

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 195 of 2018

Shri Suresh Ratan Shinde,
Aged about 57 years, Occ. Nil,
Ex. Police Head Constable (Buckle no.903),
Attached to Police Head Quarters in the office of
Superintendent of Police, Yeotmal
R/o C/o Shri Santosh R. Shinde
B/1/206 Vasant Vihar Garden,
Near city Hospital, Ambarnath (E), Dist. Thane.

Applicant.

Versus

- 1) The State of Maharashtra,
through Principal Secretary,
Home Department,
Having office at Mantralaya, Mumbai-32.
- 2) The Superintendent of Police
Yeotmal having office at Yeotmal.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.P. Potnis, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 582 of 2018

Changdeo S/o Sahadeorao Sanap,
Aged about 47 years, Occ. At present Nil,
R/o Swagatam Colony,
Near Gajanan Maharaj Mandir, Gadge Nagar,
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Secretary,
Home Department,
Mantralaya, Mumbai.

- 2) Commissioner of Police,
Amravati City, Amravati.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri H.K. Pande, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

COMMON JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 28th day of February,2019)

Heard Shri S.P. Palshikar, learned counsel for the applicants and Shri A.P.Potnis (in O.A.195/2018) and Shri H.K. Pande (in O.A.582/2018), learned P.Os. for the respondents.

2. Both these O.As. are based on the identical questions of law and facts and therefore they are decided by the common judgment.

3. The applicant in O.A.No. 195/2018 joined service on 23/02/1982 as Police Constable and then he was promoted as Police Naik and later on as Police Head Constable. In year 1998-99 it was diagnosed that the applicant was suffering from Madurafoot disease and as per the medical advice his right leg was amputated. It came to the knowledge of the Appointing Authority that due to amputation

of leg the applicant was unable to perform his duty in the police force. Consequently vide order dated 01/07/2013 the applicant was called upon to show cause why he should not be retired on medical ground as provided under rule 10 of sub rule 4 of the Maharashtra Civil Services (Pension) Rules, 1982. The reply was submitted by the applicant, but the Superintendent of Police, Yavatmal who was Appointing Authority formed opinion on the basis of the opinion given by the Medical Board that the applicant was unable to discharge his duty as Police Constable and consequently decided to retire the applicant from service on the medical ground.

4. Thereafter the applicant made request to engage his son on compassionate ground in service, but the applicant was informed that in absence of any such provision his son could not be engaged in service.

5. It is case of the applicant that he learnt about the Judgment delivered by the Maharashtra Administrative Tribunal in one matter that the government servant if retired on the ground of any disease, then he is protected by Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "Disabilities Act, 1995"). Consequently the present application is filed by the applicant for the relief.

6. In O.A. No. 582/2018 the applicant was appointed in service in 1999 as Police Constable, he was promoted as Police Naik and later on as Police Head Constable and in the year 2009 he was promoted as Assistant Sub Inspector. On 03/08/2014 the applicant had paralytic attack, consequently he became bed ridden. In the year 2016 the applicant was referred to the Medical Board, the Medical Board issued Disability Certificate and gave opinion that the applicant was not able to discharge his duties as Assistant Sub Inspector and consequently on 04/08/2017 the Commissioner of Police, Amravati retired the applicant from the service vide order dated 04/08/2017. It is submission of the applicant that he was entitled to have protection of section 47 of the Disabilities Act,1995 and without considering this fact, the Appointing Authority straight way took decision to retire the applicant from service on medical ground, therefore, it is illegal.

7. In the both the matters it is contended by the Petitioners that action of the Appointing Authorities is contrary to law and therefore, these orders be set aside and direction be given to the respondents to create supernumerary post for the applicants and they be kept in service till their retirement and all consequential reliefs be given to them.

8. We have heard the respective submissions on behalf of the applicants and on behalf of the respondents. The learned counsel for the applicants has placed reliance on the judgment in case of **Kunal Singh Vs. Union of India & Ano., (2003) 4 SCC, 524.** On the basis of the law in this case it is submitted that the protection under sections 47 & 72 of Disabilities Act,1995 is mandatorily available to an employee acquiring disability during his service and it cannot be denied on the ground that he is given the benefit of invalid pension as per the the Maharashtra Civil Services (Pension) Rules, 1982.

9. In para-9 of this Judgment the Hon'ble Apex Court has observed as under –

“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”.

10. In both the matters the applicants acquired the disability during their service and they were entitled to have protection under Section 47 of the Disabilities Act,1995, but unfortunately their Appointing Authorities did not consider the provisions under Section

47 and decided to retire the applicants from the service on medical ground.

(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”.

11. After reading the second proviso to sub section 1 of section 47 the direction is given to the appointing authorities to create a supernumerary post for the employee under physical disability, until suitable post is made available or the employee attains the age of superannuation, whichever is earlier. After reading this proviso and Judgment in case of Kunal Singh vs. Union of India (cited supra) there is no doubt in our mind that approach of both the Appointing Authorities was in violation of the law.

12. In this regard, we would like to take note of the fact that Circular dated 04/08/2011 was issued by the Government of Maharashtra and specific direction was given that the government employees who acquired physical disability during the employment were protected under Section 47 of the Disabilities Act,1995, but they were forced to retire on medical ground and such instances were

happening in the Police Department, where instead of giving benefit of Section 47 the Disabilities Act,1995 to such employees, they were forced to retire from the service on medical ground. It was also observed that it was in violation of the law and the Appointing Authority shall follow Section 47 and give its benefit to the employees acquiring disability during the service. Similar circular was issued on 26/03/2007. In spite of both these Circulars and mandate under Section 47 and the law declared by the Hon'ble Apex Court in both the matters the applicants were forced to retire on medical ground, therefore, we accept the contention of the applicants that this approach and action of the Appointing Authorities in both the cases was in violation of law and it cannot be protected. In view of this discussion, we pass the following order –

ORDER

ORDER IN O.A.195 OF 2018 -

- (i) The impugned order of retirement is hereby set aside.
- (ii) The respondents are directed to create supernumerary post to adjust the applicant in service till his retirement on superannuation (30-4-2017). The applicant shall be deemed to be in service on such supernumerary post till the date of his retirement and entire salary, allowances and other consequential reliefs to which he was entitled

till his retirement be given to him and on the basis of this the pension of the applicant be fixed and arrears be paid to him. We direct that as the respondents did not take the notice of the law, therefore, respondents shall pay Rs.10,000/- to the applicant on account of cost of the proceeding.

(iii) The respondents to comply the order within 3 months from the date of the order.

ORDER IN O.A.582 OF 2018 –

(i) The impugned order of retirement is set aside.

(ii) The respondents are directed to create supernumerary post to adjust the applicant till his date of retirement on superannuation (30/6/2028). The respondents to pay the salary admissible to the post to the applicant till the date of his retirement together with all allowances and benefits. The respondents to pay Rs.10,000/- on account of cost of this proceeding to the applicant.

(iii) The respondents to comply the order within 3 months from the date of the order.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 28/02/2019.