

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 90/2015**

Sujat Keshvrao Patil,  
Aged about 51 years,  
R/o Near Prachi Complex, Shaniwari,  
Cotton Market, Imamwada Road,  
Distt. Nagpur.

-----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary, Ministry of  
Higher and Technical Education Department ,  
Mantralaya Mumbai.
2. The Director, Directorate of Vocational Education  
And Training, Maharashtra State at  
3, Mahapalika Road, Post Box No. 10036,  
Mumbai 400001.
3. The Joint Director, Vocational Education  
And Training , Regional Office,  
Civil Lines, Nagpur.
4. The Principal, Industrial Training  
Institute, Nagpur Shradhanand Peth,  
Nagpur.

-----**Respondents.**

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1. None for the applicant.
  2. Shri A.M. Ghogare, Presenting Officer for the  
Respondents.
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**CORAM** : B. Majumdar : Vice Chairman  
and  
S.S. Hingne: Member ( J )  
**DATE** : 25<sup>th</sup> January, 2016

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**ORDER****PER VICE-CHAIRMAN**

None is present for the applicant. Shri A.M. Ghogare, Id. P.O. for the Respondents. The matter is heard and decided at the admission stage with the assistance of the Id. P.O.

2. The brief facts of the case are that the applicant, a Craft Instructor in ITI was appointed in 1992. In 2014 it was revealed that due to illness he was incapable of using his hands. The Principal, ITI ( R/4) therefore referred him to the Medical Board, Govt. Medical College, Nagpur to examine and certify whether due to his inability to use both the hands, he was capable of attending to his duties of an Instructor. On 19/1/2015, the Medical Board issued a certificate which stated as follows :-



***“ We consider Shri Sujat Keshrao Patil to be completely and permanently incapacitated for further service of any kind in the department to which he belongs in the consequence of Operated case of C2-C3 PIVD C Radiculomyecopathy –C MND***

***His incapacity appears to us not to have been caused by irregular or intemperate habits.”***

3. On 4/2/2015, Respondent no. 4 informed the applicant that as per the report of the Medical Board he was fully and permanently incapable of doing Govt. service w.e.f. 19/1/2015 and hence action is being taken to terminate his services and he should immediately submit his application for retirement on medical grounds ( invalid pension) as per Rule 68 of the Pension Rules. The applicant has challenged the legality of this communication in this O.A.

4. The applicant submits that the Medical Board duly observed that his physical disability was not due to any

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“irregular or intemperate habits”. It was beyond his control. As he has acquired the disability while in service, in terms of Section 47 of the Persons with Disabilities( Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ( Disabilities Act ), his services , including pay and further promotion are protected. As he was found unfit to work as a Craft Instructor, under this Act it is obligatory for the respondents to provide him with an alternative assignment. He further submits that Rule 68 of the Pension Rules applies only to cases of those who are seeking voluntary retirement or are proceeding on long leave which is not the case with him.

5. The respondents in their reply to the O.A. submit as follows :-

**Para 9** “ *It is submitted that the disease of the applicant can be cured after some reasonable time as said by the doctors, which is annexed with this application. It is kindly noted that the*

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**appointment of the applicant was not under any reservation category. Hence cannot be given his responsibility to the applicant's representative, and he also did not worked under the handicap category. If he had been given services under the handicap reservation then only he would have allotted allied work. Hence respondent no. 3 had issued a letter to the applicant to take voluntary retirement on medical grounds.**

**Para 10.**

**It is submitted that he applicant was appointed to this department in open category and not in handicap category. Section 47 of P.W.D. Act, 1995, claims cannot be passed to him as he was appointed on caste category and not on handicap category. Further, it is submitted that he is not able to work with his hands and as per his nature of duties he has to work with his hands and as per his nature of duties he has to work with brush, which is operated by hands only, and his hands are not in working conditions.-----"**

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6. Shri A.M. Ghogare, Id. P.O. after reiterating the submissions of the respondents as above, fairly conceded that the applicant's case is required to be considered under the provisions of the Disabilities Act.

7. We find that it is undisputed that the applicant acquired the disability of complete and permanent incapacity of using his hands (Motor Neuron Disease) while he was in service. According to him, the respondents could not have asked him to proceed on invalid pension and his case is required to have been dealt with under the provisions of the Disabilities Act. On examination of the provisions of the Act, we find the following :-

( a ) The applicant's case is of "Locomotor disability" . As per Section 2 ( a ) ( i ) ( v ) , this is a "disability" as defined under the Act and as per Section ( a ) ( o ) , " locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

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(b) Section 47 of the Act reads as follows :-

**Section 47 :- "Non-discrimination in Government employment-**

**(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**

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***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."***

8. It is not disputed that the establishment of R/2 is not exempted from the provisions of Section 47. Hence as per the above provisions of the Disability Act, once the applicant had acquired a disability and it was held that due to this reason he became incapable of functioning as a Craft Instructor, respondents are obliged to provide him an alternative and equivalent posting and if this is not feasible at all, he is required to be kept on a supernumerary post until a suitable post is identified for him or he retires on superannuation. His promotion as per his seniority in the cadre of Craft Instructors is also required to be protected. Hon'ble the Supreme Court in **Kunal Singh Vs Union of India [ ( 2003 ) 4 SCC 524 ]** and hon'ble the Bombay High Court in **Shivaji S/o Vishwanath Dongre Vs State of**

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Maharashtra [ 2006 ( 1 ) Mh.LJ. 417] and Jaikumar Jagannath Kulkarni -Vs- State of Maharashtra [ 2007 ( 3 ) Mh.LJ. 130 ] and the Principal Bench , Mumbai of this Tribunal in George Raffaille Makasare ( O.A. No.337/2011 dtd. 25/1/2012 ) had held that a disability acquired while in service is not be treated as retirement on invalid pension and the employee is entitled to full protection in service under Section 47 of the Disabilities Act.

9. These being the statutory obligations of the respondents, we find that their averment that the Disability Act will not apply to the applicant as he was not appointed from the handicapped category not only appears to be preposterous and ridiculous, it also points towards a total lack of empathy with an handicapped employee. Hence in our view the impugned communication dtd. 4/2/2015 is to be held as illegal and devoid of merit. Accordingly, the O.A. stands disposed of in terms of the following :-

- a) The communication dtd. 4/2/2015 is quashed and set aside.

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- b) It is held that in terms of Section 47 of the Disabilities Act, the applicant's service interests including pay, seniority and future promotion stand protected .
- c) The respondents will provide a suitable alternative & equivalent <sup>+</sup>posing to him with effect from the date he was <sup>^</sup>relieved of his duties as a Craft Instructor.
- d) If no post as above is available the respondents will create a supernumerary post for this purpose till such an alternative post is found or his retirement on superannuation.
- e) Compliance of ( c ) and ( d ) will be done within 6 months from the receipt of this order
- f) No order as to costs.

Sd/-

( S.S. Hingne )  
Member ( J )

Sd/-

( B. Majumdar )  
Vice-Chairman.

Skt.