

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 734 OF 2014

DISTRICT : MUMBAI

Shri Dinesh @ Dadaji Daulatrao Meshram)
[Retired on Medical Ground],)
R/o: 1/19, Savitri Sadan C.H.S,)
Dr Mukharjee Road, Near Sawarkar Road)
Dombivali [E], Thane 421 201.)...**Applicant**

Versus

1. The Addl. Chief Secretary,)
Education Department,)
N.C.C, Mantralaya [Extension],)
Madam Cama Road, Mantralaya,)
Mumbai 400 032.)
2. The Director,)
Sports & Youth Services,)
Central Building, Pune-1.)
3. The Dy Director,)
Sports & Youth Services,)
Mumbai/Nasik, Administrative)
Training Mahavidyalaya Room.)

4. The Commanding Officer,)
3, Maharashtra Batalion,)
N.C.C Bldg, 3rd floor,)
Old Secretariat Compound,)
Fort, Mumbai 400 032.)
5. The Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.S Deshpande with Shri V.P. Pobthare, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 24.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S Deshpande with Shri V.P. Pobthare, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant seeking quashing of order dated 29.1.2011 retiring the Applicant from service on medical grounds. The Applicant is seeking continuation of service till the date of superannuation in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act). The Applicant had also challenged G.R dated 22.8.2005, regarding compassionate appointment. However, he had not pressed this relief.

3. Learned Counsel for the Applicant argued that the Applicant was working as Driver in the office of the Respondent no. 4 since 22.3.1993. A camp of National Cadet Corps (NCC) was organized at Jawahar Lal Nehru Port Trust (JNPT), District-Raigad from 12.1.2010. The Applicant was driving a Government Vehicle (a Military Truck), on his way to JNPT when the vehicle stopped at a traffic signal. A trailer dashed the said vehicle which was stationary. The Applicant suffered serious injuries in the accident and was relieved from the Camp duty by the Camp Commandant on 13.1.2010. The Applicant was declared unfit for any service by the Medical Board of J.J Hosital, Mumbai on the ground of Schizophrenia by Medical Certificate dated 10.11.2010. The Applicant was retired from service by order dated 29.1.2011. The Applicant made a number of representations including representations dated 29.3.2011 and 13.6.2011 to the

Respondents to continue to pay his salary till the date of his superannuation. However, he did not receive any reply. The Respondents did not also consider his request to give appointment to his wife on compassionate basis. The Applicant has, therefore, filed this Original Application. Learned Counsel for the Applicant argued that he has acquired disability due to severe accident, while on duty. Even if, it is held that he was found unfit for further duties due to 'Schizophrenia', that is also an acquired disability under Section 47 of the Disabilities Act. As such, he is eligible to be given full salary, if necessary, in a supernumerary post, till he reaches the age of superannuation.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant had already accepted pensionary benefits as per order dated 29.1.2011 retiring him from service on medical grounds. His representation dated 29.3.2011 and 13.6.2011 were regarding compassionate appointment to his wife. These representations were rejected on 6.3.2013. Learned Presenting Officer argued that the Applicant has already crossed the age of 58 years and he is beyond the age of superannuation. At this stage, no cause of action survives and the Applicant is not entitled to any relief.

5. We find that the word 'Disability' is defined in Section 2(i) of the Disability Act which reads as follows:-

“Disability” means-

- (i) Blindness
- (ii) Low vision;
- (iii) Leprosy cured;
- (iv) Hearing impairment
- (v) Locomotor disability;
- (vi) Mental retardation;
- (vii) Mental illness.

It is evident that the Applicant has acquired the disability viz. ‘mental illness’, during his service. Section 47(1) reads:-

“(1) No establishment shall dispense with, or reduce in rank, an employee who acquired a disability during his service.”

Medical Certificate dated 10.11.2010, issued by the Standing Medical Board of Sir J.J Group of Hospitals, Mumbai has completely and permanently incapacitated the Applicant for further service of any kind. It was clarified that the incapacity was not caused, accelerated or aggravated by irregular or intemperate habits of the Applicant. There is no doubt that the Applicant has acquired disability (mental illness-paranoid schizophrenia) during his service and his case is fully covered by Section 47 of the Disability Act. Learned Counsel for the Applicant has relied on the judgment of

Hon'ble Supreme Court in **KUNAL SINGH Vs. UNION OF INDIA & ANR : 2003 SCC (L & S) 482**, wherein it is held that:-

“12 Merely because under Rule 38 of the 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 other provisions of Section 47 of the Act.”

The facts are remarkably similar in the present case. The Applicant is eligible to get for full salary till the date of his superannuation and his pensionary benefits are required to be refixed on that basis.

6. The Respondents are directed to redetermine the pension and pensionary benefits on the date on which the Applicant reached the age of superannuation. He may be paid the difference between pension and full salary till the date of superannuation. Similarly, he will be eligible for difference in pensionary benefits he is entitled and those which he has already received. All these arrears and revised pension may be paid to the Applicant within 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 24.08.2016
Dictation taken by : A.K. Nair.