

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 354 of 2008

Wednesday, this the 30th day of July, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

P. Balan,
S/o. Narayanan Nair,
Shunting Master, Southern Railway,
Ernakulam Junction (Medically Unfitted),
Parambil House, Perumbilliissery,
Cherpu P.O., Thrissur : 680 561

... **Applicant.**

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai : 600 003
2. Chief Medical Superintendent,
Southern Railway, Trivandrum : 695 014
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum : 695 014 ... **Respondents.**

(By Advocate Mr. K.M. Anthru)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The uncontroverted facts of this case as under:-

(a) The applicant who had been working as shunting master was medically examined by a medical board constituted by the Railway Hospital Trivandrum, and was found unfit in all classes of medical category for

Railway Service prescribed for Railway employees and thus has been placed in a supernumerary post w.e.f. 22-10-2007, i.e. from the date he was so medically declared unfit. Office order dated 23-10-2007 (Annexure A-3) and dated 05-02-2008 (Annexure R-1) refer.

- (b) He has not been paid the salary since 22-10-2007 (though different reasons are attributed by the applicant and the respondents).
- (c) While according to the applicant, he being a paralysed person, could not visit the office every day or at frequent intervals, according to the respondents, his physical presence in the office is very much necessary for claiming wages for the period beyond unfitness.

2. Provision exists under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 for protection of the employment of anyone who acquires disability during his service and the said section reads 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."

3. According to the counsel for the applicant his earlier posting before he acquired the disability is at Ernakulam and that the applicant is a resident of Trissur. It would not be possible for the applicant to move to Ernakulam every now and then. Respondents should, therefore, devise a way, whereby, with the least disturbance to the applicant in moving to the office, they must afford the benefits available to the applicant under the above provisions.

4. According to the counsel for the respondents, the applicant not being visiting the office at Trivandrum, he could not be paid any amount due to him.

5. Arguments were heard and documents perused. The admitted fact is that the applicant is entitled to the benefit of the provisions of Sec. 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The extent to which the provisions should be pressed into service has been discussed *inter alia* in the following decisions by the Apex Court:-

(a) In *Kunal Singh v. Union of India* (2003) 4 SCC 524, the Apex Court has held as under:

"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 employee 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."

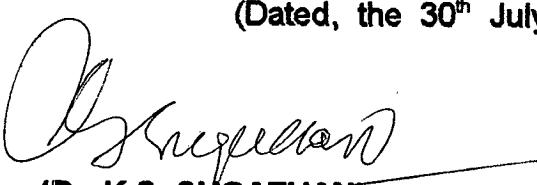
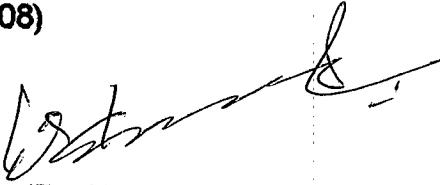
(b) In Bhagwan Dass vs Punjab SEB (2008) 1 SCC 579, the appellant therein became suddenly blind and under a compelling circumstance he wrote a lone letter to the respondents to permit him to retire from service. Respondents therein, accepting the same paid the terminal benefits without considering the entitlement of the appellant to the benefits available under Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Right and Full opportunities) Act, 1995. The Apex Court in that case, disregarding the request for retirement (and treating the same as one not voluntarily given by the appellant) held, "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."

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6. In view of the above law laid down by the Apex Court, there is no doubt that the applicant is entitled to his pay and allowances, including increments etc., from the date he has been declared medically unfit till the date of his superannuation. Respondents are therefore, directed not to any further delay payment of the dues to the applicant. Since supernumerary post has already been created for accommodating the applicant, the said post could be attached to the office nearest to the place of residence of the applicant so that the applicant could be in a position to visit the office to receive his dues every month. Salary for the month of August should thus be disbursed to the applicant by 31st August, 2008, subject to his visiting the office at Ernakulam, while salary for subsequent months should be through the office to which the supernumerary post is attached, as suggested above. As regards arrears of pay and allowance from 22-10-2007 till 31st July 2008, the same shall be paid to the applicant by way of cheque and remitted to his bankers, the details of which the applicant shall make available to the Station Superintendent at Ernakulam. The arrears shall be paid within a period of two months from the date of communication of this order.

7. The O.A. is disposed of on the above lines. No costs.

(Dated, the 30th July, 2008)


(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER
(Dr. K B S RAJAN)
JUDICIAL MEMBER