

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.750/2000

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Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 10th day of August, 2001

Prem Parkash
s/o Sh. Narain Dutt
r/o 1/185, Gandhi Nagar
Near Jat Dharmshala
Gannaur, Sonipat
Haryana.

... Applicant

(By Advocate: Shri Arun Bhardwaj)

Vs.

1. Union of India through
Chairman, Railway Board
Rail Bhawan
New Delhi - 1.
2. Divisinal Railway Manager
Delhi Railway Division
Northern Railway
State Entry Road
Cannaught Place
New Delhi.
3. Asst. Personal Officer
Delhi Divison Northern Railway
State Entry Road
Cannaught Place
New Delhi.

.. Respondents

(By Advocate: Shri D.S.Jagotra)

O R D E R(Oral)

By Mr. Shanker Raju, Member (J):

Heard both the parties.

2. The issue in this case is that the applicant is suffered with complete paralytic attack had been away from duty from August, 1998. and was declared fit to perform duty from April, 1999. Thereafter, the applicant was subjected to medical board where he has been declared unfit for any job due to his acute immobility and the respondents have decided that he be retired from service. Although it is stated that on making a representation for

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compassionate appointment of his wife the same is under consideration. Drawing my attention to Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with Rules, 1996 (hereinafter called as 'Act'), it is stated that in case the Government employee is suffered with disability during the service, he is to be provided a suitable post with the same pay scale and service benefits and in the event 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 till he attains the age of superannuation, whichever is earlier. Also placing reliance on a decision of the High Court in Baljeet Singh Vs. Delhi Transport Corpn., 83 (2000) Delhi Law Times 286, it is stated that Section 47 of the Act taken of note by the Delhi High Court and directions have been issued to the respondents therein to take the petitioners back into service and pay and salary from the date when the respondents stopped paying full salary soon after the petitioners would be treated as in continuous employment without any break in service. It has also been directed that in case they are not fit to perform the duties which they were performing since their initial appointment till their disability, the respondent shall deal with in terms of proviso to Section 47 of the Act in regard creation of supernumerary post. The learned counsel for the applicant ^{has} also placed reliance on a decision of this Court in OA No.2826/99 dated 9.1.2001, in the case of Head Constable Poor Singh where placing reliance on the Baljeet Singh's case supra, directions

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have been issued to offer the applicant therein an alternative job suitably to his physical condition and made entitled for all the consequential benefits.

3. On the other hand, strongly rebutting the conditions of the applicant, the learned counsel of the respondents has stated that the applicant has been declared fit on 9.4.1999 and recommended for security job and accordingly as per the provisions of Indian Railway Establishment Manual and the medical rules, he was subjected to a medical Board to ascertain his suitability which was held on 3.5.1999 and after a thorough examination he has not been found suitable for any job due to his acute inability, ie., due to paralysis. As such he was retired on medical ground. Although it is admitted that the request of the wife of the applicant for compassionate appointment is still under consideration. In this back ground, it is stated that as the applicant has not been found fit for any job available with the respondents, he was rightly retired on medical grounds.

4. I have carefully considered the rival contentions of the parties and perused the available pleadings on record. No doubt, the applicant was declared fit on 9.4.1999 and was recommended for sedentary job which do not involve fast movement on permanent basis in his own medical category from vision point of view. The respondents though subjected him to suitable medical test, and considering the request for compassionate appointment of his wife, they have totally failed to take into consideration the special provisions contained in

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Section 47 of the Act *ibid* wherein in the case it is not possible for the Government to adjust the employee against any post, it has been provided to continue him on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. The aforesaid provision has been placed reliance by the High Court as well as by this Tribunal in several cases.

5. Having regard to the fact that this Central Act which is an Act of Parliament, and has been a welfare legislation for protecting the right of disabled persons who incurred disability either from the birth or during his service has to be taken into consideration at the time when the rights of a disabled person are determined by the respondents in any manner. As the aforesaid action of the respondents is not in conformity with the Section 47 of the Act *ibid*, it would be in the fitness of things and in the interest of justice to remit this case back to the respondents for reconsideration of the case of the applicant in the light of the provisions contained in Section 47 of the Act *ibid*. In that process the respondents may subject the applicant to a medical board keeping in view of the fitness ^{Certificate} ~~service~~ issued by the Board. The respondents shall thereafter pass a reasoned order on the basis of their rules as well as Section 47 of the Act *ibid* within a period of three months from the date of receipt of a copy of this order. However, this action shall not preclude the respondents in considering the case of the applicant's wife for compassionate appointment. The applicant

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if still aggrieved, he is at liberty to assail the order
passed by the respondents in accordance with law. The
OA is accordingly disposed of. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/