

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 943 of 2022 (S.B.)**

Israil Shah Raheman Shah,
aged about 57 years, occupation service,
R/o Pundlik Baba Nagar,
Tower Line, Amravati,

Applicant.

Versus

1. State of Maharashtra,
Ministry of Home affairs,
through its Secretary, Mantralaya, Mumbai.
2. Commissioner of police,
Amravati City, Tahsil and district Amravati.
3. Assistant police Commissioner (Administration),
Amravati City.
4. Office Superintendent,
Police Commissioner, Police Commissioner Office,
Amravati.

Respondents.

**Shri S.R. Charpe, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 9th January,2024.

Date of Pronouncement of Judgment : 24th January,2024.

JUDGMENT

(Delivered on this 24th day of January,2024)

Heard Shri S.R. Charpe, learned counsel for the applicant
and Shri S.A.Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant is an employee of respondents. He was appointed as a Police Hawaldar on 01/03/1993. On 10/12/2019, the applicant suffered a major paralysis stroke, as a result the applicant was required to hospitalize, since then he is under constant medical treatment. On account of health condition, the applicant has not been fit to discharge his duties. He was on medical leave. He was under the treatment of Dr. G.M. Taori, Central Institute of Medical Sciences, Nagpur. The applicant thereafter was under the treatment of Zenith Hospital, Amravati. As per the Certificates issued by the Doctors, the applicant was not fit to discharge his duties. The respondents have granted leave. The respondents have directed the applicant to remain present before the Medical Board on 11/01/2023. The applicant had appeared before the Medical Board on 11/01/2023. After examination by the Medical Board, he was declared unfit for duties for a period of six months and directed for re-examination after six months. The applicant was again examined by the Medical Board on 27/06/2023. As per the opinion of Medical Board, the applicant is permanently unfit for duty.

3. It is submitted that during the pendency of the present application, the applicant has been rendered permanently unfit for duty. The applicant is permanently unfit for duty declared by the Medical Board. The case of the applicant is liable to be considered in

accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 so also in accordance with the G.R. dated 22/08/2005 issued by the Government of Maharashtra by which the family members of the applicant is entitled to be considered for appointment on compassionate ground. It is submitted that as per the Government G.R. dated 22/08/2005, the family members of the employee, who is rendered permanently disabled on account of paralysis stroke etc.-----, are entitled to be considered for appointment on compassionate ground. Since the applicant has been rendered permanently unfit for duties, therefore, the applicant is squarely eligible for being considered in the light of the provisions of G.R. dated 22/08/2005 and also in the light of the Rights of Persons with Disabilities Act, 2016.

4. It is submitted that the son of applicant namely Saqeeb Raza Shah Israil Shaha at present is of 20 years of age and has studied upto 12th Standard and is also pursuing further education. He has also secured Government MS-CIT Certificate course. It is submitted that applicant's son can very well be considered for appointment on compassionate ground by the respondents in the light of the Government G.R. dated 22/08/2005.

5. It is submitted that the respondents have paid salary till January,2022, but as per orders/ communications dated 11/02/2022

and 28/02/2022 the salary of the applicant is stopped. Hence, the applicant approached to this Tribunal for the following reliefs.

“(6) (a) Quash and set aside the order dated 11/02/19 (Annexure A-3) issued by the respondent no. 3 so also the communication/correspondence 28/02/22 (Annexure A-5) issued by the respondent no. 4.

(b) Direct the respondents to forthwith restore and release the salary of the applicants from the month of February 2022 and onwards and to continue to pay the same in accordance with law.

(c) Grant any other relief as may be considered fit and proper in the facts and circumstances of the case.

(cc) direct the respondents to consider the claim at the behest of the family members of the applicant particularly the son of the applicant, for appointment on compassionate ground, in terms of the government resolution dated 22/08/2005 and grant compassionate appointment accordingly.

(7) (a) stay the effect and operation of the order/Communication dated 11/02/2022 (Annexure A-3) so also communication/correspondence dated 28/02/2022 and thereby by interim order direct the respondents to forthwith release of regular salary of the applicant from the month of February, 2022 and onwards until further orders of this Hon'ble Tribunal.

(b) Grant ex-parte ad-interim relief in terms of prayer clause a.”

6. The O.A. is strongly opposed by the respondents. It is submitted by respondent no.2 that the applicant is not fit for duty. As per rules, he was paid salary. Now there is no any leave balance. In addition to the balance leave, the respondents have granted extra ordinary leave as per the Maharashtra Civil Services (Leave) Rules.

As per the order dated 28/02/2022, the salary of applicant is stopped from the month of February,2022. There is no illegality on the part of respondents. Hence, the O.A. is liable to be dismissed.

7. During the course of submission, learned counsel for the applicant Shri S.R. Charpe has pointed out Section 20 of the Rights of Persons with Disabilities Act,2016 (49 of 2016). He has pointed out the decision of M.A.T., Bench at Nagpur in O.A.No.501/2017.

8. The respondents have not followed the procedure given in Section 47 / Section 20 of the Rights of Persons with Disabilities Act,2016 (Equal Opportunities, Protection of Rights and Full Participation, Act,1995).

9. As per Section 47 of the Act, there should not be any discrimination in Government employments. This section specifically says that 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 supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier -----.

10. There is no dispute that the respondents have not provided any suitable employment after acquiring the disability by the applicant and, therefore, the applicant is entitled to get the salary of the period till his retirement. The age of applicant shown in the O.A. appears 57 years in the year 2022. The age of superannuation of Police Constable / Head Constable, etc., is 58 years. The applicant must have or about to retire in the year 2023. This Tribunal in O.A.No.501/2017 with connected O.A., has observed as under –

“In support of aforesaid contentions the respondents have placed Annexures R-1 to R-4 on record.

To assail the orders dated 01.07.2013 (Annexure A-2) 16.12.2013 (Annexure A-5) and 26.08.2015 (Annexure A-6) the applicants have relied on Section 47 of the Persons with Disabilities (*Equal Opportunities, Protection of Rights and Full Participation*) Act, 1995.

It reads as under-

“47.Non-discrimination in Government employments.-(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 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.

To support this submissions reliance is placed on *Uttarakhand State Co-operative Federation Ltd. Vs. Shiv Kumar Sharma and another* (Judgment of Uttarakhand High Court delivered on 27.09.2018 in Special Appeal No.672/2018.) In this case it is held-

13. In view of the language used in Section 47 of the Act, no employer, who falls within the definition of 'establishment' can dispense with services of an employee, who acquires disability during employment, notwithstanding any provision to the contrary contained in the Service Rules. Service Rules are in the nature of subordinate legislation, which cannot override provisions of Parliamentary Legislation. Moreover, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a beneficial legislation which requires a liberal interpretation to give effect to the legislative intent as held by Hon'ble Supreme Court in the case of Kunal Singh Vs. Union of India reported in (2003) 4 SCC 526.

In reply, it was submitted by the learned P.O., Shri V.A.Kulkarni that it was the deceased himself who had applied for retirement, he accepted the impugned orders without demur and hence an inference of waiver will have to be drawn which would non-suit the applicants. To counter this submission learned Advocate for the applicants submitted that the deceased was left with no alternative because of his physical condition and under such circumstances it would not be permissible to draw an inference of waiver. To support this submission reliance is placed on the following observations in paras 9 and 10 of Shiv Kumar Sharma (Supra)-

9. Section 47 of the aforesaid Act is in the nature of guarantee to an employee, who acquires physical disability while in service. Since respondent no.1 acquired disability during service, therefore, he is protected by Section 47 of the Act. Merely, because he gave option for voluntary retirement pursuant to the circular issued by Managing Director, it cannot be said that he waived his rights available under Section 47 (i) of the Act. For a waiver of legally enforceable right earned by employee, same should be clear and unequivocal, conscious and with full knowledge of consequences, as held by Hon'ble Supreme Court in the case of Shashikala Devi Vs. Central Bank of India reported in (2014) 16 SCC 260.

10. From Annexure-9 to the Writ Petition, it is apparent that respondent no.1 was not able to perform his duties. He had given option for voluntary retirement due to his physical disability. Thus, he was not aware of the rights available to him under law, therefore, the condition necessary for waiver of right is not present in the instant case. Since the option given by the respondent no.1 was not unqualified, therefore, it was never accepted. In such view of the matter, the submission made on behalf of the appellant that respondent

no.1 was not entitled to protection of Section 47 of the Act, cannot be sustained in the eyes of law.

The applicants have further relied on **“C.Edwin JoshuaVs.The State Transport Corporation (Madurai) Ltd.”**(Judgment dated 11.01.2018 delivered by Madurai Bench of Madras High Court in Writ Petition No.8248 of 2014 with W.M.P. (MD) No.15747 of 2017.) In this case it is held-

3. The stand of the respondent cannot be appreciated. There is no question or waiver or estoppel in these cases. When Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, gives a statutory protection to the disabled employee, the same will have to be adhered to in letter and spirit. The impugned order is violative of the said statutory provision.

Reliance may also be placed on **“Kunal Singh Vs. Union of India and Another 2003 SCC (L & S) 482”**. Wherein it is held-

Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits ; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in

service without considering the effect of the other provisions of Section 47 of the Act.

Undisputed facts have been narrated above. By applying Section 47 of the Act to these facts it can be concluded that none of the impugned orders can be sustained and declaration deserves to be granted that the deceased would deem to have retired on superannuation and therefore entitled to all benefits flowing therefrom.

8. Additional facts of O.A.No.805/2019-

On 20.03.2015 applicant no.3 submitted an application for appointment on compassionate ground. This application was turned down by communication dated 4.4.2015 (Annexure A-9) which reads as under-

विषय :-आपल्या विभागात अथवा कोणत्याही शासकिय/निमशासकिय विभागात नौकरी मिळण्याबाबत.

श्री. विशाल रामकृष्ण मोरे, रा.शिवाजीनगर, भद्रावती.

संदर्भ :- आपला दिनांक २०/३/२०१५ चा अर्ज.

उपरोक्त संदर्भिय विषयांकित अर्जान्वये आपणास कळविण्यात येते की, आपण दिनांक २०/३/२०१५ चे अर्जान्वये पोलीस विभागात अथवा कोणत्याही शासकीय /निमशासकिय विभागात नौकरी मिळण्याबाबत अर्ज सादर केलेला आहे.

सदर अर्ज प्रकरणी आपणास कळविण्यात येते की, महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक अकंपा/१००४/प्र.क.५१/२००४/आठ, दिनांक २२/८/२००५ अन्वये गट क व ड मधील कर्मचारी कर्करोग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट क व ड मधील पदावर नियुक्ती देण्याची सवलत रद्द करण्यात आली आहे. त्यामुळे आपण पोलीस विभागात अथवा कोणत्याही शासकिय /निमशासकिय विभागात नौकरी मिळण्याबाबत केलेली विनंती अमान्य करण्यात येत आहे.

मा. पोलीस अधीक्षक यांचे मान्यतेने.

Relevant portion of G.R. dated 22.08.2005 (Annexure A-10) is as under –

२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीत खालीलप्रमाणे सुधारणा सदर आदेश निर्गमित झाल्याच्या दिनांकापासून करण्यात येत आहेत :-

(१) गट 'क' व 'ड' मधील कर्मचारी कर्करोग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट 'क' व 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. यापुढे

केवळ सेवेत असतांना दिवंगत झालेल्या गट 'क' व 'ड' च्या कर्मचा-यांच्या पात्र कुटुंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल.

This ground of rejection of application for appointment on compassionate ground no longer survives in view of the judgment dated 07.08.2017 passed by the Principal Bench of this Tribunal in O.A.No.1006/2015. I have already quoted operative part of the judgment whereby aforequoted Clause of G.R. dated 22.08.2005 has been quashed and set aside. Consequently, communication dated 04.04.2015 (Annexure A-9) cannot be sustained.

9. The upshot of the foregoing discussion is this.

All three impugned orders in O.A.No.501/2017 are required to be quashed and set aside and declaratory relief that the deceased would deem to have retired on superannuation will have to be granted with all consequential benefits. So far as O.A.No.805/2019 is concerned, the surviving reliefs in prayer Clauses aa and b deserve to be granted since the impediment posed by the relevant Clause of G.R. 22.8.2005 no longer remains in view of the determination made by the Principal Bench in O.A.No.1006/2015. Prayer Clauses aa and b in this O.A. read as under.

aa) quash and set aside, the order dated 04/04/2015 (Annexure A-9) issued by the respondent.

b) Direct the respondents to consider the claim of the applicant no.2 & 3 for appointment of either of them, on compassionate ground, on an appropriate suitable, post with them in accordance with their eligibility and suitability as per educational and other qualifications in accordance with law.

It was argued by Advocate Shri S.R.Charpe for the applicants that the applicants would be entitled to the reliefs claimed in both the O.As. In support of this submission reliance is placed on the judgment dated 17.03.2022 in Writ

Petition No.432 of 2021 of the Hon'ble Bombay High Court (Nagpur Bench). In this case it is held, by relying on Kunal Singh (Supra)-

In other words, it has been held that the protection of pay, rank and other such status under Section 47 of the aforesaid Act is available, notwithstanding any other benefit that a person may be entitled to who has suffered disability during the course of his service.

It was submitted that in light of relevant facts the applicants would be entitled to the reliefs claimed in both the O.As. viz. those based on Section 47 of the Act and that of an appointment on compassionate ground. This submission cannot be accepted.

Simultaneous grant of reliefs claimed in both the O.As. would obviously lead to an incongruity. Once it is held that the deceased would deem to have retired on superannuation with all the attendant benefits, question of granting relief of appointment on compassionate ground to his dependant would not arise.

In such a situation the Principal Bench, in O.A.No.1006 of 2015 gave a choice to elect only one set of such reliefs. Same course will have to be adopted in these cases too. Hence, the order.

ORDER

The impugned orders in O.A.No.501/2017 dated 1.7.2013, 16.12.2013 and 26.8.2015 (Annexures A-2, A-5 & A-6, respectively) are quashed and set aside and it is declared that deceased Ramkrishana More would deem to have retired on superannuation and entitled to all consequential benefits.

Order dated 04.04.2015 (Annexure A-9) in O.A.No.805/2019 is quashed and set aside and the O.A. is allowed in terms of prayer Clauses aa and b.

The applicants will have to elect any one set of reliefs granted as above in these O.As., and not both.

On receipt of representation from the applicants communicating the option which they desire to exercise, the respondents shall act upon the same and take it to its logical conclusion within three months therefrom.

The O.As. are allowed in the aforesaid terms with no order as to costs.”

11. In the present O.A., the applicant is seeking two reliefs. For direction to the respondents to release his salary from the month of February,2022 and onwards and to continue to pay the same. The applicant is also seeking 2nd relief for direction to the respondents to consider the claim at the behest of the family members of the applicant particularly son of the applicant for appointment on compassionate ground in terms of the G.R. dated 22/08/2005 and grant compassionate appointment.

12. As per the Judgment of the M.A.T., Principal Bench at Mumbai and also the Judgment of this Tribunal cited supra, the applicant will have to elect any one set of relief and not more than one relief. Therefore, the following order is passed -

ORDER

(i) The O.A. is allowed.

(ii) The order dated 11/02/2022 and communication dated 28/02/2022 are hereby quashed and set aside.

(iii) The respondents are directed to provide the suitable post to the applicant as per Section 47 of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1996, Rights of Persons with Disabilities Act (49 of 2016), Section 20.

(iv) The respondents are directed to pay the salary of the applicant from the month of February, 2022, till his superannuation.

Dated :- 24/01/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 24/01/2024.