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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/00560/2015

Dated of order: 4.02.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

PINTU KUMAR DAS,
Son of Madhusudan Das, working as Sorting Assistant at
RMS, WB Division, 2 M.G.Road (Howrah HPO Building),
Howrah-711101, residing at Ichapur, Purba Para, Swamiji
Sangha Club Santragachi, Howrah, West Bengal-711104.

.....Applicant

For the Applicant: In person

-Versus-

1. Union of India service through the Secretary, Department of Posts, Ministry of Communications & Information Technology, having its office at Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General having his office at Yogajog Bhawan, 5th floor, Kolkata-700012.
3. Office of the Senior Superintendent, RMS WB Division, Howrah, having its office at 2 M.G.Road (Howrah HPO building 3rd floor), Howrah-711101.

.....Respondents

For the Respondents: Mr.P.Sharma, Counsel.

O R D E R

MS.JAYA DAS GUPTA, AM:

Heard both and perused the records.

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2. This OA has been filed by the applicant U/s. 19 of the A.T. Act, 1985 seeking the following reliefs:

"(a) The respondent authorities be directed to immediately release the full salary along with all other entitlements and/or increments and/or benefits lying due to the applicant since August, 2012 till date;

(b) The respondent authorities be directed to pay arrears to the Respondent on account of wrong calculation of basic pay;

(c) The respondent authorities be directed to pay salary and all due entitlements to the applicant with the basic pay as Rs. 16, 010/- (Rupees sixteen thousand and ten only) to be calculated on and from 01.07.2014;

(d) The respondent authorities be directed to credit all the debited medical leaves, half pay leaves and earned leaves to the Applicant deducted since 26.05.2007;

(e) The respondent authorities be directed to pay to the applicant due and unpaid yearly bonus for the financial year 2012-2013 and the accurate yearly bonus for the financial year 2013-2014 to which the applicant is entitled for;

(f) The respondent authorities be directed to reimburse a sum of Rs. 25,680/- (Rupees twenty five thousand six hundred eighty only) which has been wrongly and arbitrarily deducted by the SSRM, RMS WB Division, Howrah from the Applicant's salary;

(g) The respondent authorities be directed to reimburse the applicant for the cost of a latest technology enabled foldable motorized wheel chair which the applicant is compelled to purchase due to his disability;

(h) The respondent authorities be directed to reimburse a sum of Rs. 3,17,680/- (Rupees three lakhs seventeen thousand six hundred eighty only) to the applicant towards medical expenses as has been requested by the applicant by submitting all relevant medical documents;

(i) To pass a direction or directions upon the respondent authorities to take all appropriate measures in order to place the applicant at a workplace that is accessible and suitable for the him and till the applicant is so placed further direct the Respondent authorities to allow the applicant to remain in supernumerary post;

(j) A direction as to costs of the proceedings to the Applicant;

(k) Appropriate and fair compensation for the trauma harassment and difficulties suffered by the Applicant by working in hazardous conditions in the Respondent Department since 26.05.2007 which caused him to suffer 70% physical disability and for the difficulties faced by the Applicant and his dependants due to the acts/inaction of the respondent authorities;

(l) Any further order or orders, direction or directions as the Hon'ble Tribunal may deem fit and proper for the ends of justice.

(Extracted as such)

3. The Applicant, Shri Pintu Das, who is appearing in person, placing reliance on the averments made in the OA and the annexure appended thereto, submitted that he is an employee of the Central Government, namely Department of Posts having joined as Sorting Assistant and comes under the category of

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person with disability as he is suffering 70% orthopaedic disability, in course of employment, as defined u/47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in short, PWD Act, 1995. His main contention is that he repeatedly requested the authorities concerned for granting him his dues, as he is entitled to under the Rules, but the authorities concerned neglected to pay him the salary and all other dues to which he is entitled to including reimbursement of the expenditures incurred by him for his treatment as a result of his disability. Accordingly, he has prayed for the allowing of this OA.

Per contra, placing reliance on the stand taken in the reply and enclosures appended thereto, the learned counsel for the respondents submitted that as the applicant did not suffer the disability in course of discharging his duties, he cannot come under the purview of person with disability so as to attract the provision of the PWD Act, 1995. Further contention of the learned counsel for the respondents is that the applicant was a habitual absentee and had not discharged his duties for more than 1200 days in his service period and, as such, some periods have been treated as Extras Ordinary Leave "EOL", Dies Non etc and



accordingly no salary was paid for such periods and over payments had to be recovered. He also absented from duty with effect from 20.11.2014 to 14.5.2015 without producing any kind of leave application. The applicant used to send his leave applications, unfit medical certificates and other applications through Howrah HPO, without appearing in person though the office where he was posted and the Reporting Officers' office are situated in the same building. Accordingly, the learned counsel appearing for the Respondents has prayed for the dismissal of this OA because of the callous attitude of the applicant in discharging his official duties.

4. The points for consideration in this Original Application are as under:

- (i) Whether the applicant is a disabled person, as per the definition of PWD Act, 1995; if so,
- (ii) Whether the provisions of the PWD Act would apply to him, he being a person with 70% disability;
- (iii) Whether the authorities concerned are justified in treating the period of absence of the applicant as EOL dies non etc and consequential recovery from his salary;

5. The above points are taken together for adjudication, as they are interlinked and intertwined with each other.

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6. The definition of disability provided under the PWD Act, 1995, is given in Section 2 (i) where disability includes "locomotors disability" also. As per Section 2 (t) "persons with disability" means a person suffering from not less than forty percent of any disability as certified by a medical authority. It would be appropriate to consider the disability certificate dated 26.05.2007 where the percentage of permanent disability of the applicant, has been calculated as 70% (i.e. more than 40% which is the percentage accepted leading to permanent disability). Also the certificate mentions that he cannot travel without assistance of an escort. This disability certificate dated 26.05.2007 has been issued by the Medical Board of the District Hospital Howrah constituted for the purpose under the Chairmanship of the Superintendent of District Hospital, Howrah. Though this certificate is not as per the format prescribed by the Government of India, the genuineness of such is not in dispute. The respondent authorities have not challenged the genuineness of the certificate. In fact in the reply they have mentioned that considering his health condition he was arranged in a lighter job as Sorting Assistant.

According to the Respondents, the applicant is not entitled to the benefits allowed to a Person with disability as per PWD Act, 1995 as he did not acquire the disability in course of

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discharging his duties. This conclusion of the authorities is wrong.

Our mind goes back to para 17 of the decision of the Hon'ble Apex Court in the case of *Union of India v. Devendra Kumar Pant*, (2009) 14 SCC 546 which is extracted below:

"17. The scope of section 47 in general was considered by this Court in *Kunal Singh v. Union of India* [2003 (4) SCC 524]. This Court held :

"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

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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."

Keeping the opinion of the Hon'ble Apex Court above and after going through the various provisions of the PWD Act, 1995 and instructions issued by the Government of India, in this regard, we do not find any justifiable reason to uphold the decision taken by the Respondents that as the applicant did not acquire the disability in course of discharging his duties, he will not be covered by the PWD Act, 1995, notwithstanding the fact that he is a permanent disabled person having suffered 70% Loco motor disability. We hold that the provisions of the PWD Act, 1995 would apply to him. In this regard, Section 47 of the PWD Act, 1995 is extracted hereunder for ready reference:

"47. Non-discrimination in : Government employments.—

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(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."

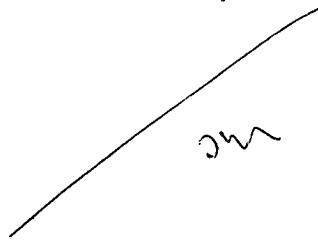
7. When provisions of PWD Act, 1995, applies to the applicant, the provision of DoP&T OM No. 36035/2/2012-Estt.(Res.) dated 8th January, 2014 (Annexure-A/2) will immediately come into play. Para 3 of the above communication dated 08.01.2014 is extracted below:

"3. Para 4 of this Department's OM No. 36035/3/2004-Estt. (Res.) dated 29.12.2005 relating to identification of jobs/posts is amended accordingly and all the Ministries/Departments are now requested to utilise the list of identified posts specified in Annexure-C of the Ministry of Social Justice & Empowerment's Notification No. 16-15/2010-DD.III dated 29.07.2013. It is further stated that the list of jobs/ posts notified by the Ministry of Social Justice and Empowerment is illustrative and the concerned Ministries/Departments can further supplement the list to suit their job requirements."

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8. In view of the specific instruction of the DoP&T, it is hoped that the authorities might have identified the jobs/posts which are to be filled up by such permanent loco motor disabled persons, and, accordingly, as per the discussions made above; the authorities concerned shall have to post the applicant against any of the identified post. It is also made clear that if identification of job/post for the disability persons have not been done, the same shall be done by the authorities concerned within a period of four months from the date of receipt of a copy of this order and till such time, the applicant shall be allowed to continue in a supernumerary post.

9. The further grievance of the applicant is that he has not been allowed to join the post when he reported for duty after availing of leave and the unfair manner in which his leave have been treated as EOL Dies Non etc., from the date he has been declared as disabled as per the disability certificate on 26.05.2007. In this regard, our attention has been drawn to the Office Memorandum No. 18017/1/2014-Estt (L) dated 25th February, 2015 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi (Annexure-A/2), which being relevant, is reproduced below:

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"OFFICE MEMORANDUM dated 25.02.2015

Subject: Amendment to Central Civil Service (Leave) Rules, 1972 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995),-regarding.

The Central Civil Services (Leave) Rules, 1972 were amended vide the Department of Personnel and Training Notification No. 13026/1/2002-Estt(L) dated the 15/16th January, 2004 consequent to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995) which came into force from 7th February, 1996.

2. Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. In Kunal Singh v. Union of India, [2003] 4 SCC 524, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

3. The issues relating to leave or absence of Government servants who have acquired a disability while in service are required to be dealt with in the light of the provisions of the Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The case of a disabled government servant who is declared fit to resume duty but who may not able to perform the duties of the post he was holding earlier may be dealt with as per the first proviso to Section 47 of the PWD Act, 1995. The second proviso shall apply if it is not possible to adjust him against any existing post. In all such

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cases, the Government servant so adjusted shall be entitled to the pay scale and other service benefits attached to the post he was holding.

4. A disabled Government servant who is not fit to return to duty shall be adjusted as per second proviso to the Section 47 mentioned above, until he is declared fit to resume duty or attains the age of superannuation whichever is earlier, with the same pay scale and service benefits. On being declared fit for resuming duty, the Government servant who is not fit for the post he is holding, may be adjusted as per the first proviso to Section 47.

5. Leave applied on medical certificate in connection with disability should not be refused or revoked without reference to a Medical Authority, whose advice shall be binding. The ceiling on maximum permissible leave laid down in Rule 12 may not be applied to leave on medical certificate applied in connection with the disability. Any leave debited for the period after a Government servant is declared incapacitated shall be remitted back into his/her leave account.

6. For a government servant who is unable to submit an application or medical certificate on account of disability, an application/medical certificate submitted by a family member may be accepted. The provisions relating to examination of disabled Government servants and the Medical Authorities competent to issue such certificates are also being amended.

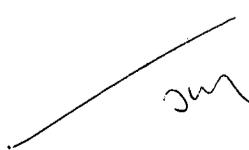
7. Necessary amendments to the Central Civil Services (Leave) Rules, 1972 are being notified separately."

The respondent authorities have alleged the fact of misconduct of the applicant in not applying for leave, on being on unauthorized leave etc. But they have not taken any action under CCS (CCA) Rules, 1965 in this regard.

10. Hence, ordered as under:

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- (i) The Respondents Authorities concerned shall post the applicant who comes under the purview of the PWD Act, 1995 to a post identified for such purpose immediately;
- (ii) If no such posts have been identified till date, such exercise shall be completed within a period of four months of getting a copy of this order and the applicant shall be posted in one of those identified appropriate posts and till such time, the applicant shall be allowed to continue in a supernumerary post, as per the DoP&T OM, cited supra.
- (iii) The appropriate authorities concerned shall also consider and dispose of various grievance of the applicant as regards deduction from salary made due to the absence of the applicant thereby treating the period as EOL, Dies Non etc, keeping in view of the DoP&T OM dated 25th February, 2015, cited supra, within the period fixed above;
- (iv) However, it is made clear that nothing shall preclude the respondent authorities concerned to

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take any action for the alleged misconduct of the applicant, as per law.

11. This OA stands allowed to the extent stated above. There shall be no order as to costs.

(Ms.Jaya Das Gupta)
Admn. Member

(Justice V.C.Gupta)
Judicial Member

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