

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2127/2004

M.A. NO.1891/2004

M.A. NO.1892/2004

This the 28th day of September, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

1. Smt. Sushmita Pandey,
Ex-Accountant,
W/O Anil Kumar Pandey.
2. Anil Kumar Pandey through
his wife Sushmita Pandey,
Both R/O 14/704, East End Apartments,
Mayur Vihar, Phase-I Extension,
New Delhi.

... Applicants

(By Shri Piyush Sharma, Advocate)

-versus-

1. Comptroller & Accountant General of
India, 10 Bahadurshah Zafar Marg,
New Delhi-110002.
2. Principal Accountant General (A&E)-I,
Lekha Bhawan, Gwalior, M.P.
3. Dy. Accountant General (A&E)-I,
Lekha Bhawan, Gwalior, M.P.
4. Dy. Accountant General (Administration),
A & E, M.P., Gwalior.

... Respondents

ORDER

Learned counsel heard. M.A. Nos.1891 and 1892/2004 for
joining and for amending the OA are allowed.

/s/

2. Applicants have challenged Annexure A-I dated 25.7.2003 whereby applicant No.1 has been retired from service on invalidation pension under rule 38 of Central Civil Services (Pension) Rules, 1972 read with rule 20 of Central Civil Services (Leave) Rules, 1972. Applicants have also challenged inaction of the respondents in not appointing applicant No.1 on compassionate ground. 5

3. Admittedly, applicant No.2 had made an application to the respondents for retirement on invalidation pension, which was accepted and impugned order Annexure A-I was passed. However, the learned counsel has now contended that these orders are contrary to O.M. dated 19.1.2004 (Annexure A-8) and also to the provisions of the Persons with Disabilities Act, 1995. The learned counsel stated that as per the provisions of the aforesaid O.M., applicant should have been continued on a supernumerary post until a suitable post was available. He has also relied upon (2003) 4 SCC 524 – **Kunal Singh v. Union of India & Another.**

4. Applicants have also claimed an alternative relief to quashing of the impugned orders dated 25.7.2003 by way of a direction to the respondents to appoint applicant No.1 on compassionate ground. O.M. dated 19.1.2004 relates to non-invalidation of a Government servant who has been permanently incapacitated from Government service on account of mental or physical disability. It refers to amendment in Section 47 of the Persons with Disabilities Act, 1995. It provides that if the disabled

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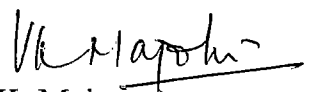
person is not suitable for the post he was holding, he should be adjusted against any post with the same pay scale and service benefits. If such post is not available, he may be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. The Hon'ble Supreme Court has also directed in the matter of **Kunal Singh** (supra) that the services of the disabled person should not be dispensed with until a suitable post is available.

5. There is no denying the fact that grant of invalidation pension under rule 38 of the Pension Rules, 1972 is no ground to deny the protection available under section 47 of the Persons with Disabilities Act, 1995. The issue here is whether there is any post in the Government which can be made available to the applicant No.2. To a pointed query, the learned counsel could not describe any such post which could be considered for adjusting the applicant. The applicant had applied for invalidation pension. He was retired with grant of such pension. Respondents could have been directed to consider the applicant for adjustment against a supernumerary post in terms of the aforesaid O.M. and the Supreme Court's judgment referred to above provided that there was any post in existence in the Government to adjust the applicant No.2. The silence of the learned counsel of the applicant as to what duties and functions can be performed by the applicant No.2 so as to direct the respondents to consider the applicant for adjustment establishes that the applicant cannot discharge functions of any post in the Government, therefore,

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benefit under the aforesaid O.M. cannot be granted to the applicant at all. Retirement of the applicant No.2 on invalidation pension on his application is quite in order and, therefore, the question of quashing and setting aside of the impugned orders does not arise. However, the request of applicant No.1, Smt. Sushmita Pandey wife of applicant No.2, the disabled employee, Shri Anil Kumar Pandey, can certainly be considered by respondents under the scheme for compassionate appointment. Respondents have themselves vide Annexure A-5 dated 3.1.2002 accepted that on retirement of applicant No.2 the case of applicant No.1 for compassionate appointment can be considered.

6. Having regard to the above discussion, though it is not possible to quash and set aside Annexure A-I dated 25.7.2003, respondents are directed at this stage itself without issuing a notice to the respondents, in the interest of justice, while respondents' rights shall not be prejudiced, to consider the request of applicant No.1 Smt. Sushmita Pandey for compassionate appointment under the provisions of the related scheme by passing a detailed and reasoned order within a period of three months from the date of communication of these orders. Ordered accordingly.


(V. K. Majotra)
Vice-Chairman (A)
28.9.07

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