

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR,
JABALPUR

Original Application No. 728 of 2003

Jabalpur this the 18th day of February, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Kishore Kumar Bhagawath,
S/o. Shri Bhagawath P, aged 43 years,
R/o. Qtr. No. 607, Old Railway Colony,
Road No. 15, Ratlam, Distt. Ratlam (MP). Applicants

(By Advocate – Shri B.da.Silva with Shri S. Akthar)

V e r s u s

1. Union of India, through : The General Manager,
Western Railways, Mumbai.
2. Divisional Railway Manager,
Western Railway, Ratlam Division,
Ratlam (MP).
3. Chief Medical Superintendent,
Railway Hospital, Ratlam (MP). Respondents

(By Advocate – Shri H.B. Shrivastava)

O R D E R

By Madan Mohan, Judicial Member –

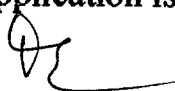
By filing this Original Application the applicant has claimed the following main reliefs :

I to quash the impugned orders dated 24.9.2003 (Annex. A-1) removing the applicant from service and impugned circular dated 28.7.2003 (Annex. A-2) by holding the same to be bad in law,

II. to direct the respondents to reinstate the applicant in service and to adjust him against a suitable post failing which against a supernumerary post in accordance with the provisions of law.”



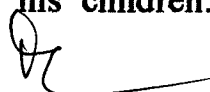
2. The brief facts of the case are that the applicant was selected through Railway Service Commission on 17.11.1984 and was offered appointment as Apprentice Senior Draftsman/Apprentice Senior Estimator. It was suspected that applicant's eye sight was adversely affected and vide order dated 16.11.1999 he was sent for a periodical/special medical examination. Vide order dated 12.6.2001 the respondent No. 3 conveyed to the respondent No. 2 that the medical board held on 19.1.2001 has recommended for invalidation of all categories of services in the case of the applicant. On being declared unfit the applicant submitted a representation dated 18.6.2001 requesting for the benefit that he was entitled on the provisions of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the act). The screening committee examined the case of the applicant on 30.7.2001. The applicant appeared before the committee and it was found that he was not totally disabled. He was once again referred to medical examination vide order dated 21.8.2001. Vide communication dated 24.8.2001 the respondent No. 3 conveyed that the applicant has already been declared unfit, and the question of re-examining him does not arise. The applicant was directed to seek voluntary retirement vide order dated 4.3.2002. The applicant moved representation dated 10.4.2002 requesting the respondents that since he has no dependents who can be employed, protection and relief as per the Indian Railways Employees Manual, which is in consonance with the provisions of the Act of 1995 be extended to him. The applicant alongwith others was asked to appear before the screening committee to be commenced on 15.1.2003, 7.3.2003 and 25.3.2003. But the committee did not examine the case of the applicant and he continued on a supernumerary post pursuant to order dated 25.7.2001. Subsequently, the applicant was removed from service vide order dated 24.9.2003 (Annexure A-1). The impugned order and the circular dated 28.7.2003 (Annexure A-2) are contrary to law and provisions of the Act of 1995. Hence, this Original Application is filed.



3. Heard the learned counsel for the parties and carefully perused the records and pleadings.

4. It is argued on behalf of the applicant that the applicant was declared unfit for the Railway service by the respondents vide order dated 12.6.2001 due to eye sight of the applicant. The learned counsel for the applicant has drawn our attention towards Section 2(b) the act, in which the word "blindness" is defined and further has drawn our attention towards Section 2(i) i.e. the definition of disability which means (i) blindness, (ii) low vision. The applicant was not blind but the aforesaid act includes even the blind person. Our attention is drawn towards Section 47 of the said act regarding non-discrimination in Government employment. It is provided in this section that (1) no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. He has also drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Narendra Kumar Chandla Vs. State of Haryana and others, AIR 1995 SC 519 in which it is held by the Hon'ble Supreme Court that "Every endeavour must be made to adjust him in a post where he could suitably discharge his duties, protecting his last drawn salary." He has also drawn our attention towards another judgment of the Hon'ble Supreme Court in the case of Kunal Singhi Vs. Union of India & another, 2003(96) FLR 990, in which the Hon'ble Supreme Court has considered benefit of Section 47 of the aforesaid act. Hence, the applicant should have been provided suitable job. He also argued that the Annexure A-2 issued by the respondents is against the rulings cited above of the Hon'ble Supreme Court. Thus, the OA deserves to be allowed.

5. The learned counsel for the respondents argued that by letter dated 12.6.2001 the applicant was declared unfit for all classes of service in the Department of the Railways. He was offered appointment on compassionate ground for his children. Against this argument it was



argued on behalf of the applicant that the children of the applicant were minor. The applicant cannot claim the benefit of Section 47 of the said Act and in compliance of the letter dated 28.7.2003 issued by the Railway Board the impugned order dated 24.09.2003 has been issued by the respondents. This order is perfectly legal and justified. The services of the applicant have been discontinued in view of the revised instructions and provisions of Indian Railway Establishment Manual, 1989. The rulings cited by the applicant is distinguishable.

6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings, we find that the vision of the applicant was examined from time to time by the Department of the respondents and ultimately the respondents issued the unfit certificate for the Railway service dated 12.6.2001 in which it is mentioned that there is no reasoning prospect that the Railway employee concerned will ever be fit to resume his duties. We have perused Section 2(b) of the act in which blindness is defined as total absence of sight, or visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses, or limitation of field of vision subtending an angle of 20 degrees or worse. The applicant was not blind at all but he was declared unfit for the Railway service. We have also perused Section 47 of the said act regarding non-discrimination in Government employment. It is provided in this section that (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. We have perused the ruling cited by the applicant in the case of Narendra Kumar Chandla (supra) in which the Hon'ble Supreme Court has held that "Every endeavour must be made to



adjust him in a post where he could suitably discharge his duties, protecting his last drawn salary,” and also in the case of Kunal Singh (supra) in which the Hon’ble Supreme Court has held that “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1996 – Section 47 – Scope of – Section is of mandatory nature – Contains a clear direction that the employer shall not dispense with or reduce in rank – An employee who acquires a disability during the service – Casts statutory obligation on employer to protect employee acquiring disability during service.” It is further held by the Hon’ble Supreme Court in this case 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. These rulings of the Hon’ble Supreme Court perfectly applies to the present case. The letter issued by the respondents dated 28.7.2003 is after the pronouncement of the judgment of the Hon’ble Supreme Court in the case of Kunal Singh (supra). This is issued in violation of the aforesaid ruling of the Hon’ble Supreme Court. The argument advanced on behalf of the applicant that the Railway administration posts many blind persons on the post of Announcer and can also utilize and depute the applicant on any such suitable post, have some force.

7. Considering all the facts and circumstances of the case and also the principles laid down by the Hon’ble Supreme Court referred to above, the impugned order passed by the respondents dated 24.9.2003 (Annexure A-1) and the impugned circular dated 28.7.2003 (Annexure A-2) are liable to be quashed and set aside. We do so accordingly. The respondents are directed to consider the case of the applicant according to Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights



and Full Participation) Act, 1995 and pass a speaking order within a period of three months from the date of receipt of a copy of this order.

8. The Original Application stands allowed accordingly. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”

पूछांकन सं ओ/ब्या.....जबलपुर, दि.....

प्रतिनिधि अवधि:-

(1) सचिव, उच्च न्यायालय वार एडमिनिश्रन, जबलपुर

(2) आदेशक श्री/श्रीमती/शु.....के काउंसल

(3) प्रशाधी श्री/श्रीमती/शु.....के काउंसल

(4) न्यायालय, एडमिनिश्रन, जबलपुर न्यायाधीश

संबन्ध एवं आवश्यक कार्यवाही हेतु

उप सचिव

Handwritten notes:
B.P.S. 10/11/2005
H.B.S. 10/11/2005
(B.P.S. 10/11/2005)

Handwritten notes:
Issued
mm
21-2-05