

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 398/97
T.A. No.

199

DATE OF DECISION 25.9.02

Hasan Khan Petitioner

Mr. Rajendra Prasad Advocate for the Petitioner (s)

Versus

Union of India and another Respondent

Mr. Bhanwar Bagri Advocate for the Respondent (s)

Hyd/
24/9/02
May 25/02
in
419

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
- ✓ 2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*
in

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR

Original Application No. 398/97

Hasan Khan
S/o Shri Ibrahim Khan
r/o C/o M. Rafiq,
Advocate A-1-A Hawa Sarak
Opp. Chambal Power House,
Near Civil Lines,
Jaipur.

: Applicant.

rep. by Mr. Rajendra Prasad : Counsel for the applicant.

-verses-

1. Union of India through
Registrar General-cum-
Census Commissioner of
India, Census Operations,
Ministry of Home Affairs,
2-A Man Singh Road,
Kotah House, Annexe
New Delhi.

2. Joint Director of Census,
Ministry of Home Affairs,
Government of India,
Rajasthan
6-B Jhalana Doongri,
Jaipur.

: Respondents.

rep. by Mr. Bhanwar Bagri : Counsel for the respondents.

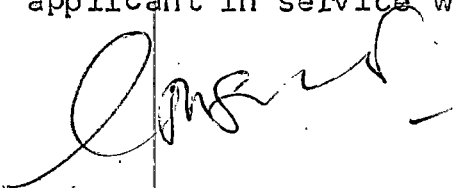
CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 25.09.97

Per Mr. Justice G.L.Gupta,

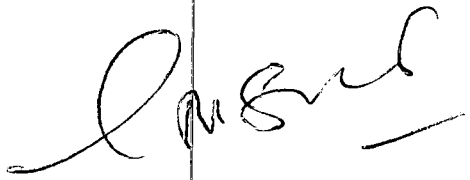
ORDER

In the O.A. filed on 1.9.97, it was prayed
that the order Annex. A.1 dated 30.9.96 be quashed
and the respondents be directed to re-instate the
applicant in service with all consequential benefits.



2. The grounds of challenge to the order were that the Medical Board was not fair and a new ground has been taken to hold him 'unfit' for the Government service. The application was amended and the amended O.A was filed on 27.5.2002. The emphasis in the amended O.A is that after the coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred to as 'the Act') the applicant could not be retired from service and he is entitled to continue on the post.

3. The relevant facts of the case are these. The applicant was appointed on the post of Statistical Assistant in the Directorate of Census Operation, Jaipur on 21.3.80, on adhoc basis. His case was sent for regularisation on the basis of the recommendations of the Screening Committee and his services were regularised vide order dated 14.3.1991. The applicant was continuing in the post. It is alleged that systematic prejudice was gone into the mind of the second respondent and the applicant was repeatedly subjected to medical examination by Medical Boards and the last such examination by the Medical Board was conducted on 30.4.96, whereby the applicant was held to be 'unfit' for service on the post of Statistical Assistant and on that basis, the services of the applicant were terminated by the order dated 30.9.96 (Annex. A.1) issued by the 3rd respondent. Invalid pension was granted to him with effect from 30.9.96.



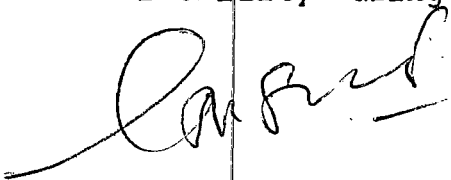
4. The case for the applicant is that under the Provisions of the Act, 1995, which came into force from 7.2.96, he could not be retired from service and is entitled to be re-instated on the post of Statistical Assistant with all consequential benefits.

5. In the amended reply, the respondents' case is that the applicant cannot claim the benefit of the provisions of the Act, 1995. It is denied that the applicant is the victim of the prejudice on the part of the respondent authorities.

6. We have heard the learned counsel for the parties and perused the documents placed on record. It is not necessary on our part to consider about the averments made in the O.A. with regard to the alleged prejudice of the respondent authorities against the applicant or that the applicant was subjected to medical examination time and again.

7. The serious question to be considered is whether on the basis of the certificate Annex. A.122 dated 30.4.96, the applicant could be retired from service after coming into force of the Act 1 of 1996 (the Act) with effect from 7.2.96.

8. The contention of the learned counsel for the applicant was that the provisions of the Act 1 of 1996 have over-riding effect on the CCS(Pension) Rules, 1972 and under Sec. 47 of the Act, the applicant's services could not be dispensed with by way of retirement or otherwise, since the applicant has acquired disability during his service.



9. On the other hand, the learned counsel for the respondents contended that Sec. 72 of the Act saves the provisions of Rule 38 of the CCS(Pension) Rules, 1972 and the applicant has rightly been retired on invalid pension.

10. We shall read hereunder the medical certificate dated 30.4.96(Annex. A.22) issued by Medical Board which consists of 3 doctors presided over by Dr. S.K. Pathak, on the basis of which the applicant was retired from service vide order dated 30.9.96. :-

Form of Medical Certificate

Certified that, we the members of Medical Board have carefully examined Shri Hasan Khan S/o Shri Ibrahim Khan working as Statistical Assistant in the Directorate of Census Operation, Rajasthan Jaipur. His age by his own admission is 40 years and by appearance about 40 years

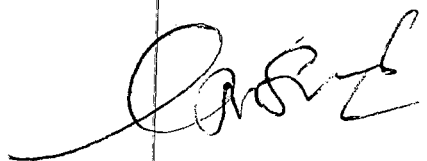
Having examined him medically, we are of the opinion that Shri Hasan Khan is not fit for service on the post of Statistical Assistant already held by him since he does have the mental age of 10 years and suffering from postencephalitis sequale which will impair his working capacity.

Sd/.
(Dr.S.K. Pathak)
Chairman
Medical Board

Sd/.
(Dr. Shiv Gautam)
Member
Medical Board

Sd/.
(Dr. Ashok Pangaria)
Member
Medical Board

11. A reading of the Medical certificate(Annex. A.22) clearly shows that the applicant was found 'unfit' for service on the post of Statistical Assistant. The Medical Board had opined that the applicant had only the mental age of 10 years and he was suffering from post encephalitis sequale which would impair his working capacity.



12.

Sec. 47 of the Act reads as follows:

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 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. "

(emphasis supplied).

13.

The word "establishment" has been defined under

Sec. 2 (k) of the Act, which reads as under:

"(k) 'Establishment' means a corporation established by or under a Central, Provincial or State Act, or an Authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government

(emphasis supplied).

A reading of the above definition clearly shows that the Departments of a Government are included in the definition of "establishment". It is needless to state that Census Operation Department coming under the Ministry of Home Affairs is a department under the Central



Government. In ~~other~~ words, the provisions of Sec. 47 applied to the department in which the applicant was working.

14. Sec. 47(1) of the Act provides that services of an employee, who acquires a disability during his services cannot be dispensed with. It is further stated that after acquiring the disability if the employee is not suitable for the post which he was holding, he could be shifted to some other post with the same pay scale and service benefits. It is further ^{provided} 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.

15. The obvious mandate is that if an employee acquires disability during his service, he has to be allowed to continue in service on the same ^{scale} of pay with ^{all} service benefits till he attains the age of superannuation.

16. The word "disability" has been defined in Sec. 2(i) of the Act which reads as follows:

Disability means
i) blindness
ii) low vision
iii) leprosy cured
iv) hearing impairment
v) locomotor disability
vi) mental retardation
vii) mental illness

It is evident from clause (iv) above that hearing impairment ^{and} from clause (vi) that mental retardation have been considered as 'disability'.



Mental retardation has been defined in clause(r) of Sec. 2 which reads as under:-

" (r) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence; "

The definition includes the condition of arrested or incomplete development of mind of a person.

17. The applicant's case clearly falls within the definition of "mental retardation".

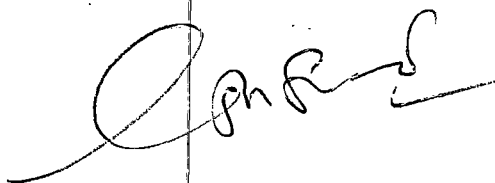
18. 'Hearing impairment' is defined in clause (1) which reads as under:

" hearing impairment" means loss of sixty decibels or more in the better year (sic) in the conversational range of frequencies;

It is evident that the loss of sixty decibels or more in the better ear in the conversational range of frequencies, amounts to hearing impairment. Various Medical Examinations of the applicant indicated that he had hearing problem. In our opinion the case of the applicant clearly fell within the definition of hearing impairment also.

19. In sub-section (1) of Section 47 the words used "dispensed with" are exhaustive and they certainly includes retirement.

20. Keeping in view, the provisions of Sec. 47 of the Act, it has to be accepted that the applicant could not be retired from service on the basis of the medical certificate (Annex.A.22)

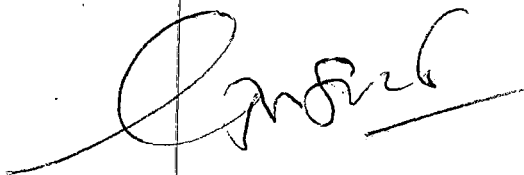
A handwritten signature in dark ink, appearing to be 'Ph R S', is written over the bottom of the page.

21. There is no merit in the contention of the learned counsel for the respondents that the Act does not have over-riding effect over the provisions of the CCS(Pension) Rules, 1972. It must be borne in mind that the object of the Act is to benefit the persons who incur disabilities during the service period.

Sec. 72 of the Act on which reliance was placed by the learned counsel for the applicant itself shows that the provisions of the Act or the Rules made thereunder are in addition to and not in derogation of any other law or rules, order or any instructions issued for the benefit of persons with disabilities. Thus Sec. 47 being more beneficial to the persons incurring disability during service has got the over riding effect.

22. Under Rule 38 of the CCS(Pension) Rules, a provision has been made to grant invalid pension to the Government servants who retire from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

Evidently, Rule 38 was also enacted for the benefit of Government servants who suffered disability during service period. The Act 1 of 1996, has made more beneficent provisions for the persons with disabilities. Evidently, the provisions of Sec. 47 of the Act, do not run counter to Rule 38 of the CCS(Pension) Rules, 1972, rather the provisions of the Act are in addition to the CCS(Pension) Rules, 1972.



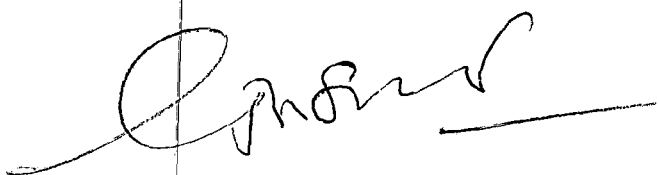
Needless to state, the very purpose of making law in the form of Act 1 of 1996 is to ensure equality to all the employees even if some one of them suffers from any disability.

23. The Preamble of the Act shows that it was passed to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, with reference to the meeting to launch the Asian and Pacific Decade of Disabled persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December 1992.

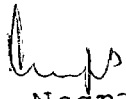
24. Keeping in view the intention behind the enactment, it has to be held that if a persons acquires disability during his service he cannot be allowed to suffer and it is the duty of the employer to provide him the same benefits which he was getting before the said disability was detected.

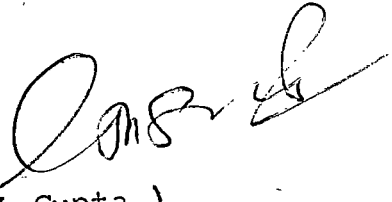
25. For the aforesaid reasons it is held that the order retiring the applicant on invalid pension is not sustainable in law and is liable to be quashed.

26. Resultantly, the O.A. is allowed. The order Annex. A.1 is hereby quashed. The applicant shall be deemed to be in service with all consequential benefits. The respondents are directed to pass



appropriate order under Sec. 47 of the Act within a period of 15 days of the communication of this order. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.