafter

² "PWD Act", hereinafter

³ with effect from

⁴ "the Tribunal", hereinafter



Drivers who had been posted in alternate postings owing to their having suffered physical disabilities during the course of their service.

5. By judgment dated 18 May 2016, the Tribunal dismissed the OA 4179/2014, filed by the petitioners. The reasoning of the Tribunal is contained in the following paragraphs:

“12. Admittedly, the applicants had joined the Corporation as Drivers but after attaining disabilities within the meaning of Section 2 of the Disability Act, they were given alternate placements in the DTC. The retirement age of the Drivers in the DTC is 55 years. The impugned Annexure A-1 circular dated 30.6.1998, however, entitles the Drivers to work upto the age of 60 years subject to they undergoing annual medical check up after attaining the age of 55 years and being found medically fit for the driving duties. In the other words, the official retirement age for the Drivers is 55 years but they can be given extension of service on year to year basis subject to they being found medically fit for the driving duties during the mandatory annual medical check-ups. The applicants undoubtedly joined as Drivers in DTC and were fully aware that for them the retirement age is 55 years only. They were also aware that the benefit of extension of service upto 60 years is incumbent upon they being found medically fit for driving duties in yearly medical examination, after attaining the age of 55 years.

13. The applicants after they acquired disabilities albeit during the course of employment could have been retired even before attaining the age of 55 years but after the Disability Act coming into force their retirement age despite acquiring disabilities, has been assured to be 55 years. Simply because they have been given alternate employment in the DTC after acquiring disabilities would not entitle them to crave for higher retirement age of 60 years notwithstanding the fact that the normal retirement age of the Drivers, the posts to which they were appointed, is 55 years only.

14. We do not find that the Annexure A-1 circular of the respondent-Corporation in any way violates equality principles enshrined in Articles 14 & 16 of the Constitution of India. It is settled law by the Hon'ble Supreme Court that the equality has to be claimed amongst equals. Hence the applicants who were recruited as Drivers in the DTC originally have to claim equality amongst the Drivers only. The impugned circular does not make any discrimination between the one Driver and the another Driver of the respondent-Corporation. The circular is uniformly applicable



to all the Drivers. As a matter of fact, the applicants should feel obliged to the respondent-Corporation that, even after acquiring disabilities, they are allowed to continue in service of the DTC upto the age of 55 years in alternate placements without loss of any monetary benefits to them. Even though they might be doing alternate jobs, as they cannot do driving duties on account of their disabilities, but in the eyes of law they continue to be drivers getting the same monetary benefits as they would have been getting while actually performing the driving duties. Thus we also hold that the impugned circular is neither violative of the provisions of DRTL Act nor those of the Disabilities Act.

15. For the reasons discussed in the foregoing paras, we do not find any illegality, infirmity or perversity in the impugned Annexure A-1 circular dated 30.06.1998 issued by the respondent-Corporation. We also hold that the impugned Annexure A-1 circular is not ultra vires to Articles 14 and 16 of the Constitution of India and that it is in conformity with the Disabilities Act as well as with the DRTL Act.”

6. Effectively, therefore, the Tribunal was of the view that a person, once a driver, would always remain a driver. The birthmark of initial appointment as driver, according to the impugned order, would not be effaced even if, during the course of service as driver, the employee concerned suffered disability and was, therefore, offered an alternate posting.

7. Aggrieved by the aforesaid judgment, the applicants before the Tribunal have approached this Court by means of the present writ petition under Article 226 of the Constitution of India.

8. We have heard, Mr. Kishore Kumar Patel, learned Counsel for the petitioners and Mr. L.K. Passi, learned Counsel for the respondents at length.

9. Mr. Patel places reliance on the judgment of the Supreme Court



in *Ram Phal v DTC*⁵.

10. Mr. Passi submits, *per contra*, that the judgment in *Ram Phal* is distinguishable as, in that case, the appellants before the Supreme Court, having sustained physical disability while working as driver, were reappointed in alternate postings, and the order of reappointment specifically clarified that it was in the nature of a fresh appointment and that the period between the date of pre-mature retirement of the employee as Driver and reappointment in the new post would be treated as *dies non*.

11. Mr. Passi submits that, unlike the situation which obtained before the Supreme Court in *Ram Phal*, the alternate postings of the petitioners in the present case, were not by means of fresh appointment orders and, therefore, they continued as Drivers, albeit working in other capacities.

12. We are unable to agree with Mr. Passi.

13. The Supreme Court in its judgment, decided two appeals, one filed by Trilochan Singh and the other filed by Ram Phal. We deem it appropriate to reproduce the judgment of the Supreme Court in its entirety:

“1. Heard learned counsel for the petitioners and learned counsel for the respondent-Delhi Transport Corporation (hereinafter called the 'Corporation').

⁵ Civil Appeal 183/2016, decided on 12 January 2016



2. Delay condoned in SLP(C) No(s).35202-35204/2009. Leave granted in all the SLPs.

3. The facts available in the record of the appeals arising out of SLP(C)Nos.35202-35204/2009 filed by Trilochan Singh disclose that after he suffered disability as a Driver under the respondent-Corporation, by an order dated 16.12.1996 the Corporation re-appointed him to the post of Store Attendant with various terms and conditions which inter alia indicate that his appointment as a Store Attendant will be a fresh appointment. For the intervening period, i.e., from the date of pre-mature retirement to the date of his appointment to the new post, he will be treated as dies non. The break up period will neither be counted as a service nor be construed as a break in service.

4. In view of such clear terms in the fresh appointment letter, the appellant Trilochan Singh could not have been taken as a Driver and superannuated from service at the age of 55 years. when the retirement age of other cadre of employees including the Store Attendant is 60 years. Hence, without the need of going into the statutory provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and their interpretation, on facts we are satisfied that the appellant-Trilochan Singh was wrongly superannuated at the age of 55 years.

5. In that view of the matter, we direct the respondent-Corporation to treat the appellant-Trilochan Singh to be in service as Store Attendant till he attained 60 years of age. For working out the emoluments payable on account of this order, the respondent-Corporation will be entitled to deduct the pension for the said period for which the appellant-Trilochan Singh will be treated to be in service and pay the difference of salary only. The amount of pension payable will also have to be re-worked by taking into account the fact that appellant-Trilochan Singh shall be deemed to be in service till he attained 60 years of age and shall be deemed to have superannuated on the lawful salary payable to him till that age.

6. *In the case of Ramphal in Civil Appeal arising out of SLP(C)No.10348/2009, the relevant documents are not available but it is apparent that he had met with an accident as a Driver of the 3 respondent-Corporation on 29.4.1995 and thus suffered disability before coming into force of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Hence, for all practical purposes, the case of Ramphal has to be treated on same footing as of Trilochan Singh and he is*



also held entitled for a declaration that he was wrongly superannuated at the age of 55 years when he was working on a post different than that of Driver. He shall also be treated to be in service till he attained the age of 60 years. In his case also, difference of salary and pension etc. shall be worked out as per law.

7. The dues payable to the appellants in both matters shall be paid by the respondent-Corporation within three months. We are once again making it clear that this order has been passed on the basis of peculiar facts and fresh appointment letter as noticed above. In case the dues are not paid by the respondent-Corporation within three months, the same shall carry interest at the rate of 18% per annum till they are paid. Civil Appeals arising out of SLP(C)Nos.35202-35204/2009 and Civil Appeal arising out of SLP(C) No.10348/2009 are allowed to that extent. No order as to costs.”

(Emphasis supplied)

14. The point of distinction as sought to be made by Mr. Passi, may apply to the judgment of the Supreme Court in so far as it decides the Civil Appeal of Trilochan Singh. However, while dealing with the Civil Appeal filed by Ram Phal, the Supreme Court notes, at the very outset, that the relevant documents were not available. In other words, the factual distinction between the case of Trilochan Singh and the case of the present petitioners may not apply when examining the applicability of the judgment of the Supreme Court qua Ram Phal, to the present facts. Even in the absence of any documents which would indicate that the posting of Ram Phal was by way of a fresh appointment – as was the case with Trilochan Singh – the Supreme Court, nonetheless, held that, having met with an accident as a Driver of the DTC and suffered disability before the coming into force of the PWD Act, for all practical purposes, Ram Phal’s case was to be treated as on the same footing as Trilochan Singh and that he would also be entitled for service upto the age of 60 years, along with



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consequential relief by way of arrears of salary and pension.

15. Even on principles of parity, this reasoning is eminently wholesome. The DTC could not, in the case of employees working as drivers who suffered physical disability during the course of their employment, issue fresh appointment orders of alternate posting in the case of some, and merely issue alternate posting orders in the case of others, and, on that ground, treat them differently. Any such discrimination would clearly infract Articles 14 and 16 of the Constitution of India.

16. In so far as the requirement of undertaking medical examination every year is concerned, the Notification to the said effect on which the DTC relies, reads thus:

“DELHI TRANSPORT CORPORATION
(Govt. of N.C.T. of Delhi)
I.P. Estate: New Delhi.

No.PLD-V/retirement/98/2145

Dated: 30.6.98

Sub: Amendment in Fundamental Rule-56 regarding increase in the retirement age of govt. servant from service from 58 years to 60 years.

In accordance with the DTC Board's resolution No.84/98, item 56/98 dated 26.6.98, the Board after detailed discussion resolved that the age of retirement on superannuation of the employees of DTC should be enhanced from. 58 to 60 years w.e.f. 27.5.1998 to date from which the Govt. of NCT Delhi had issued, circular No.F.2/64/98/S-I dated 27.5.98 (copy enclosed for ready reference).

2. In regard to the employees who have already been retired from the services of this Corporation w.e.f. 31.5.1998, be called for duty but no wages should be paid for the intervening period w.e.f. 1.6.1998 to the date of their joining against DTC. However, other

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sei-vice benefits as per rules shall be admissible to them. (The list as the employees xxxx from the service w.e.f 31.5.03 A.N. xxx).

3. The Board further resolved that the -drivers of the DTC shall get the benefit of enhanced retirement age subject to their being found fit in every respect after a thorough medical examination by the Medical officer of the DTC every year after they have attained the age of 55 years. The first examination shall be carried out immediately after or before they have attained the age of 55 years. If as a result of such medical examination they are found unfit for further service, they would be retired from the service of the Corporation without any notice.

4. The other conditions of the Central Govt. Notification dated 13.5.1998 will remain the same.

Sd/-
(J.R. Rana)
Dy. Manager (Pers.)”

Thus, the Notification specifically refers to Drivers. Inasmuch as the petitioners were no longer working as Drivers, the said Notification could not apply to them. Besides, the requirement of undertaking medical examination every year was obviously to ensure the continued competence of the employee concerned, to function as a Driver. This requirement can obviously not apply where the employee was no longer working as Driver and had been posted to another assignment.

17. Besides the Supreme Court has held, in *Rajive Raturi v Union of India*⁶, that the provisions of PWD Act have to be accorded an expansive interpretation so as to maximize the reach of the benefit of the statute, rather than restrict its scope.

18. Mr. Passi has not been able to point out any ground on which



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the case of Ram Phal can be distinguished from the case of the present appellant. Accordingly, applying to the facts of the present case, the judgment dated 12 January 2016 of the Supreme Court in so far as it decides Civil Appeal 183/2016⁷, to the facts of the present case, we are of the opinion that the petitioners are entitled to succeed in the writ petition.

19. Accordingly, the impugned judgment dated 18 May 2016 passed by the Tribunal is quashed and set aside.

20. The writ petition is accordingly allowed with consequential relief as was granted to Ram Phal and Trilochan Singh, the appellants before the Supreme Court.

21. The petitioners would, therefore, be entitled to be continued in service/treated as having been continued in service till the age of 60 with consequential benefits.

22. Let the consequential reliefs, if any, in the form of arrears of salary and pension be disbursed to the appellants by the DTC, within a period of 4 weeks from today.

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⁷Ram Phal v DTC

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23. This writ petition emanates from judgment dated 28 April 2016 passed by the Tribunal in OA 2983/2012, which was filed individually by Suraj Prakash Sharma, Petitioner 1 in WP (C) 284/2017. Though the OA, as originally filed, contain various prayers, submissions ultimately were advanced only on the aspect of whether the petitioner was entitled to continue in service till the age of 60. The petitioner relied on the judgment of the Supreme Court in **Ram Phal**. The Tribunal sought to distinguish the judgment in **Ram Phal** on the ground that it involved a case of fresh appointment with independent terms and conditions. We have already indicated, hereinabove, that the judgment of the Supreme Court covered the cases of Ram Phal as well as Trilochan Singh and that, while the facts in **Trilochan Singh** may be distinguishable from those of the petitioner, there is no distinction between the facts of Ram Phal's case and that of the petitioner.

24. Accordingly, in view of the judgment already rendered by us, hereinabove in WP (C) 284/2017, no separate order is required to be passed in the present writ petition, it is accordingly disposed of. The judgement dated 28 April 2016 of the Tribunal, however, would stand set aside.

C. HARI SHANKAR, J.

GIRISH KATHPALIA, J.

NOVEMBER 28, 2024

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[Click here to check corrigendum, if any](#)