Delhi High Court
Delhi Transport Corporation vs Shri Dharam Pal (Ex. Driver) on 9 January, 2009
Author: Mool Chand Garg

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 11.12.2008
Date of decision: 09.01.2009

\+ LPA 1214/2007

DELHI TRANSPORT CORPORATION ...Appellant
Through: Mr. J.S.Bhasin, Advocate

Versus

SHRI DHARAM PAL (EX. DRIVER) ...Respondent
Through: Nemo

\+ LPA 121/2007

DELHI TRANSPORT CORPORATION ...Appellant
Through: Mr. Sumeet Pushkarna, Advocate

Versus

NIRMAL SINGH ...Respondent
Through: Mr.N.A.Sebastian, Advocate

\+ WP(C) 12265/2004

SH. YASHBIR SINGH ...Petitioner
Through: Mr. Raman Kapur, Advocate

Versus

DELHI TRANSPORT CORPORATION ... Respondent
Through: Mr., J.S.Bhasin, Advocate

\+ WP(C) 13885/2006

BALWAN SINGH ...Petitioner
Through: Mr. Anil Mittal, Advocate

Versus

DELHI TRANSPORT CORPORATION. ... Respondent
Through: Mr. Sumeet Pushkarna, Advocate

\+ WP(C) 6803/2006

RAM PHAL ...Petitioner
Through: Mr. Anil Mittal, Advocate

Versus

DELHI TRANSPORT CORPORATION. ...Respondents
Through: Nemo

\+ LPA 1251/2007

TRILOCHAN SINGH AUJLA ...Appellant
Through: Ms. Rasmeet K. Charya, Advocate

Versus

DELHI TRANSPORT CORPORATION ...Respondent
Through: Mr.J.S.Bhasin, Advocate

\+ LPA 2123/2006

DALEL SINGH ...Appellant
Through: Mr.K.K.Patel, Advocate

Versus

DELHI TRANSPORT CORPORATION ...Respondent
Through: Mr.J.S.Bhasin, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This Judgment shall dispose of all the aforesaid matters which raises the following Common questions for our consideration:-

i) Whether Section 47 of the â Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (hereinafter referred to as â the Disabilities Act)â also mandates that the drivers (hereinafter referred to as â workmen/driversâ) working in Delhi Transport Corporation (hereinafter referred to as â the managementâ) be retained in service till the age of sixty years even after they reached the age of their superannuation which is 55 years as

provided for vide Regulation 10 of DRTA(Conditions for Appointment of Service) Regulations 1952, (hereinafter referred to as â the Regulationsâ) and were not found fit to by a medical board to act as a driver after that age.

ii) Whether office order No. 99 dated 04.10.1963 and the circular dated 30.6.98, issued by the management by virtue of Section 4(e) of Delhi Road Transport Laws (Amendment) Act, 1971 providing for the extension of the service of the drivers beyond 55 years of age on year to year basis subject to their medical fitness up to 60 years is discriminatory in view of the age of superannuation of other employees who retires at 60 years.

iii) Whether the workmen/drivers who retired prematurely from services of the management from the post of driver on having incurred physical disability before reaching the age of superannuation at 55 years, but retained in service till that age, on account of the benefits made available to them by Section 47 of the Disability Act by assigning them either a lower post or otherwise with the pay and allowances as admissible to a driver are also entitled to superannuate at the age of 60 years as a matter of right despite being un fit to act as a driver after the age of superannuation by claiming parity with other employees of the Corporation who retires at 60 years.

2. It is an undisputed fact that all the workmen who are, either the petitioners/appellants or respondents in all these matters had LPA No.1214/2007 Page 3 of 34 been working as a bus driver under the management before their superannuation from service. They all incurred physical disability for various reasons before reaching the age of 55 years, which is the age of superannuation for a driver as per their service regulations, and were retained in service either in a lower post or otherwise but in the same pay scales after coming in to force of the Disability Act extending such benefits to the disabled Government Servants in accordance with the provisions contained under Section 47 of the said Act. However their further extension after 55 years was not recommended by a medical board, constituted by the management which was essential for their further extension in service on year to year basis up to the age of sixty years in accordance with the office order 99/63 read with circular dated 30.6.98 issued by the management.

3. It would be appropriate to take note of the office order No.99/63 dated 04.10.1963 issued by the management governing service conditions of the workers including the drivers working in erstwhile Delhi Transport Undertaking(DTU) than a part of MCD now taken over by Delhi Transport Corporation, the management which reads as under:-

> In accordance with the provisions of Regulation 10 of the DRTA (Conditions of Appointment & Service) Regulations, 1952 is framed by the erstwhile DRTA which are still in force in term of Section 516(2)(a) of the D.M.C. Act, the employees of this Undertaking are to retire on attaining the age of 55 years provided their LPA 1214/2007 Page 4 of 34 services are not otherwise terminated earlier. The Municipal Corporation of Delhi, vide resolution No. 450 of its meeting held on 05.09.1963 has raised the age of superannuation from 55 years to 58 years in respect of the employees of the Undertaking subject to the following terms and conditions.

(a) The decision shall take effect from 05.09.63 i.e. the date on which the Corporation has taken the decision.

(b) Those who have already retired before this date or those who are on refused leave on 05.09.63 beyond the date of their normal retirement after attaning the age of 55 years shall not be entitled to resume duty. However, those who, on the effective date, are on refused leave beyond the date of normal retirement may be re-

employed if found fit at the discretion of the appointing authority. No employee or officer shall, however, claim it as a right to be so re-

employed

(c) Those who had previously retired according to the normal rules and have subsequently been re-employed shall not be entitled to this benefit.

(d) Persons on extension or service on the date from which the decision would be effective will be allowed to continue in service up to the age of 58 years.

(e) Notwithstanding the conditions stipulated above and the decision to extend the age of superannuation from 55 to 58 years, the appointing authority may require an officer or an employee of the DTU to retire after he attains the age of 55 years after giving three monthsâ notice without assigning any reason. The officers and employees shall also have the option of retiring after giving three monthsâ notice to the appointing authority after attaining the age of 55 years.

(f) The drivers of the DTU shall get the benefit of the enhanced retirement age subject to the being found fit in every respect after thorough medical examination by the Medical Officer/Officers of the DTU 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 services of the Undertaking without any notice.

4. The aforesaid office order initially provided for retirement age of all employees of the Corporation as 55 years later extended up to 58 years while that of the drivers was

kept at 55 years extendable on year to year basis subject to their medical fitness. The benefit of extension was made applicable even up to 60 years on the basis of their medical fitness vide circular date 30.6.98 which reads as under:

> DATED 30.06.1998 SUB: AMENDMENT IN FUNDAMENTAL RULE 56 REGARDING INCREASE IN THE RETIREMENT AGE OF GOVERNMENT SERVICE FROM SERVICE FROM 58 YEARS TO 60 YEARS In accordance with the DTC Boardâ s resolution NO. 84/98, item 56/98 dated 26-6-1998, the Board after detailed discussion resolved that the age of retirement on superannuation of the employees of DTC should be enhanced from 58 years to 60 years w.e.f. 27-5.1998, the date from which the Govt. of NCT of Delhi had issued circular No. F-2/64/98/S-I dated 27-5-1998.
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> 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 again DTC. However, other service benefits as per rules shall LPA 1214/2007 Page 6 of 34 be admissible to them 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.
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> The other conditions of the Central Govt.

Notification dated 13-5-1998 will remain the same (copy enclosed)

5. Thus it is the mandate of the office order 99/63 and the circular dated 30.6.98, issued by the management by virtue of Section 4(e) of Delhi Road Transport Laws (Amendment) Act 1971 in accordance with regulation 10 aforesaid that the retiring age of the drivers of the management is 55 year. However they may be retained in service further up to 60 years subject to their medical fitness, to be certified by a medical board of the Management, to work as a driver on year to year basis on account of shortage of drivers with the management.

6. However the workmen/drivers who are the petitioners in CWPs No. 12265/2004, 13885/2006, 6803/2006 which petitions were transferred to this Court by a ld. Single Judge, claimed retention in service up to 60 years as a matter of right in view of the enforcement of the Disability Act which came into force since 07.02.1996.

According to them the benefit provided for under Section 47 of the aforesaid Act enhances their age of retirement LPA No.1214/2007 Page 7 of 34 at 60 despite their physical disability to act as the drivers. They have also relied upon the two Judgments delivered by two different Single Judges of this Court in CWP 8159/2005(Dharam Pal) and CWP No 15309/2006 (Nirmal Singh) vide orders dated 31.5.2007 and 13.11.2006 respectively wherein it was so held.

7. In LPA No. 2123/2006 and No. 1251/2007, the appellants namely, Dalel Singh and Trilochan Singh who were also workmen/drivers under the Management and were similarly retired at the age of 55 years approached this court by filing writ petitions under Article 226 of the Constitution of India claiming similar reliefs but the same was declined by two other learned Single Judges of this Court which orders have been assailed in the aforesaid LPAâ s. The writ petitions filed by them registered as CWP No. 22194/2005 and CWP No. 2708/98 were dismissed vide orders dated 02.11.2006 and 12.05.2005 respectively. The appellants have assailed those Judgments before us by placing reliance on the Judgments delivered in the case of Dharam Pal and Nirmal Singh (supra). On the other hand the Management has filed LPA bearing Noâ s 1214/2007 and 121/2007 to assail the findings given in the aforesaid two Judgments where directions have been issued to them to retain the workmen till 60 years despite their condition being medical unfit to act as a driver after the age of 55 years. It is their submission that the aforesaid Judgments are un sustainable in law because while delivering the aforesaid Judgments, the ld. Single Judges have simply ignored LPA 1214/2007 Page 8 of 34 the office order 99/1963 and the Circular of the Management dated 30.06.1998 and have also wrongly applied the provisions of Section 47 of the Disability Act as it is not the mandate of that provision to extend the age of superannuation of the drivers which has been fixed by statuary regulations. They have also relied upon the decision given by other Ld. Single Judges in the case of Trilochan Singh Aujla in CWP No.2708/98 decided on 12.5.2005, CWP 22194/2005 (case of Dalel Singh) decided on 02.11.2006 CWP No. 12182/2006 titled as Mohinder Singh Vs. DTC decided on 15.11.2006 as well as in CWP No. 4417/2003 titled as Rood Singh Vs. DTC decided on 07.04.2005 which in fact is an earlier Judgments to the Judgments delivered in the case of Dharam Pal and Nirmal Singh decided on 31.5.07 and 12.11.2006 and was also cited before the Ld. Judges who took a contrary view, instead of referring the matter to a larger bench.

8. The Management in support of their appeals and in opposition to the claims of the workmen/drivers submitted that the workmen/drivers had been retired from the service of the Management only at the age of superannuation despite incurring disability as they were not physically fit to act as a driver after 55 years of age and thus not found suitable for further retention in service in terms of the office order No. 99/1963 and the circular dated 30.6.98 issued under Clause (e) of Section 4 of the DRT Laws (Amendment) Act, 1971. It is stated that the said provision makes all orders as well as regulations, appointments, LPA No.1214/2007 Page 9 of 34 notifications, bye-laws, schemes, standing orders and forms related to the Transport

Services, whether made under the DRTA Act, 1950 or under the Delhi Municipal Corporation Act, 1957 in force immediately before the coming in to force of the said Act, insofar as they are not inconsistent with the provisions of these Act as continued to be in force as deemed Regulations made by the new Corporation under Section 45 of Road Corporation Act, 1950 unless superseded by regulations made subsequently under that Section as legal and binding on its workmen as a statute. Accordingly, the age of superannuation of the drivers as per their service regulation is 55 years. Their further extension in service up to 60 years is not as a matter of right but is subject to their medical fitness for the Job of Driver on year to year basis. The workmen/drivers cannot get the benefit of retirement at the age of 60 years as applicable to the other employees of the management in other categories because they were not performing the duties of a driver being medically unfit once they incurred some disability which made them unfit to act as drivers even before the age of their retirement. They were retained in service up to the age of 55 years only because of the benefit made available to them under Section 47 of the Disabilities Act by either providing them with a lower post or by giving them salary in the same pay scale till the age of superannuation i.e 55 years of age.

9. It has been submitted that in the case of Trilochan Singh LPA 1214/2007 Page 10 of 34 Aujla reported in 2005 V AD Delhi 607 (impugned in LPA 1251/2007) the issue of the age of retirement of a driver has been considered in the light of the service regulations as also in the context of Section 47 of the disability Act. The learned Single Judge having considered the office order 99/1963 dated 4.10.63 and the circular dated 30.06.1998 held that every driver must appear, if wants extension of his service before a Medical Board for a medical test after having attained the age of 55 years as is envisaged in sub-paragraph (f) of the said office order. It was further observed that whilst the petitioner in that case was entitled to payments in the pay scale and shall receive all service benefits of a driver till he attained the age of 55 years but would have to superannuate on his attaining this age unless he is fit for extension of his service as a driver. In the case of Rood Singh CWP 4417/2003, Dalel Singh (impugned in LPA 2123/2006) and in Mohinder Singh Vs. DTC also similar views were reiterated. In the aforesaid cases the applicability of the provisions of Section 47 of the Disability Act were also considered in the aforesaid context and it has been said;

> The Act (Disability Act) does not anywhere say that the person disabled during his service be given better emoluments and service conditions than what he was already enjoying. It already protects him from his employment in all respects since his employment as a driver would have come to an end at the age of 55 years being found to be medically unfit to work as a driver. There is no reason why his employment should be extended, despite disability, beyond the age of 55 years. .

10. It is submitted that in the case of Baljeet Singh Vs. DTC 83 (2000) DLT 286 relied upon by the other two Judges who delivered the Judgments in the case of Dharam Pal and Nirmal Singh, it has no where been stated that the aforesaid provision warrants extension of the service beyond the age of superannuation. The said Judgment only talks about granting the benefit of Section 47 of the Disabilities Act to a disabled person till the age of superannuation. It has also been submitted that the learned Single Judges failed to appreciate that the office order 99/63 and the circular dated 30.06.1998 are service regulations and statutory in nature. They are binding on the parties.

11. Before coming into force of the Disabilities Act which contains Section 47 providing several benefits to the disabled Government Servants while in service, the drivers used to retire prematurely on incurring disability i.e even before they attained the age of 55 years. However, after coming in to force of the aforesaid provision, the management started granting benefit of the provisions contained under Section 47 to its drivers even if they were unable to drive a vehicle by providing them either a lower post or salary and allowances till the age of their superannuation.

12. The disputes arose only because the drivers who incurred physical disability before reaching the age of superannuation and were retained in service up to the age of 55 years in view of the LPA 1214/2007 Page 12 of 34 provisions contained under section 47 of the Disability Act but who were retired on attaining the age of superannuation started claiming retirement at 60 years on parity with other employees of the Corporation, whose retiring age is 60, even though they were not found fit to work as a driver after 55 years of age by the medical board. This was denied by the management who took a stand that the retention in service of the drivers despite suffering with disability till the age of superannuation was in fact an opportunity granted to them to work at a lower post just to give effect to the mandate of Section 47 of the Disability Act and that their further retention is not the mandate of the aforesaid provision.

13. Thus two contrary views have been taken by different Judges of this Court on the same subject. While the Ld. Judges in CWP 8159/2004 and 15309/2006 (case of Shri Dharam Pal and Sh. Nirmal Singh) subject matter of LPAs No. 121/2007 and 1214/2007, have granted extension of service up to 60 years; in case of Sh. Dalel Singh and Sh. Trilochan Singh (supra) who filed CWPs No. 2294/2005 and 2708/1998 the other two Judges held, that the extension of service was not a matter of right, vide judgments dated 02.11.2006 and 12.05.2005 respectively which are the subject matter of the LPAs No. 2123/2006 and 1251/2007. This controversy needs to be settled by us.

14. We would like to extend a word of caution here. While it is open to a Learned Judge to differ with a view of a coordinate LPA No.1214/2007 Page 13 of 34 bench the sequiter is to make a reference to a larger bench on papers being placed before Honâ ble the Chief Justice. The Learned Judge cannot simply say "with due respect, I do not agree to the ratio..." and proceed to take a contrary view as done in the impugned order in LPA 1214/2007 while referring to the earlier case of Dalel Singh (supra). Such an approach would result in conflicting opinions of coordinate benches resulting in judicial chaos & is, thus, improper. The Supreme Court in the recent judgment in Official Liquidator Vs. Dayanand & Ors. (2008) 10 SCC 1 has emphasized the adherence to basics of judicial discipline and the need for predictability and certainty in law. In that context, certain earlier judgments have been referred to where one bench of the Court not following the view of another coordinate bench, has been commented upon as under:

> 78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v.
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> Administrator General of W.B., this Court observed: (AIR p.941, para 19) "19.....If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be LPA 1214/2007 Page 14 of 34 utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court. "
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> [Emphasis added]

79. In Lala Shri Bhagwan v. Ram Chandra, Gajendragadkar, C.J. observed: (AIR p.1773, para

18) "18....It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such mattes and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

82. In Dr. Vijay Laxmi Sadho v. Jagdish, this Court considered whether the learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held: (SCC p.256, para 33) "33. As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the

credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

We need to add nothing more in this context.

15. We have already quoted the office order 99/63 and the circular dated 30.6.98 providing for the age of superannuation of the drivers working with the management and the circumstances in which extension of their services is permissible after 55 years, LPA 1214/2007 Page 16 of 34 we shall now examine the scope of Section 47 of the Disabilities Act which was enacted by the Indian Parliament after India became a signatory to a convention held in Beijing in December, 1992 when a decision was taken to launch the Asian and Pacific Decade of disabled persons 1993-2002. In the said conference and a resolution was adopted to provide full Participation and Equality to People with Disabilities in the Asian and the Pacific Region. It was decided to grant certain benefits to the disabled persons in respect of their services.

16. Section 47 of the said Act came up for interpretation before a learned Single Judge of this Court in Baljeet Singh Vs. DTC, 83 (2000) DLT 286 wherein while interpreting the aforesaid Section it has been held that:

"13. Section 47 in clear terms mandates that no establishment shall dispense with or reduce in rank the employee who acquires the

disability during his service. Even if he is not suitable for the post he was holding as a result of disability he is to be shifted to some other post with same pay scale and service benefits. Even when he cannot be adjusted against any other post he is to be kept on supernumerary post until a suitable post is available for he attains the age of superannuation, whichever is earlier. The intention of Section 47 is clear and unambiguous namely, not to dispense with the service of the person who acquires disability during his service. The purpose is not far to seek. When the objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of education, employment etc. it is obvious that those who are already in employment should not be uprooted when they incur disability during the course of employment. therefore, their employment is protected even if the destiny inflicts cruel blow to them affecting their limbs. Even if he is not able to discharge the same duties and there is no other work suitable for him, he is to be retained on the same pay scale and service benefits so that he keeps on earning his livelihood and is not rendered jobless. Notwithstanding the aforesaid clear and mandatory provisions LPA No.1214/2007 Page 17 of 34 contained in Section 47 of the Act, the respondent Corporation has passed the orders of voluntary retirement in the aforementioned cases which is an establishment within the meaning of Section 2(k) of the Industrial Disputes Act as it was established under Central Act. Such obvious Legislature intent is not understood by the officials of the DTC who are at the helm of affairs and have handed out such shabby treatment to the petitioners. Even when their attention was drawn to the provision they chose to lend deaf ears and did and did not rectify their wrong acts."

17. The aforesaid Judgment came up for consideration of a Division Bench of this Court in Delhi Transport Corporation Vs. Rajbir Singh 100 (2002) DLT 111. Some observations which are relevant are extracted below::

9. Section 47 of the said Act occurs in Chapter VII thereof which deals with non-discrimination. Section 44 deals with non-discrimination in transport whereas Section 45 deals with non- discrimination on the road. Section 46 deals with non-discrimination in the built environment. Section 47 deals with non-discrimination in Government employment. The said provision reads thus:

"47.Non-discrimination of Government employment.-

(l) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the Age of superannuation, whichever is earlier."

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

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10. History of legislation as noticed here before clearly shows that said Act was enacted in conformity with the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. It is not in dispute that the Act is beneficent in nature. It is also not in dispute that by reason of the said Act provisions have been made so that the persons with disability feel themselves as a part of the society which eventually may lead to his full participation at the work place. Nobody suffers from disability by choice. Disability comes as a result of an accident or disease.

11. The said Act was enacted by the Parliament to give some sort of succour to the disabled persons. By reason of Section 47 of the said Act which is beneficent in nature, the employer had been saddled with certain liabilities towards the disabled persons. Section 47 of the Act we may notice does not contemplate that despite disability, a person must be kept in the same post where he had been working. Once he is not found suitable for the post he was holding, he can be shifted to some other post but his pay and other service benefits needs to be protected. The second proviso, appended to Section 47 of the Act in no uncertain terms, state that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available. The said Act provides for social security for the disabled persons and if for the said purpose a statutory liability has been thrust upon the employer, the same cannot be held to be arbitrary.

13. Can a provision be read differently than its plain and grammatical meaning. Answer to the said question must be rendered in the

negative.

14. The true way to read and apply a legislation is to take the words as Legislature have given them and to take the meaning the word gives naturally, unless the construction in those words as offered by preamble or context appear contrary thereto. The golden rule is that all the statute should be interpreted literally. Exercises for construction of a statute should be taken recourse to only when the literal construction thereof would give rise to an absurdity.

15. Grant of some relief to the disabled person had been in the mind of all concerned for a long time.

16. As indicated hereinbefore 1995 Act came into force only after India became signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and LPA No.1214/2007 Page 19 of 34 Pacific Region. The said Act, therefore, must be read in the context of the said proclamation.

17. It is now well settled that construction of such a statute must be made in the light of the International Covenants. See Jolly George Verghese v. Bank of Cochin, 1980 SC 470; Vishaka v. State of Rajasthan, AIR 1992 SC 3011; Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625.

18. In G.P. Singh's Principles of Statutory Interpretation (Eighth Edn. 2001) at pages the law is stated in the following terms:

"In construing Wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further. And as stated Lord Atkinson: "in the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense". Viscount Simon, L.C., said: "The golden rule is that the words of a statute must prima facie be given their ordinary meaning". Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning". Such a meaning

> cannot be departed from by the Judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy".

The Division bench referring to the case of Baljeet Singh also observed:

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> 25. A judgment, as is well known, must not be read as a statute. It must be understood in the context of the facts involved therein and points required to be decided.
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> 26. What was emphasized in the said paragraph was that those who were already in employment should not be uprooted when they incurred disability. It would not mean that such disability must occur during the course of employment which expression finds place in certain statutes, as for example, Workmen Compensation Act.
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> 32. Whether a substantive right can be taken away by giving retrospective effect to a statute is not in question in these matters. Accident might have occurred in 1995, and the Act might have come into force on 7.2.1996 but the submission of Mr. Vibhu Shanker that the date of acquisition of disability must be considered to be the cut off date for the purpose of Section 47 of the Act cannot be accepted. After coming into force of the said Act only the order impugned was passed- If prior to coming into force of the said Act, services had been terminated the matter would have been different but as the services were not terminated till the Act came into force the same must be held to be bad in law.
>
> 33. Once the Act came into force having regard to the phraseology used in Section 47 the appellant herein became debarred from terminating the services of the respondent.

18. In the light of the aforesaid observations of the division bench, the submission of the workmen/drivers that Section 47 of the disability act being a welfare legislation extends the age of their superannuation up to 60 years or in the alternative having been appointed to a lower post on account of benefits extended under section 47 of the Disabilities Act which post carries the age of retirement as 60 years, they should also be retired at the age of 60 years is again unacceptable for the simple reason that the drivers joins the Corporation as drivers and were supposed to perform the duties as drivers till the age of 55 years. As a matter of policy keeping a lower age of retirement for posts like that of a driver cannot be faulted and being a matter of policy cannot even otherwise be interfered with by this court. Moreover it is on LPA No.1214/2007 Page 21 of 34 account of the disability incurred by them before reaching the age of superannuation, i.e., 55 years which would

have enabled the management to turn them out of service by retiring them prematurely but which could not be done because of coming into force of the Disability Act, which confers the benefit of retention in service may be at a lower post or by providing them salary till the age of their superannuation. However this does not in any way entitles them to have another 5 years of service having originally agreed for the retirement at the age of 55 years, being a driver. The benefit of extension as is being conferred by the office order issued by the Management is only an enabling provision in the case of drivers who are fit to be retained in service and does not ipso facto increases the age of superannuation. In fact accepting the contentions of the drivers would be putting premium to their disability which is not the mandate of the Disability Act.

19. There is merit in the submission of the management that sub Section 1 of Section 47 of the Disabilities Act clearly indicates that the benefits will be available to the employees till he attains the age of superannuation. The said Act does not add any additional benefit to a person who has suffered accident for Continuance in service beyond the age of 55 years because of his being medically unfit on reaching that age as he cannot steal advantage over other persons because of his disability. The fact is that whilst an employee would be entitled for payment in the LPA 1214/2007 Page 22 of 34 pay scale and would receive service benefits of a driver till he is superannuated irrespective of the fact whether he is medically fit or not, but he will have to retire once he attains the age of 55 years. Thereafter he cannot say that on account of provisions contained under Section 47 of the Disabilities Act he is entitled to continue in service up to 60 years as is being pleaded because this is not the mandate of Section 47 of the Disabilities Act.

20. Thus we are of the considered opinion that there is nothing in the Disability Act which permits extension of the service of an employee. The protection afforded under Section 47 is to an employee who incurs a disability during the period of his service which certainly means from the date of recruitment and the date of superannuation. If the date of superannuation is 55 years which is extendable on year to year basis subject to medical fitness it cannot be said that service of the employees must be extended on account of the provisions of the aforesaid Act even if he is unfit for the Job i.e. to act as a driver.

21. It is no doubt true that the provisions under Section 47 forms part of a welfare legislation. However, the provisions cannot be interpreted in a manner which is not permissible by the Rules or the interpretation or which extends the provisions of the Act in a territory which is not permissible in law. Applying the aforesaid principles to section 47 of the Disabilities Act, in the context of regulation 10 of the service regulations governing the age of superannuation of the drivers in accordance with the office LPA No.1214/2007 Page 23 of 34 order No. 99/63 of 4.10.1963, it cannot be said that the age of superannuation of the drivers is 60 years. The benefit of extension is only to extend the services of those drivers, who otherwise retire at the age of 55 years but can act as a driver subject to their medical fitness on year to year basis which initially could have been up to 58 years and now up to 60 years. Such a situation is possible in the case of a driver whose disability incurred earlier may have been cured by the lapse of time. Looking to the nature of job which a driver is to perform by plying heavy vehicles like a bus which carries number of passengers, the benefit of extension is a beneficial provision taken by the management suo moto but this cannot be availed as a matter of right by the drivers who have to retire at the age of 55 years and are not

medically fit to drive further. No case has been brought to our notice of discrimination in this regard. The provision is applied in general and not by way of exception, as is the case of the Management. Keeping a lower retiring age for such an strenuous job cannot be termed as either arbitrary or illegal. Hence we answer all the three questions as framed in para one above against the workmen and in favor of the management. Now we shall consider each of the cases separately:

+ WP(C) 12265/2004

22. Shri Yashbir singh the petitioner was appointed as a retainer crew driver on 02.01.1982 and was declared medically unfit by LPA 1214/2007 Page 24 of 34 DTC medical board for post of driver on 20.05.2002 before his attaining the age of 55 years. However, by virtue of an order passed in W.P.(C) No. 7813/2001 passed on 15.03.2002, he was granted benefit of Section 47 of the Disability Act and was given the arrears of the salary and was also assigned lighter duty of vehicle examiner where he worked till 21.07.2004 which was the date of his superannuation as a driver i.e the age of 55 years. His services were not extended thereafter. He thus filed the present writ petition challenging his superannuation at the age of 55 years prayed for his retirement only at the age of 60 years. It was also his case that once he was given lighter duties he ought to have been treated like any other employee who retires at 60. He therefore pleaded discrimination. The Management however, denied the aforesaid prayer and submitted that it was neither a case of re-designation of the petitioner to the post of vehicle examiner nor he was to be given any benefit attached to the said post. In fact he was allowed the aforesaid duty with the pay scale of the Driver by virtue of the provisions contained under Section 47 of the said Act which does not extend the age of superannuation. Once he attained the age of superannuation meant for drivers and he was unfit for extension in service as a driver after the age of 55 years he was rightly retired from service at the age of his superannuation. It has been submitted that Shri Yashbir Singh was liable to be retired w.e.f. 30.02.2003 but since he did not receive the letter he was retired on LPA No.1214/2007 Page 25 of 34 22.07.2004.

23. In view of what has been state above, the petitioner who was governed by service Regulations providing retiring age of the drivers at 55 years and having become medically unfit prior to that age is not entitled to any extension of service beyond 55 years of age being the age of his superannuation. Hence the writ petition is dismissed.

+ WP(C) 13885/2006

24. In this case the petitioner was appointed as a driver by the DTC on 25.06.1985 after he retired from Indian Army. While the petitioner was driving the bus on which he was deputed, it met with an accident. A case was registered against him under Section 279 for which he was chargesheeted. A disciplinary enquiry was also conducted against him where he was found guilty. Consequently he was removed from service on 07.03.1995. Subsequently he was acquitted of the charge and thus was reinstated in service on 09.11.2005. At that time he was subjected to medical test and was found to have developed some defects in his eye-side making him unfit to drive the vehicle by the DTC medical board. Therefore he was retired on 31.03.2006 after he attained the age of 55 years which is the age of superannuation of a driver. He wanted his retirement at the age of 60 years and, therefore

filed the aforesaid writ petition which was transferred to this Court.

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25. The case of this petitioner is no different than that of Trilochan Singh (supra). In this case also the petitioner joined as a driver and attained the age of superannuation, which as per service regulation is 55 years and thereafter he was found unfit to work as a driver due to color blindness could not have been retained in service claiming benefit of Section 47 of the Disability Act. Admittedly the petitioner has been retained in service up to the age of 57years as he was given extension based on year to year assessment of his physical condition. However, as he was not found fit subsequently, for further extension of service, he is left with no right to claim further extension. Accordingly, his writ petition is also dismissed.

+ WP(C) 6803/2006

26. In this case the petitioner, a driver, while on duty met with an accident and suffered a disability. After recovering from his illness he was allowed to join on 20.10.1991. However being unable to perform the duty of driver he was granted an alternative job of clerk and thereafter the duty of time keeper which he performed till 28.01.2003 in view of the provisions of Section 47 of the Disability Act. Thereafter he was asked to perform similar duties but he refused and wrote a letter for his medical check up on 24.03.2003. The medical board declared him unfit to report for duty on 25.03.2006 as a driver. Here also the petitioner stood retired after attaining the age of 55 years after performing lower duties as assigned to him after he became LPA No.1214/2007 Page 27 of 34 medically unfit. Benefit of Section 47 of the Disabilities Act were extended to him till the age of his superannuation, but the same cannot be extended beyond 55 years. Thus he is also not entitled to any relief. The writ petition is accordingly dismissed. + LPA 1251/2007 (arising out of CWP No. 2708/1998)

27. Here, the appellant Sh. Trilochan Singh while working as a driver met with an accident on 22.08.1994. As a result thereof he suffered an injury in his right leg and was prematurely retired from service on 22.09.1995. The Disabilities Act came into force thereafter. With the intervention of Minority Commission he was reemployed and was given the post of store attendant on 15.12.1996. He wanted the pay-scale of driver and for that purpose filed W.P.(C) No. 2708/1998 which was allowed on 12.05.2005 and accordingly he was granted salary in the pay scale of a driver together with all service benefits till his superannuation on attaining the age of 55 years. Thereafter, he claimed further extension by submitting that since he was assigned the job of peon, he ought to have been permitted to work up to 60 years. This relief claiming extension under Section 47 of the Act beyond the age of superannuation is not permissible and accordingly the writ petition filed by the petitioner was rightly dismissed by a Learned Single Judge by making following observations:

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> "7. Since the prayer of the Petitioner is that he should receive emoluments in the scale payable to a Driver, which were the duties performed by him at the time of the

> accident, he must also clear the physical test which would entitled him to continue after the age of 55 years. The Disabilities Act does not give any added benefit to a person who has suffered an accident; it endeavours to level the disadvantages faced by the employee as a result of the injuries sustained by him. Basically it enjoins the continuance of service on all terms applicable to all other employees. My attention has been drawn by learned counsel for the Petitioner to sub-clause 2 of Section 47 of the Disabilities Act which enunciates that no promotion shall be denied to a person merely on the grounds of a disability. It is contended that the next promotional position is that of Vehicle Examiner. Mr.J.P.Singh, Depot Manager, clarifies that one of the essential duties for a Vehicle Examiner is to drive the vehicle in the event of an emergency; in checking the functioning of a Bus he would also require to drive it. If the Petitioner, due to his disability cannot claim as a right the continuance in service beyond the age of 55 years because of his being medically unfit on reaching that age, he cannot steal an advantage over other persons because of his disabilities. The effect is that whilst the Petitioner would be entitled to payments in the pay-scale of driver and would receive all service benefits of a Driver, since he is not medically fit beyond the age of 55, he would have to superannuate on his attaining this age. This is also the intendment of the second proviso to Section 47 itself.

28. We do not find any infirmity in the aforesaid approach of the Learned Single Judge for the reasons stated above and agree with it. Accordingly we dismiss the LPA.

+ LPA 2123/2006(arising out of CWP No. 22194/2005)

29. In this case, the appellant Dalel Singh also appointed as a driver was injured in an accident when the bus driven by him collided with another bus during the course of his employment on 07.06.1996. He was prematurely retired on 29.04.1998. This order was challenged by the appellant by filing a civil suit bearing no. 912/1999 before a civil judge which was allowed. The management was also given further directions to consider the case of the appellant in terms of provisions of Section 47 of the Disability Act. Accordingly he was reinstated in service on LPA No.1214/2007 Page 29 of 34 20.10.2005 and was assigned the duties of a gate keeper. However he was retired on 30.11.2005, when he attained the age of 55 years. This order of the management became the subject matter of challenge before the Learned Single Judge in W.P.(C) No. 22194/2005. The ld. Single Judge dismissed the writ petition vide order dated 02.11.2006 by taking similar view as was taken by him in the case of Trilochan Singh Aujla(supra). Some observations made by the Learned Single Judge in the aforesaid case also throws light on Section 47 of the Act sought to be pressed in service by the appellant are reproduced for the sake of reference:

> "If the petitioner, due to his disability cannot claim as a right the continuance in service beyond the age of 55 years because of his being medically unfit on reaching the age, he cannot steal an advantage over other persons. The effect is that whilst the petitioner would be entitled to payment in the pay-scale and received all services benefits of a driver, since he is not medically fit beyond the age of 55, he would have to superannuate on his attaining this age. This is also the intendment of the second

proviso to Section 47 itself.

> This is the natural fall out of the provisions of Section 47 of the Act. The Act does not anywhere say that the person disabled during his service be given better emoluments and service conditions than what he was already enjoying. It already protects him from his employment in all respects since his employment as a driver would have come to an end at the age of 55 years being found to be medically unfit to work as a driver. There is no reason why his employment should be extended, dispite disability, beyond the age of 55 years. I am entirely in agreement with the decision of this Court in the case of Trilochan Singh Aujla Vs. DTC (supra)."

30. We agree with the aforesaid view and dismiss the appeal and uphold the views taken by the ld. Single Judge. LPA 1214/2007 Page 30 of 34 + LPA 121/2007 & LPA 1214/2007(arising out of CWPs 15309/2006 & 8159/2004)

31. In both these cases a different view has been taken by the learned Single Judges of this Court by holding that the benefit of Section 47 of the Disabilities Act also entitles enhancement of the retirement age of the workmen to 60 years in view of the circular dated 30.06.98(supra). It has been held that because of the benefits extended to disabled persons in view of the Section 47 of the Disabilities Act, the circular must be interpreted so as to grant benefit of extension of service as a matter of right till the age of 60 years and therefore, the writ petitions were allowed. However, as held by us in other cases referred to above, we are of the considered view that neither the benefit of Section 47 of the Disabilities Act can be extended beyond the age of superannuation to a driver nor he could be retained in service after 55 years unless he is found medically fit on year to year basis as is the provisions made in the service regulations by the Corporation which are statutory in nature and thus when the appellants were not found suitable in working as a driver beyond the age of 55 years the age of superannuation for a driver they could not have been granted the benefits as extended by the learned Single Judges. Hence both the aforesaid orders subject matters of the aforesaid LPAs cannot be sustained and therefore, the LPAs filed by the management in both these cases are allowed.

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32. We may also observe that the entire list raised by the workmen in this case rests on their submissions that they have been discriminated against; firstly qua their own colleagues, that is the other employees of the management whose age of retirement is 60 years and secondly by not conforming benefits made available under Section 47 of the Disability Act to the persons who are unable to perform their job on account of having incurred a physical disability.

33. However, these arguments proceeds on the basis that there is a discrimination exercised qua the workmen who forms a class by themselves that is the class of driver. For the class of driver if the management has decided, and rightly so, to keep a lower age of retirement qua other employees of the management, it cannot be said to be an Act of discrimination on their part. Similarly, qua application of the provisions of Section 47 of the Disability act, the said benefit have to be provided

to a Government servant who incurs physical disability during the course of his tenure so as to make him equal qua his other colleagues who are in service having not incurred such a disability. The workmen cannot steal over a march over their own colleagues in the class of drivers while seeking extension of the benefit of the retirement age by invoking the provisions of Section 47 of the Disability Act which nowhere mandates such additional benefits, as is being claimed by them.

34. We may also mention that even in the submissions made by LPA 1214/2007 Page 32 of 34 the management as well as in the written statement filed in all the cases, they have categorically stated that the extension of service of the workmen as a driver, which was made permissible, was subject to their being found medically fit by a medical board only because of the scarcity of drivers in the services of the management and it was not a decision to grant extension of services to a driver per se. Needless to say, that keeping of lower age of service in particular cases such as a Naib Subedar in the Army in comparison to the officers, an air hostess, services for an airmen are good examples which goes to show that those persons are retained in service for a lesser period because they are supposed to be fit till such time they continue in service of the management. Thus, even on this score also the case of the workmen has no legs to stand while the contentions of the management have to be upheld.

35. To conclude, we hold that the age of superannuation of a driver under the management is 55 years. Section 47 of the Disability Act does not ipso facto extends the tenure of service of a driver with Delhi Transport Corporation, the benefits granted to such drivers despite incurring disability during tenure of his service that is up to 55 years would not extend his service beyond 55 so as to enable him to continue in service may be at a lower post for which the normal age of retirement is 60. This is because the benefit of such post has been made available to the said person as per the provisions of Section 47 of the Act and not LPA No.1214/2007 Page 33 of 34 otherwise.

36. The views taken by the learned Single Judges of this Court in the Case of Trilochan Singhâ s case supra subject matter of LPA 1251/2007 as well as in the case of Dalel Singh Vs. DTC subject matter of LPA 2123/2006 as well as in the CWPs 12265/2004, 13885/2006 & 6803/2006 are upheld while the Judgments subject matter of LPAs 1214/2007 and 121/2007 are set aside leaving parties to bear their own cost.

37. It is, however, made clear that any benefit extended to a workman driver by virtue of the two judgments will not be taken away & recovered because the appeals have now been allowed. With these observations all the aforesaid matters are disposed of.

MOOL CHAND GARG, J.

SANJAY KISHAN KAUL, J.

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