

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1180/2023(D.B.)

Vilas Rajeshwar Siramwar,
Aged about 54 years, R/o. Sahakari Nagar,
Indira Gandhi High School, Wardha Road,
Nagpur. Maharashtra.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Education and Sports Department,
Mantralaya Mumbai-32.
- 2) The Deputy Director,
Sports and Youth Services,
Nagpur Division, Nagpur Divisional Sport Complex,
Koradi Road, Mankapur, Nagpur.
- 3) Commanding Officer,
4, (Maharashtra), Naval Unit,
NCC, Nagpur.

Respondents

Shri G.K.Bhusari, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 14th August, 2024.

JUDGMENT

Heard Shri G.K.Bhusari, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The applicant was appointed on compassionate ground on the post of Peon at 4 (Maharashtra) Batalian, NCC, Nagpur by an order dated 06.08.1992. The applicant has been promoted on the post of Lashkar. He was transferred on various places and currently working on the post of Lashkar at 4 (Maharashtra) Batalian, NCC, Nagpur. Applicant has completed total period of unblemished service of 31 years and 3 months on the post of Lashkar.

3. As per the Government Resolution dated 22.04.2022, it is necessary on the part of the Government servant specifically who are between 40 to 50 years of age requires to undergo medical examination once in two years. The applicant was referred for Medical Examination. The applicant was examined by Civil Surgeon, Nagpur and he was declared unfit to do his duty.

4. The respondents relying on the Certificate issued by Civil Surgeon, Nagpur dated 02.05.2023, issued order dated 24.10.2023 by which the applicant is compulsorily retired. Therefore, the applicant has approached to this Tribunal for the following reliefs-

1. Quash and set aside the impugned order dated 25.10.2023. (Annexure A-1) issued by the Respondent No. 2 thereby compulsorily retiring the Applicant on medical grounds.

2. Stay the effect and operation of impugned order dated 25.10.2023. (Annexure A-1) issued by the Respondent No. 2 thereby compulsorily retiring the Applicant on medical ground.

3. Direct the Respondents to allow the Applicant to continue on the post of Lashkar during the pendency of the instant Original Application with all other consequential benefits.

4. Grant any other relief which this Hon'ble Tribunal may find deem fit and proper in the facts and circumstances of the case;

5. Allow the Original Application with cost and Saddle the cost on the Respondents.

8. INTERIM RELIEF: -

During the pendency of the present Original Application Stay the effect and operation of impugned order dated 25.10.2023. (Annexure A-1) issued by the Respondent No. 2 thereby compulsorily retiring the Applicant on medical ground.

5. The O.A. is strongly opposed by the respondents. It is submitted by the respondents that applicant is unfit for service as declared by Civil Surgeon, Nagpur and therefore the impugned order is issued by the respondents. It is further submitted that the applicant has not challenged the Certificate issued by the Civil Surgeon, Nagpur. Therefore, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for the applicant has pointed out Section 20 of the Rights of Persons with Disabilities Act, 2016. The learned counsel for the applicant has pointed out the Judgments of the Hon'ble Supreme Court in the case of **Anil Kumar Mahajan Vs. Union of India (SC) reported in Civil Appeal No.4944 of 2013 (Arising out of SLP(C) No.26400 of 2010).** in the case of **Kunal Singh Vs. Union of India AIR 2003 (SC) 1623** and Judgment of the Hon'ble Bombay High Court in the case of **Jaikumar Vs. State of Maharashtra in W.P.No.1937 of 2006 .**

7. The learned P.O. has strongly objected the O.A. on the ground that Certificate issued by the Civil Surgeon, Nagpur is not challenged by the applicant before the Medical Board. Hence, the O.A. is liable to be dismissed.

8. The objection raised by the learned P.O. is not tenable because it is not for the applicant to approach before the Medical Board. It is for the respondent/employer to refer the applicant for Medical Board as to whether he is permanently unfit to discharge his duty. The Certificate issued by Civil Surgeon, Nagpur show that he is unfit to do his duty. This Certificate nowhere says that he is permanently unfit to discharge his duty. Section 20 of the Rights of Persons with Disabilities Act, 2016 is very clear. Section 20 of the said Act is reproduced below-

20. Non-discrimination in employment.—

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

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, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

9. As per Section 20(4), it is clear that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. There is no dispute that the applicant acquired the disability during his service with the respondents. The respondent authority is a Government

establishment, therefore all the provisions of Rights of Persons with Disabilities Act, 2016 is applicable to the institution of respondents.

10. The Hon'ble Supreme Court in the case of **Anil Kumar Mahajan Vs. Union of India (SC)**, has held "Even if it is presumed that he become insane, mentally illness being one of the disabilities under Section 2(i) of the Act, 1995 (new Act of 2016), under Section 47 (new Section 20) it was open to the respondents to dispense with his services as he acquired a disability during his service - the impugned order of compulsory retirement liable to be set aside - Appellant held entitled to all the consequential benefits of pay and pensionary benefits".

11. In the case of **Kunal Singh Vs. Union of India AIR 2003 (SC) 1623**. The Hon'ble Supreme Court has held that "Disabled person is entitled to suitable employment - A disabled person cannot be completely invalidated from service - There is a statutory bond - He has to be provided with some alternate suitable job so that his right to live is not taken away".

12. The Hon'ble Bombay High Court in the case of **Jaikumar Vs. State of Maharashtra in W.P.No.1937 of 2006** in para 13 has held as under-

13. In the light of the provisions of the Act of 1995, more particularly the provisions of Section 47 thereof, we are of the view that the petitioner's case deserves to be considered in the

light of the provisions of Section 47 of the Act of 1995. It would be for the competent authority to consider as to whether the petitioner could be given alternate job or the petitioner could be kept on a supernumerary post after examining the petitioner's case on its own merits. The authorities shall also consider suitability of the petitioner to work on a post. We find that the authority did not take into consideration the effect of provisions of Section 47 of the Act of 1995 before passing order of compulsory retirement.

13. The Hon'ble Bombay High Court in the case of **M.R.T.C. Vs. Diwakar Madhukarrao Malkapure reported in 2014(1) Mh.LJ 382 : 2014(140)** has held "The petitioner employer has directly terminated the services of the respondent no.1 on the ground of his physical disability, the respondent no.1 acquired disabilities during the course of his employment. Thus, the petitioner employer has violated the mandate of proviso to Section 47(1) of the Persons with Disabilities Act 1995(new Act of 2016 and as per Section 20)". The Hon'ble High Court has further held that "employer has no regards to the mandate of the provisions of Section 47 (1) (Section 20) of the Persons with Disabilities Act, 1995. (New Act 2016) and law laid down by the Hon'ble Supreme Court --- etc.

14. From the above cited decision, it is for the employer to provide light job to the employee who acquires any disability during the course of his employment. The respondents without observing

the mandate of Hon'ble Supreme Court and the law enacted by this country directly removed the applicant from service. The respondents should have provided the applicant suitable job as per provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016. As per the Judgment of the Hon'ble Supreme Court and High Court cited Supra, it is clear that the compulsory retirement order issued by the respondents dated 25.10.2023 is liable to be quashed and set aside. Hence, we pass the following order.

ORDER

1. The O.A. is allowed.
2. The impugned order issued by the respondents dated 25.10.2023 by compulsorily retiring the applicant is hereby quashed and set aside.
3. The respondents are directed to provide suitable job to the applicant as per the provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016. If the suitable post is not available, then the respondents are directed to create supernumerary post.
4. The respondents are directed not to reduce the rank of the applicant or reduce the salary of the applicant by providing suitable job.

5. The respondents are directed to strictly follow Section 20 of the Rights of Persons with Disabilities Act, 2016.
6. The respondents are directed to pay the salary of the applicant regularly by not taking into consideration of order dated 25.10.2023.
7. The respondents are directed to comply the order of this Tribunal within three months from the date of receipt of this order.
8. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 14/08/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 14/08/2024.
and pronounced on