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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1112/2002

New Delhi this the 13th day of December, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

R.C. Chawla,  
S/o late Sh. Khem Chand Chawla,  
R/o AK-4, Ara Kasha Road,  
Paharganj,  
New Delhi-110055.

-Applicant

(By Advocate Shri S.K. Rungta)

-Versus-

1. Union of India,  
through Secretary,  
Ministry of Information  
and Broadcasting,  
Shastri Bhawan,  
New Delhi-110055.
2. Doordarshan,  
through its Director General,  
Mandi House,  
New Delhi.

-Respondents

(By Advocate Shri S. Mohd. Arif)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 24.4.2002, retiring him on invalid pension under Rule 38 of the CCS (Pension) Rules, 1972 and has sought direction to the respondents to accord him benefit under Section 47 of Persons with Disability (Equal Opportunity, Protection of Right and Full Participation) Act, 1995 (hereinafter referred to as Disability Act).

2. By an order dated 29.4.2002, as an interim measure retirement order has been kept in abeyance.

3. Applicant was appointed as a Floor Assistant with the respondents in 1972 and was promoted as Production Assistant in 1993. In this job the job consists of

assisting production of programmes, script writing, background voicing in many programmes etc.

4. In the year 1992 on account of road accident applicant sustained head injuries which resulted in visual disablement as a result of retina pigmentosa in the year 1995 and was declared blind by a certificate issued from Hindu Rao Hospital.

5. Applicant was required to fill up a proforma regarding transfer and therein he made a statement that on account of his road accident and declared 100% visually disabled it would be difficult for him to attend any other office practically.

6. Applicant right from 1995 in 2001 has been performing the alternative job and at present posted in Stores where his work is to issue stationary.

Para-6  
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vide order  
dt: 4-4-03  
in RA 41/03  
in OA 1112/2003

7. In the wake of his own statement applicant was subjected to a medical examination at Dr. Ram Manohar Lohia Hospital after he has submitted all his medical documents and as per the advice tendered on 29.1.2002 on account of visual impairment he has been declared permanently incapacitated for any service in the department.

of Dr. Ram  
8/4/03  
DR(D)

8. Invoking Rule 38 of the CCS (Pension) Rules applicant was retired on invalid pension, giving rise to present OA.

9. Learned counsel for applicant Sh. S.K. Rungta who also represents the National Federation of Blind being 100% visually impaired by drawing my attention to Section 47 of the Disability Act, which is reproduced as under, stated that being a substantive legislation the same overrides the other subordinate legislation, i.e., CCS (Pension) Rules, 1972:

"47. Non-discrimination in Government employment.---(1) 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 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 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."

10. Having regard to the aforesaid Act it is contended that the respondents have not at all took into consideration the provisions of Special Act and without looking at appropriate job for applicant or keeping him on supernumerary post retirement has been resorted to, which is not consistent with the provisions of the Act. Moreover, by referring to Section 72 of the Act, it is contended that provisions of this Act are not in derogation of any other law for the time being in force or enactment issued for the benefit of the persons with disability but it is in addition to the same. By referring to the

decision of the Delhi High Court in Delhi Transport Corporation v. Raibir Singh & Another, LPA No.656/2002 decided on 19.9.2002 by the High Court of Delhi it is contended that similar controversy has cropped up in the said LPA and by resorting to provisions of Section 47 order of retirement on medical ground has been set aside.

11. On the other hand, respondents' counsel Sh. S.M. Arif vehemently opposed the contentions of the applicant and states that applicant himself admitted that he is incapable of doing any duty in any of the office. Accordingly he was directed to produce all his medical record and as he has been declared permanently incapacitated for any further service of any kind he has been rightly retired under the provisions of Rule 38 (1) of the Rules ibid. He would get his pension and other benefits.

12. Moreover, it is contended that Section 47 of the Act would apply only in cases where the persons with disability has been terminated or reduced in rank. Sh. Arif contends that being a Production Assistant and on blindness he is unfit for the job and at present there are no jobs available with the Doordarshan to be offered to applicant as per his disability which is an impediment for any sort of duties. Shri Arif further contends that action under Rule 38 (1) is not contrary to the provisions of Section 47 of the Disability Act.

13. I have carefully considered the rival contentions of the parties and perused the material on record. Disability Act is enacted by the Parliament after

the matter has been gone into much deliberations and on the wake of Asian and Pacific disabled persons. This is a Welfare Legislation providing employment and regulating conditions of those who acquired disability during the service as well as those who are disabled before seeking entry in Government service. Blindness has been defined under Section 2 (b) as total absence of sight and is included as disability under Section 2 (1) of the Act ibid.

14. As per Section 33 it is incumbent upon appropriate Government, i.e., Central Government as well as State Government to identify posts in the establishment to be reserved for persons with disability which includes 1% reservation for persons suffering from blindness. As per Section 33 if the aforesaid reservation is not to be applied to an establishment, a notification for exemption is to be issued to this regard. I do not find any such notification issued for Doordarshan.

15. As per Section 47 which is couched in negative language is to be construed as mandatory though despite Rule 38 of the Pension Rules, 1972 High Court of Delhi while dealing with the similar provisions in Rajbir Singh's case (supra) observed as follows:

"There cannot be any doubt that the said Act provides for special provisions Doctrinae of generalia specialibus non-derogant, thus would apply in the instant case. Service conditions laid down under the regulations made under the Delhi Transport Corporation Act will be subject to the provisions of the said Act having regard to the aforesaid maxim. Section 47 is couched in negative language and the same, necessarily must be construed as mandatory in nature. So construed the appellant was bound to give effect to these irrespective of any consequences."

The High Court while dealing with the provisions of Section 47 also observed as follows:

"History of legislation as noticed hereinbefore clearly shows the 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."

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, states 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 thrust upon the employer the same cannot be held to be arbitrary."

Moreover the High Court in another case in Baliit v. D.T.C. 83 (2000) DLT 286, held has follows:

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

The Division Bench of the High Court in LPA No.120/2000, referred the following observations of the Apex Court in CA-1864/2000 - Kanwar Pal Singh v. DTC:

"Special Leave granted.

Learned counsel for the appellant has brought to our attention Section 47 of the Persons with disability (Equal Opportunities) Act, 1995.

Having heard the learned counsel for the parties, we are of the opinion that if it is the duty of respondent No.1 to employ the appellant in a class IV post, if no such post exists then by virtue of Section 47 of the said Act a supernumerary post shall be created within eight weeks from today and employment given to the appellant with such relief as the appellant may be entitled to.

The appeal stands disposed of accordingly."

16. If one has regard to the aforesaid provisions and the proposition of law., on coming into operation of the Act, i.e, Disability Act, respondents cannot resort either to termination of a disabled Government servant who acquired disability during the

service and also the provisions of Section 47 ibid have to over-ride the provisions of any subordinate legislation and being couched in negative language are to be mandatory.

17. Section 47 mandates respondents that in the event it is not possible to adjust the employee against any suitable post or any other post to keep him on a supernumerary post unless a suitable post is available or till the incumbent attains the age of superannuation, whichever is earlier. The contention of the petitioner in DTC's case (supra) that if the provisions o Section 47 are to be read literally it would lead to absurdity and the employer would be burdened with unnecessary liability has been negated by the High Court of Delhi.

18. As I find that the respondents have not acted in accordance with Section 47 of the Act, retirement of applicant on medical grounds resorted to under Rule 38 cannot be legally sustained.

19. In the result and for the foregoing reasons in the light of the decision of the High Court and the Apex Court (supra) OA is allowed. Impugned order is quashed and set aside. Applicant ~~be~~ <sup>is</sup> reinstated in service with all consequential benefits. However, a query has been raised by learned counsel for respondents as to what sort of job or employment to be accorded to applicant as he is incapable of performing duties of Production Assistant, we have been assisted by the learned counsel for applicant, who being 100% visually impaired has offered his assistance in the capacity of President of National Federation of Blind to assist the respondents allocating a suitable

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(9)

alternative job to applicant, the respondents are directed to consult the Federation for implementing the directions issued above. These directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
(Shanker Raju)  
Member (J)

"San."