

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.654 OF 2015

DISTRICT : MUMBAI

Shri Devram Jijaba Dhore.)

(Since deceased, by his heirs and legal)

Representatives))

1. Smt. Rekha Devram Dhore.)
Age 42 Yrs, Widow of deceased Govt.)
Servant.

2. Shri Nikhil Devram Dhore.)
Age : 21 yrs.)

3. Shri Omkar Devram Dhore.)
Age : 19 yrs.)
All residing at Jay Ambe Society,)
Varsha Near, Near Nalanda Balwadi,)
Park Site, Vikhroli (W), Mumbai 79.)...Applicants

Versus

1. The Commissioner of Police.)
Mumbai having office at Mumbai)
Police Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai 400 001.)

2. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)



3. The Principal Accountant General)
 No.1, (M.S), having office at M.K.)
 Road, Mumbai 400 020.)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicants.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
 R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 07.07.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The validity of an action manifested by the order dated 20.1.2015 whereby the retirement of a deceased Police Naik having received paper promotion as Police Head Constable being the original Applicant who died pending OA on invalid pension under Rules 71 and 72 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules) was made is questioned by the present Applicants being the heirs and legal representatives of the said deceased. We regret to mention that the Social Welfare Policy enshrined in "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) to be called Disabilities Act hereinafter was completely lost on the concerned



authorities either by design or accident mostly the former. But the impugned action quite undoubtedly is remarkable apart from violation of law to the complete insensitivity. It is elementary principle that the Pension Rules are totally subordinate to the parliamentary enactment viz. the Disabilities Act. The impugned order in fact shows ignorance of such a basic tenet. That order is at Exh. 'A' (Page 17 of the Paper Book). As if it was not sufficient enough injustice, the pension papers required effectively the recovery of a huge amount as detailed in Para 6.22 of the OA for which Rule 134-A of Pension Rules came to be invoked. Both the orders are herein impugned.

2. The deceased Applicant was born on 18.03.1961. He joined the Police Force in Maharashtra as a Police Constable (PC) on 01.11.1988. In 2006 and July, 2014, he came to be promoted as Police Naik (PN) and Police Head Constable (PHC) respectively. However, because of poor health and afflicted eye sight, he could not function as PHC. This OA was instituted on 25.08.2015. The deceased Applicant died on 3.10.2015 (See Affidavit-in-reply of Respondent No.3, Page 40 of P.B.) His widow and two sons impleaded themselves by heirship as and are the present Applicants.

A handwritten signature in black ink, appearing to be 'G.S.', is written above a horizontal line.

3. The deceased Applicant as on 29.03.2012 was attached to Police Station, M.R.A. Marg. While commuting, he fell down from a running train sustaining serious injuries on his head resulting in Paralysis and affected vision.

4. The issue, therefore, is as to whether an order made in complete ignorance of the provisions of the Disabilities Act with particular reference to Section 47 thereof can sustain. The answer is axiomatic that it cannot. It bears repetition that the deceased Applicant could not have been accused of having contributed to his plight in any manner whatsoever. He met with an accident and the miseries followed. Section 47 of the Disabilities Act read as follows :

“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.

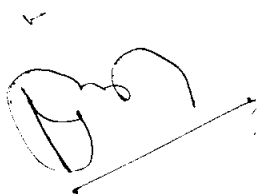
(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any 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.”

The said provision will have to be read in the light of the judgment of the Hon'ble Supreme Court in **Kunal Singh Vs. Union of India, AIR 2003 SC 1623 = (2003) 4 SCC 524**. The express language of the said provision read with Kunal Singh is so clear as not to necessitate any further elaboration. It must be borne in mind quite clearly that the Applicants derived their right to family pension from the said deceased who was their ascendant, and therefore, if his right to pensionary benefits could not be successfully negated, it goes without saying that in positive terms, the Applicants would be entitled to the right of family pension.



5. The Respondents in support of their case have invited reference to Rules 71 & 72 of the Pension Rules. Rule 71 proceeds on the basis that an application has to be made for invalid pension in the circumstances mentioned therein and Rule 72 prescribes the form of Medical Certificate. In this particular matter, there is a bunch of medical documents to show that the medical authorities certified that a case for sending deceased Applicant on invalid pension was constituted. Now, in our opinion, the provisions contained in the Disabilities Act, generally with particular reference to Section 47 in their letter and spirit would make it very clear that if the deceased Applicant could not have been put to a disadvantage while in harness, the Applicants also cannot be put to disadvantage just because the said deceased has passed away. If the provisions of Disabilities Act provide as they do inter-alia, that even if an employee who is eligible and entitled to the benediction thereof cannot be deprived of his job and for him even a supernumerary post may have to be created, then in our view, the said deceased will have to be deemed to be under employment in normal circumstances as if he were just like any other Government servant and in the event, had he retired on superannuation, he would have been entitled to continue till that point of time. The

A handwritten signature, possibly 'B. M.', is written in the bottom left corner. A long arrow points from the signature towards the right side of the page.

entitlement of the Applicants, therefore, cannot be questioned at all.

6. Quite pertinently, the Respondent No.1 made itself bold to make a sweeping statement that by some State instrument, the provisions of Disabilities Act were not applicable to the Police Force. This is absolutely unsustainable and in fact deserve to be countered in strongest of the terms but we refrain to do so because implicit in our Office is the need to be temperate in our expression. The record would show that the maker of the said Affidavit-in-reply, the Assistant Commissioner Mangesh G. Pote was personally called to explain the said statement and the source thereof. In the ultimate analysis, the learned P.O. Ms. Gohad also submitted an Affidavit of Apology. In any case, we are going to impose cost on the Respondent No.1 for the kind of insensitivity shown in this matter.

7. The amendment to the OA was necessitated because some kind of a recovery of a huge amount was apparently sought to be made from the present Applicants. Now, if the deceased Applicant could not have been made liable for any adverse consequences, thanks to the provisions of the Disabilities Act, it must follow as a

A handwritten signature in black ink, appearing to be 'M. G. Pote', is written above a horizontal line.

natural consequence and fall out that the present Applicants also cannot be saddled with any punitive consequences. Specific directions in that behalf will have to be therefore given.

8. The upshot, therefore, is that the impugned orders will have to be set aside and it will have to be held that in case of the Applicant, the provisions of Disabilities Act would completely displace the provisions of Pension Rules including Rules 71 and 72 thereof various medical documents notwithstanding.

9. Now, the deceased Applicant was admittedly cleared for his promotion as PHC but he was apparently not allowed to function as such by the circumstances and the department because of the accident. The express text of the Disabilities Act and its spirit is such that the said deceased will have to be treated to have been promoted with all the entitlement attached to the post of the PHC from the date that he would have been in the absence of the accident promoted on, as PHC. No doubt, there may not be any express prayer in that behalf, however, this Tribunal in such matters while effectuating the statutory mandate contained in the provisions of Disabilities Act has to discharge the statutory duties undeterred by the



procedural technicalities, and therefore, an appropriately moulded order will have to be made regardless of the existence or otherwise of a specific prayer.

10. The order dated 20th January, 2015 being Exh. 'A' (Page 17 of the paper book) stands hereby quashed and set aside. It is hereby declared and Respondents are accordingly directed to extend in case of the deceased Applicant, the benefit of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" without insisting on the provisions of Rules 71 & 72 of the Pension Rules. The deceased Applicant would be deemed to be on effective and actual service as Police Head Constable on the date of his death as explained in para 9 above and the present Applicants are, therefore, entitled to the family pension just as in case of any other normal case of a Government employee dying in harness. The Respondents are directed to act in accordance herewith. They must commence the compliance with immediate effect and conclude it within a period of three months from today. It is further held that the Respondents shall not insist on any recovery being made from the Applicants as threatened by them and the action, if any, in that behalf is quashed and set aside. The Original Application is allowed in these terms with of

A handwritten signature in black ink, appearing to be 'G. M.', is written over a horizontal line. There is a small mark above the signature.

Rs.10000/- (Rs. Ten Thousand only) payable in a single set to the Applicants by Respondent No.1 within four weeks from today by way of depositing in the office of this Tribunal. The same be paid over upon a proper identification to the Applicant no.1 Smt. Rekha Devram Dhore on behalf of herself and Applicant nos.2 and 3. The Applicant no.1 shall be entitled to ascertain the officer/s and/or employees from whom the said amount should be recovered either fully or in part and if a case is made out actually recover it from him/her/them.

Sd/-

(R.B. Malik)
Member-J
07.07.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
07.07.2016

Mumbai

Date : 07.07.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\7 July, 2016\O.A.654.15.w.7.2016.doc