

(2024) 12 CAT CK 0001

Central Administrative Tribunal Principal Bench, New Delhi

Case No: Review Application No. 58 Of 2024 In Original Application No. 3667 Of 2023,
Miscellaneous Application 2282 Of 2024

Narender Kumar

APPELLANT

Vs

Delhi Transport Corporation
Chairman Cum Managing
Director I.P. Estate, HQ Quarter,
New Delhi-02 & Ors

RESPONDENT

Date of Decision: Dec. 3, 2024

Hon'ble Judges: Dr. Chhabilendra Roul, Member (A)

Bench: Single Bench

Advocate: Ajesh Luthra, S.N. Sharma

Final Decision: Allowed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present RA has been filed by the Review Applicant seeking recall of Order dated 22.12.2023 passed by this Tribunal in Original Application

No.3667 of 2023. This RA is accompanied by MA No.2282 of 2024 seeking condonation of delay in filing the Review Application.

1.1 Admittedly, the Review Application has been filed after delay of 114 days. The Review Applicant has stated that the delay was neither intentional

nor deliberate. Having heard both the parties, I am satisfied regarding the reason forwarded by the Review Applicant regarding the delay in filing the

Review Application. Accordingly, the delay in filing the Review Application is condoned. On issuance of notice, both the parties were heard on

18.11.2024 when both the counsels tendered their submissions.

2. This Tribunal vide order dated 22.12.2023 has passed the following order:

3. The learned counsel for the respondents states that the DTC medical board is a competent board and they have conducted the medical examination properly. However, they have no objection if the applicant is re-examined at one of the six medical institutions approved by the DTC for conducting such medical examinations, particularly for drivers. The learned counsel for the applicant has no objection if such direction is given by this Tribunal.

4. In view of the averments made by both counsels, at this stage, without going into the merits of the case, the respondents are directed to conduct a fresh medical re-examination from one of the six approved medical institutions, namely:

1. Lok Nayak Hospital, Delhi Gate, New Delhi
2. Indira Gandhi Hospital, Sector 9 Rohini
3. Baba Saheb Ambedkar Hospital, Sector 6 Rohini
4. Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi
5. GTB Hospital, Dilshad Garden, Shahdara
6. Gurunanak Eye Center, LNJP Colony, New Delhi.

5. The concerned medical institution approved by the DTC shall conduct this medical examination within four weeks from the date of receipt of a copy of this order. Accordingly, the present OA is disposed of. No costs.

3. The Respondents in the OA had challenged the order dated 22.12.2023 before the Delhi High Court in WPC No. 6058 of 2024. The Hon'ble High Court vide order dated 30.04.2024 passed the following order.

5. Even though this plea of learned counsel for the petitioner appears to be attractive on the first blush, upon an examination of the impugned order, we find that the said directions had been issued with the consent of the learned counsel for the petitioner. We, therefore, find absolutely no reason to interfere with the impugned order, which is clearly a consent order. The writ petition is, accordingly, alongwith the accompanying applications, dismissed.

6. At this stage, learned counsel for the petitioner submits that since the consent before the learned Tribunal, was given by the learned counsel for the

petitioner without seeking any instructions from the petitioner, the petitioner will be moving an application seeking recall of the impugned order before the learned Tribunal. We make it clear that if any such application is moved by the petitioner, the same will be considered by the learned Tribunal on its own merits.â€

4. Mr. Ajesh Luthra, learned counsel for the review applicant, submits that there are two instances of apparent errors on the face of the record in the order dated 22.12.2023 in OA No. 3667/2023. He refers to paragraph 2 of the said order, particularly the first sentence, where it has been stated that the respondents â€œremovedâ€ the applicant from service based on a medical examination. He contends that this is contrary to the facts, as the applicant was never removed from service. Instead, he superannuated upon attaining the age of 55 years because he failed the medical test required for further extension as a DTC Driver. According to the Recruitment Rules (RRs), the normal age of superannuation for a DTC Driver is 55 years.

4.1 Secondly, he draws attention to pages 20 and 21 of the OA, where the applicant submitted medical certificates from the Post Graduate Institute of Medical Sciences, Rohtak, diagnosing him with IHD (Ischemic Heart Disease) and MED. The diagnosis confirms that the applicant was suffering from heart disease, rendering him medically unfit for an extension as a Driver in DTC. He also refers to page 21, where the applicant produced an echocardiography report from Hindu Rao Hospital, which recommended a treadmill test. From these documents, submitted by the applicant himself from government hospitals, it is evident that he is not medically fit for an extension beyond the normal superannuation age of 55 years. Therefore, there is no necessity to direct the respondents to conduct a fresh medical re-examination of the applicant.

4.2 The learned counsel for the Review-Applicant avers that in paragraph 3 of the order dated 22.12.2023, it is mentioned that the counsel for the respondents had no objection to the applicant being re-examined at one of six medical institutions. The respondents, however, have clarified that no such instructions were given to their counsel. The instructions were only to oppose the OA.

5. The learned counsel for the respondents in the RA states that there is no apparent error on the face of the record in the order dated 22.12.2023. He submits that the Tribunal did not delve into the merits of the case but, based solely on the submissions made by both counsels, ordered a fresh medical examination of the applicant. In view of this, the RA is not sustainable. He further states that it is not the case that the respondents are unwilling to conduct a review medical examination. He refers to the order passed by this Tribunal in OA No. 2244/2022 on 03.11.2023, wherein the Tribunal directed the applicant to submit a detailed representation requesting the respondents to conduct a review medical examination, and the respondents were directed to consider the request. Following the applicant's fresh representation, the respondents conducted a review medical examination in that case. In the present case, the applicant submitted a representation dated 22.08.2023, which is still pending with the DTC. The respondents, therefore, request that the representation be considered before any further directions are issued.

6. Going by the submissions by learned counsel for Respondents in the OA and Review Applicant in this RA, we come to the conclusion that major reason for seeking recall of order dated 22.12.2023 is that the counsel on behalf the Respondents did not had the consent or express instructions from the Respondents in the OA to give consent to conduct Review Medical Examination of the Applicant in the OA for assessing his suitability for extension of his service as a DTC driver.

7. This Tribunal does not want to comment on the ethical issue involved in the responsibilities of counsels appearing on behalf of parties. When they render their submissions, presumption is attached to their statements that they have made such submissions on instructions from the respective clients, even if it is not expressly mentioned that "with instructions from his client(s)". Nevertheless, this Tribunal accepts the bona fide of the Respondents that there was no express instruction to their counsel in the OA to consent for a Review Medical Examination of the Applicant driver for assessing his suitability to get extension in service as a driver after attaining the age of normal superannuation at 55 years.

7.1 The second reason stated in the Review Application is that there was factual error in Paragraph 2 of the Order. The Applicant in the OA was

never “Removed” from service, but was “retired on attaining age of superannuation.”

8. In view of the above, this Tribunal is of the view that the Order dated 22.12.2023 deserves to be recalled. Accordingly, I allow the Review

Application and recall order dated 22.12.2023 in OA No.3667 of 2023.

9. The OA shall be heard afresh on 23.12.2024.