

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.529/2017

(D.B.)

AND

CIVIL APPLICATION NO.566/2017

Ratnakar Kamlakar Pendharkar,
Aged about 46 years,
R/o Plot No.72, Maa Bhagwati Nagar,
Manewada, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Medical Education,
Mantralaya, Mumbai-32.

2. The Dean,
Govt. Medical College and Hospital,
Hanuman Nagar, Nagpur.

Respondents.

Shri D.M. Kakani, the learned counsel for the applicant.
Shri S.A. Sainis, the learned P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 22nd day of December 2017).

Heard Shri D.M. Kakani, the learned counsel for the
applicant and Shri S.A. Sainis, the learned P.O. for the respondents.

2. In this O.A., the applicant has requested that the order passed by respondent No.2 dated 12th July 2017, whereby the applicant has been retired from service prematurely on medical ground, be quashed and set aside. He has also requested to reinstate him on his former post with full back wages with continuity of service with all other consequential benefits. Vide C.A. No.566/2017, the applicant has requested for disposing the O.A. in view of ratio laid down by the Hon^{ble} Supreme Court of India as well as Hon^{ble} Bombay High Court, Bench at Nagpur, i.e. in view of judgment delivered in **W.P. No. 6285/2016 in case of Vijay Jadhao V/s Maharashtra State Road Transport Corporation and another delivered on 4.8.2017.** The O.A. and the C.A. are being disposed of by this judgment.

3. The applicant was appointed on regular establishment as Class-IV employee as a Ward Boy in the pay scale of Rs.750-12-870 on 19.7.1991 and in the year 1996, he was given work of Telephone Operator. Vide order dated 16.11.2009, the applicant was transferred from Account Department to X-ray Department and thereafter from X-ray Department to Ophthalmic Operation Unit on 31.1.2017. Again on 25.4.2017, the applicant was transferred from Ophthalmic Operation Theatre to Psycho Charity OPD.

4. During this service tenure, the applicant met with an accident while on duty on 13.6.2002. He had undergone operation of bone grafting in both the legs. The applicant received 63% disability and was examined by Medical Board appointed by the Government i.e. the respondent No.2 and disability certificate was accordingly issued and the applicant was declared as physically handicapped person by the Medical Board of respondent No.2 on 6.3.2017. Considering the disability and physical condition of the applicant, the doctors advised respondent No.2 to provide the applicant the light work with remarks "patient can work with restricted activities". The applicant, therefore, requested the Medical Board to provide him light work. On 16.2.2017, the Medical Board directed that the applicant be examined by the Medical Board. The Medical Board again declared the applicant unfit permanently. On 30.6.2017, a notice was issued to the applicant to explain as to why he should not be retired from service and without following the principles of natural justice and without following legal provisions the applicant has been made to retire vide order dated 12.7.2017. Such action on the part of the respondents is against the provisions of mandatory directions issued by the Hon'ble High Court of Bombay, Bench at Nagpur and the Hon'ble Supreme Court of India and contravenes the provisions of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995. (hereinafter referred to as the Persons with Disabilities Act, 1995). The applicant was, therefore, constrained to file this O.A.

5. Respondent No.2 resisted the claim and submitted that the applicant was posted from X-ray Department to Eye Operation Theatre as per order dated 31.1.2017. On 8.2.2017, the applicant made representation for giving him light work / simple work due to his hip joint operation and, therefore the applicant was sent to the Medical Board. He was examined by the Medical Board on 9.3.2017 and vide letter dated 5.4.2017, the Medical Board informed that the applicant did not submit the report from Orthopedic Department and that he was also not fit for doing light work / simple work. A show cause notice was, therefore, issued to the applicant and the applicant was made to retire.

6. During the pendency of the O.A., this Tribunal directed respondent No.2 to consider the provisions of Section 47 of the Persons with Disabilities Act, 1995 as well as the judgments of the Honble Bombay High Court and the Honble Supreme Court as are annexed by the applicant and to take a decision as to whether the said provisions as well as decisions can be made applicable in the present case. It was also observed that in case respondent No.2 comes to a conclusion that corrective steps are required to be taken, t

these corrective steps shall be taken and the report in that respect be filed on the next date. In case respondent No.2 comes to a conclusion that the corrective steps cannot be taken, a short affidavit explaining the reasons to be filed on the next date by respondent No.2. On 27.8.2017, instead of filing a short affidavit, the respondent No.2 filed affidavit in reply, denying applicant's claim. The said affidavit does not state as to whether the provisions of Section 47 of the Persons with Disabilities Act, 1995 can be made applicable to the case of the applicant and whether the case of the applicant is covered by pronouncements given by the Hon'ble Bombay High Court and the Hon'ble Supreme Court and, therefore, it is necessary to consider the case of the applicant in view of the provisions of Section 47 of the Persons with Disabilities Act, 1995 and also in view of the judgments of Hon'ble Bombay High Court and the Hon'ble Supreme Court.

7. It is an admitted fact that the applicant has become permanently disabled and the Medical Board has advised that he shall be assigned with light work. The applicant accordingly was given light work and when he was unable to perform the work, he was given a show cause notice. Vide impugned order dated 12.7.2017, the applicant has made to retire compulsorily on medical ground w.e.f. 12.7.2017 after office hours. The learned counsel for the applicant has placed reliance on the judgment reported in case of **Kunal Singh Vs**

Union of India and another in Civil Appeal No.1789/2000 delivered by the Hon'ble Apex Court on 13.2.2003, in which it was held that disabled person is entitled to suitable employment and he cannot be completed invalidated from service as there is a statutory bar. He has to be provided with some alternate suitable job so that his right to live is not taken away.

8. The learned counsel for the applicant further relied upon a judgment reported in **Anil Kumar Mahajan V/s Union of India and another reported in 2013 (7) SCC 243.** In the said case, the Hon'ble Apex Court has considered the provisions of Section 47 of the Persons with Disabilities Act, 1995 and has observed as under:-

%7. There is a prohibition imposed U/s 47 to dispense with, or reduce in rank, an employee who acquires a disability during his service, which reads as follows:

%7. Non-discrimination in Govt. 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 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.+

18. The appellant was appointed in the service of respondents as an IAS officer and joined in the year 1977. He served for 30 years till the order of his compulsory retirement was issued on 15th October 2007. It is not the case of the respondents that, the appellant was insane and in spite of that he was appointed as an IAS officer in 1977. Therefore, even it is presumed that the appellant became insane, as held by the Inquiry Officer, mental illness being one of the disabilities under section 2 (i) of the Act, 1995, U/s 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever is earlier.

19. In view of the aforesaid findings, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsory retire him from service. The High Court also failed to notice the relevant fact and without going into the merit allowed the counsel to withdraw the writ petition merely on the basis of the finding of Inquiry Officer. In fact the High Court ought to have referred the matter to the Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merit by appointing an Advocate as *amicus curiae*.+

9. The learned counsel for the applicant also placed reliance on the judgment delivered in W.P. No. 3496/2007 in case of Arvind Shankarrao Khodke V/s Regional Director of Municipal Administration, Nagpur Division, Nagpur and others by the High Court, Nagpur Bench on 10.1.2017 and in W.P. No. 6285/2016 in case of Vijay Jadhao V/s Maharashtra State Road Transport Corporation and another delivered on 4.8.2017 by the Hon'ble Bombay High Court, Bench at Nagpur. In both the judgments, it has been clearly stated that the provisions of Section 47 of the Persons with Disabilities Act, 1995 are very clear. Such persons cannot be terminated and if the post is not available for him, he needs to be continued on *supernumerary* post till the post suitable for him becomes vacant / available.

10. On going through the judgments referred to in above said paras delivered by the Honble Bombay High Court and the Honble Supreme Court, coupled with the provisions of Section 47 of the Persons with Disabilities Act, 1995, it will be clear that no establishment can dispense with or reduce in rank an employee who acquires disability during his service. In such circumstances, the impugned order retiring the applicant compulsorily is not tenable in the eyes of law. It was the duty of the respondents establishment to adjust the applicant on the post on which he may be able to work and in any case the applicant cannot be removed from service. In view thereof, following order is passed:-

ORDER

- (i) The O.A. No. 529/2017 as well as C.A. No.566/2017 are allowed with no order as to costs.
- (ii) The impugned order dated 12th July 2017 (Annexure A-1) issued by respondent No.2 whereby the applicant has been made to retire compulsorily is quashed and set aside.
- (iii) Respondent No.2 is directed to reinstate the applicant in service within four weeks from the date of this order and to grant him alternate job on which he can effectively work. If the respondent No.2 does not have any vacancy, respondent No.2 should adjust the applicant

against the post, which may be *supernumerary* until a suitable post is available or till he attains the age of superannuation in terms of second proviso to Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

- (iv) It is needless to mention that the applicant will be entitled to regular salary on the expiry of four weeks even if he is not reinstated.
- (v) The applicant would be entitled to 50% of arrears of salary and respondent No.2 is directed to pay said arrears of salary to the applicant within three months from the date of this order.

Dated :-22/12/2017

(J.D. Kulkarni)
Vice-Chairman (J)

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