

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO. 060/00174/2017

Chandigarh, this the 11th day of April, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Harvinder Kaur, Postal Assistant Dukhniwaran Post Office, Patiala,
W/o Sh. Gurcharan Singh, r/o 11, Green Lehal, Passi Road, Patiala
(age about 56 years) Group-C

....APPLICANT

(Argued by: Ms. Veena Kumari, Advocate)

VERSUS

1. The Senior Supdt. Of Post Offices, Patiala Division, Patiala.
2. The Chief Post Master General, Punjab Circle, Chandigarh.
3. Union of India through Secretary, Department of Post, Dak Bhawan, Parliament Street, New Delhi.

....RESPONDENTS

(By Advocate: Shri Vinod K. Arya with Mr. S.D. Sheikm, Sr. Supdt.
of Post Offices, Patiala)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J)

Present Original Application (O.A.) has been filed by the applicant seeking the following relief:-

“ To direct the respondents to create supernumerary post as provided annexure A-1 in the office where the applicant is already posted Further to remit back the leave in the leave account of the applicant which she had to apply under the forced circumstances because of the her disability after she was found to be unfit to perform and duty by the Civil Surgeon to whom the respondent had written to examine the applicant and despite of that the supernumerary post was not created by the respondents.”

2. After exchange of pleadings, the matter came up for hearing today.

3. The applicant commenced her service with the respondent department as Postal Assistant in January 1983 and was performing her duties to the entire satisfaction of her superiors. In the year 2001, she developed disability initially 45% and subsequently the same increased to 60% and then 80%. She made a request to respondent department that due to her disability she is unable to perform duties and she be adjusted against the post where there is no work as she has been declared incapacitated for the work. She made several representations in that regard in the year 2015. She again represented the department annexing O.M. dated 25.2.2015 (Annexure A-1), which was issued by DoP&T by amending Central Civil Service (Leave) Rules, 1972 for persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995) and requested that since she has already availed off her admissible leave, therefore, in terms of para 5 of said O.M. she be granted leave. The applicant also requested that since she has been declared medically incapacitated, therefore, in terms of para 2 of above O.M., a supernumerary post may be created against which she can be adjusted.

4. During the pendency of this O.A., on the request of the applicant, she was ordered to be appear before Medical Board to satisfy that whether she is incapacitated to perform her duties or not. There are 3 different medical reports, first one is dated 13.12.2017, second is 03.1.2018 and last one is of 15.1.2018, where the applicant has been examined by the Medical Board, who

declared her 80% permanently disabled. It has also been stated therein that she is unable to perform physical work. The other report opined that she is unable to perform physical work such as walking and sitting. Based upon these medical reports, learned counsel for applicant submitted that in terms of O.M. dated 25.2.2015 (Annexure A-1), the respondents be directed to create a supernumerary post against which the applicant can be adjusted. She also relied upon judgment of Hon'ble Supreme Court reported in (2003) 4 SCC 524- Kundal Singh Vs. Union of India.

5. Counsel representing the respondents though resisted the claim of applicant by saying that there is no report by the Medical Board that she cannot perform the duties which has been assigned to her by the respondents.

6. Pursuant to our direction dated 24.1.2018, respondent no. 1, Mr. S.D. Sheikm, Sr. Supdt. Post Offices, Patiala Division, is present in Court, who submitted that since creation of supernumerary post is not within his domain, therefore, he cannot create the post. However, he submitted that he will forward the proposal for creation of supernumerary post in terms of Annexure A-1 to the Competent Authority.

7. Learned counsel for applicant apprised this Court that she is not permitted to avail the leave after declaration of medically incapacitated. Therefore, direction be issued to respondents to consider her claim with regard to leave as per para 5 of O.M. cited above and decide the same.

8. We have given our thoughtful consideration to the entire matter and after considering the totality of the facts, we deem it appropriate that since the applicant is 80% disabled and has been declared incapacitated to any work as per the medical report placed on record. Therefore, in terms of Section 47 Clause (2) of the PWD Act, 1995 we direct the respondents to create a supernumerary post against which the applicant can be adjusted. She be also allowed to avail leave as per para 5 of the O.M. dated 25.2.2015.

9. Let the above exercise be carried out expeditiously from the date of receipt of certified copy of this order.

**(P. GOPINATH)
MEMBER (A)**

'SK'

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 11.04.2018



