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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2628/99

New Delhi: this the 8th day of January, 2001.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

H. Const. Puran Singh,
S/o Sh. Giani Ram,
R/o 121, Todarmal Colony,
Najafgarh,
Delhi-43.

....Applicant.

(By Advocate: Shri S. N. Shukla)

Versus

1. Union of India,
Ministry of Home Affairs,
North Block-1,
New Delhi.

through its Secretary.

2. Commissioner of Police,
Govt. of NCT of Delhi,
MSO Building,
I.P. Estate,
New Delhi-2

3. Addl. Commissioner of Police,
Police Control Room,
MSO Building,
New Delhi-2

....Respondents.

(By Advocate: Sh. Ajesh Luthra)

ORDER

S. R. Adige, VC (A):

Applicant impugns respondents' order dated 21.6.99, 22.7.99 and 8.11.99 (Annexure-A Copy). He seeks a direction to respondents to treat him in continuous service from 22.6.99 onwards and assign him sedentary duties as Driver of light vehicle.

2. Applicant who was Head Constable (Driver) was a T.B. patient and a request was sent to Police Hqs.

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by respondents for his transfer from PCR vide office Memo dated 10.12.97. In response it was directed that applicant be got medically examined from Civil Hospital, Rajpur Road, Delhi for retirement on medical grounds under rules. Accordingly the Civil Surgeon, Civil Hospital, Rajpur Road, Delhi was asked to constitute a Medical Board to examine applicant regarding his fitness for retention in Delhi Police vide office letter dated 23.4.98. It was suggested by the Dy. Medical Superintendent on 29.6.98 that applicant was a case of Bil. Pul. T. B. and as such he may be referred to RBTB Hospital for treatment. Thereupon the Medical Supdt. RBTB Hospital was requested vide office letter dated 3.12.98 to constitute a Medical Board on Form 23 whether applicant was still fit for retention in Delhi Police or fit for retirement on medical grounds. The medical report dated 19.3.99 opined that applicant was an old treated case of Pulmonary TB and was having healed lesions according to Radiological and Bacteriological reports. However his PFT report showed irreversible airway obstruction which meant that he was fit for sedentary duties only.

3. Respondents have referred to Rule 38 of CS (Pension) Rules, 1972 which provides that where the medical authority has declared a Govt. servant for further service of less laborious character than that which he has been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted for invalid pension. Respondents contend that as applicant could not even perform the duties of lower post of Constable (Driver)

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he was invalidated out of service vide impugned order dated 21.6.99. Respondents state that subsequently he was asked to complete his pension papers but he declined to do, and filed an appeal against the order of invalidation. That appeal was rejected by order dated 8.11.99. Applicant was informed accordingly and was again asked to fill up the pension papers vide office letter dated 10.11.99 and he was also reminded to do so, but meanwhile applicant had filed the present OA.

4. We have heard both sides and considered the rival contentions carefully.

5. Applicant in para 4 (vii) of the OA has cited what he claims to be names of police personnel who suffered from TB in the past and who had been advised light/sedentary duties in the police department. These cases are of Head Constables, ASI and Constables, all of whom were drivers like himself. This contention has not been specifically or categorically denied by respondents, and the denial is best only a formal one. Furthermore, even if applicant could not be retained as Constable (Driver) because the nature of work did not involve light/sedentary duty, nothing compelled respondents to consider applicant for adjustment as Constable (Driver) alone, and he should have been considered for appointment against any other lower post in Police Department which involved light/sedentary duties, before deciding to invalidate him out of service. No materials have been furnished by respondents to establish that they even attempted such an exercise. The lower post does not necessarily have to be in the line of promotion to that of Head

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Constable (Driver).

5. Respondents' counsel has relied upon the CAT PB ruling dated 2.8.2000 in OA No.1882/99 Virender Singh Vs. UOI & Ors. on similar facts, in which a similar prayer made by a Head Constable (Driver) was rejected, but in our view that ruling has to be treated as per incurium as it has not taken into account the Hon'ble Supreme Court's ruling in N.K.Chandla Vs. State of Haryana & Ors. AIR 1995 SC 519 in which it has been held

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties...
....."

6. Again, the Delhi High Court in Baljeet Singh Vs. Delhi Transport Corporation 83(2000)Delhi Law Times 286 while interpreting Section 47 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has held thus

"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

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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 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....."

7. Applying the ratio of the rulings in N.K. Chandla's case (supra) and Baljeet Singh's case (supra), it is clear that the impugned orders cannot be sustained in law, and are therefore quashed and set aside. In accordance with the provisions of Rule 38 CCS (Pension) Rules, respondents should consider employing applicant on any other suitable post i.e. whether it is equivalent or lower in police Department which may not necessarily be that of Constable (Driver) and which involves light/sedentary duties such that he continues to earn his livelihood, within 3 months from the date of receipt of a copy of this order. The period between 22.6.99 and the date of implementation of the above direction, shall be treated by respondents as period spent by applicant

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on duty for which he shall be entitled to all financial and service benefits, including pay and allowances, increments and arrears. His last drawn pay also should be protected in the light of the decision of the Apex Court in Chandrasekhar case (supra). No costs.

A. V. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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