

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A.No.206/2008
Dated the 29th day of October, 2008.**

CORAM :

**HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MS K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N Chandralal
Asst. Loco Pilot (SNP),
Southern Railway, Trivandrum
residing at Lal Bhavan, Payikuzhi,
Ochira P.O., Kollam. ... Applicant.

By Advocate Mr.M.P.Varkey

V/s

- 1 Union of India represented by
Deputy General Manager,
Southern Railway, Chennai-600 003.
- 2 Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

This application having been heard on 29th October, 2008, the Tribunal on the same day delivered the following

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant is seeking a direction to the respondents to promote him also to higher post from the date his juniors have been so promoted in terms of the provisions contained in Section 47(2) of the Persons with Disabilities (Equal Opportunities) Act 1995. (Act of 1995 for short) which is reproduced as under:-



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 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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The brief facts of the case are that the applicant, while working as Diesel Assistant (later re-designated as Assistant Loco Pilot), Quilon in the scale of Rs.3050-4590 was medically de-categorised and declared as unfit under Medical Classification "Aye One" w.e.f. 20.8.2004. and fitted against a supernumerary post in the existing scale created to accommodate him. While he was working in the aforesaid capacity, vide Annexure A-3 Office Order No.30/2007ORG(M)(V/P.535/VI/ALP/Vol.V) dated 29.6.2007, his juniors Shri G Thomas, Shri Sunil Jose, etc were promoted as Sr.Assistant Loco Pilot in the scale of Rs.4000-6000. Since the applicant was not considered for promotion, he made the Annexure A-4 representation stating that he was also entitled to be considered for promotion in terms of provisions contained in Section 47(2) of the Act of 1995. The respondents have not considered his representation therefore, he has approached this Tribunal by this OA.



3 The applicant's counsel has relied upon the judgment of Apex Court in Kunal Singh V/s. Union of India & Anr (2003) 4 SCC 524, Para-9 of the said judgment is relevant and it reads as follows:-

"9 Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment Section 47, which falls in Chapter VIII, deals with an employee who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service." The section further provides 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, if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an

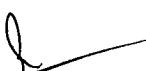


employee acquiring disability during service."

He has also relied upon the Supreme Court judgment in Bhagwan Dass and Anr V/s. Punjab State Electricity Board (2008) 1 SCC 579. Para 20 of the said judgment reads as follows:-

"20 In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (Appellant 1) with effect from 21.3.1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22.3.1997 till date. If any balance remains, that should be adjusted in easy installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustment as directed, should be made to him within six weeks from the date of presentation of a copy the judgment before the Secretary of the Board."

4 The respondents in their reply statement has stated that the applicant's representation was not received in their office. They have further stated that applicant's name was struck off from the rolls of Assistant Loco Pilot w.e.f. 20.8.2004 when he was fitted against the supernumerary post in the scale of Rs.3050-4590. Further, as he could not be absorbed in any alternative suitable employment so far and he continues to remain in the supernumerary post. As such, he has no claim for promotion Sr Assistant Loco Pilot along with his erstwhile juniors in the category of Assistant Loco Pilot. Further, they have also stated that on the



basis of Section 47 of the Act of 1995, the Railways have inserted separate provision in the Railway Establishment Manual and the Railway employees who acquired disability during the service are governed by the said provision only. The newly inserted provision as contained in para 213A is as under:-

"213A Promotion of persons with disability:- There shall be no discrimination in the matter of promotion merely on ground of physical disability. This will apply to the categories of staff who have been recruited from the open market against the vacancies reserved for recruitment of physically handicapped and the staff who acquire disability during service and are absorbed in suitable alternative employment as per provisions contained in Chapter XIII. Such staff will be considered for promotion in their turn on their eligibility and suitability along with others in the selection/suitability/trade test, for promotion to higher grade post."

5 We have heard Counsel for Applicant and the Counsel for Respondents. The Section 47(2) of the Act of 1995 is explicitly clear. According to the said provision, no promotion shall be denied to a person merely on the ground of disability. We also do not find any contradiction to the said provision in para 213A of Railway Establishment Manual referred to above. This is a clear case of denial of promotion on the ground of his disability in violation of the Rule 47(2) of the Act of 1995 and the similar provision contained in para 213A of the Railway Establishment Manual. The reason given by the Respondents that his name has already been taken out from the rolls of Assistant Loco Pilot from the date of his de-categorisation and he has not been fitted with an alternative employment are absolutely untenable and unjustifiable. The Applicant's counsel has

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rightly relied upon the judgments of the Apex Court in Kunal Singh's case (supra) and Bhagwan Das's case (supra). We, therefore, allow this OA and declare that the applicant is entitled to the scale of pay of Rs.4000-6000 on par with his juniors with effect from 29.6.2007. Consequently, we direct that the respondents shall promote the applicant to the aforesaid grade w.e.f. 29.6.2007 i.e. the date on which his juniors Shri G.Thomas, Shri Sunil Jose and others were promoted to the post of Sr.Assistant Loco Pilots in terms of the Annexure A 3 Office Order dated 29.6.2007. The Respondents shall issue necessary orders in this regard and the applicant shall also be paid the consequential arrears of salary and allowances within a period of two months from the date of receipt of copy of this order. There shall be no orders as to costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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