

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 435 OF 2023

Sri Krishna Kumar Singh,

S/o Swarth Mahto, C/o Ajoy Kumar Misra,
1st BN, TSR, Gate No.4, Type-3-D-18, P.O. Veer Bandhu Gram,
P.S. Bishalgarh, District-Sepahijala, Tripura.

Permanent Address:

Vill-Godana Koeri Tola, P.O. & P.S. Revel Ganj, 841315,
District-Chapra, Saran,
Bihar State.

.....**Petitioner.**

Vrs.

1. The Sate of Tripura,

Represented by the Chief Secretary,
Government of Tripura, New Capital Complex,
Kunjaban, Agartala, West Tripura.

2. The Secretary,

Department of Home, Government of Tripura,
New Capital Complex, Kujaban, Agartala, West Tripura.

3. The Director General of Police,

Government of Tripura, Police Headquarter, Fire Brigade Chowmuhani,
Agartala, P.O. Agartala, P.S. West Agartala,
District-West Tripura, Pin-799001.

4. The Deputy Inspector General of Police, (AP)

A.D.Nagar Police Line,
P.O. & P.S. A.D. Nagar,
District-West Tripura.

5. The Commandant,

1st BN, Tripura State Rifles,
Veer Bandhu Gram, Gakulnagar,
P.S. Bishalgarh, District-Sepahijala.

7. The Chairman,

Standing Medical Board,
AGMC & GBP hospital, Agartala,
P.S. N.C.C., District-West Tripura.

.... **Respondents.**

Present:

For the petitioner (s) : Mr. D.C. Roy, Advocate
Mr. A. K. Pal, Advocate.

For the respondent (s) : Mr. M. Debbarma, Addl. G.A.

Date of hearing and
date of delivery of
judgment and order : **15.12.2023.**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH**Judgment & Order(Oral)**

Heard Mr. A.K. Pal, learned counsel appearing for the petitioner.

Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents.

2. Briefly stated, the petitioner while discharging his duties at Salema under Kamalpur P.S., District-Dhalai as a Cook under the respondents, on 27.07.1995 received bullet injuries by some extremists which made him incapable of performing his normal duty. Though a considerable time was taken for his treatment, but, ultimately he was not totally cured to perform his duties. The petitioner also was under mental trauma which led to insanity. He underwent treatment in Sir Ganga Ram Hospital, New Delhi. The petitioner was also treated in the mental hospital at Ranchi as a psychiatric patient and till now he is continuing his treatment under the said mental hospital which fact is established from the recent Disability Certificate dated 30.09.2023, issued by the District Disability Rehabilitation Centre, Sepahijala, Tripura [Annexure-R to the Affidavit by way of Rejoinder filed by the petitioner]. From the records, it is seen that the petitioner has not been wholly recovered from his illness till today.

3. It is evident from the records that vide correspondence dated 2nd June, 2006, the Assistant Commandant of the Office of the Commandant, 1st BN, TSR, Bishalgarh had asked the petitioner to appear before the Standing Medical Board. Accordingly, he appeared and he was declared unfit to perform his duties. On the basis of the said certificate issued by the medical board, the respondents had issued release order dated 25th September, 2006 whereby and whereunder the petitioner was sent on retirement on the ground of physical unfitness w.e.f. 25.09.2006 as per Rule 22 of TSR (Recruitment) Rules, 1984 and his name was struck off from the strength of 1st BN TSR w.e.f. 25.09.2006 (AN). The petitioner had submitted a representation [Annexure-F to the writ petition] on 03.03.2008 requesting the respondents to allow him to rejoin in service. It is seen from the record that the petitioner had filed another representation [Annexure-G to the writ petition] on 22.09.2022 along with medical prescription to allow him to rejoin in service, but, those representations were not considered.

4. Learned counsel for the petitioner has argued that the petitioner was sent on retirement in total disregard of Section 47 of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [for short, the PWD Act, 1995]

On the other hand, Mr. Debbarma, learned Addl. G.A. has submitted that since the petitioner was declared unfit to perform his duties, the respondents were compelled to ask him to go on retirement.

5. I have considered the submissions of learned counsel appearing for the parties. There is no dispute that the petitioner had suffered bullet injuries during the course and in discharge of his official duty in the year 1995

under the respondents. He was admitted to hospital, but, he was not fully recovered from his illness and for a substantial period he has been suffering from mental illness for which he underwent treatment at the mental hospital at Ranchi and Sir Ganga Ram Hospital, New Delhi.

6. Here, a question comes out in the mind of this Court that when a person has become incapacitated or disabled, whether he could/can be discharged from service or he could/can be sent on retirement? In my opinion, the answer must be in negative in view of the PWD Act, 1995.

7. Section 47 of the PWD Act, 1995 reads thus:

“47. Non-discrimination in Government employments-(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.”

8. The Government of India issued various instructions time to time to achieve the object of the Act and to implement its provisions in letter and spirit. For the sake of convenience, the office memorandum dated 25th

February, 2015, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training may be reproduced here-in-below:

“No.18017/1/2014-Estt(L)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 25th February, 2015

OFFICE MEMORANDUM

Subject: Amendment to Central Civil Service (Leave) Rules, 1972 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995)-regarding

The Central Civil Services (Leave) Rules, 1972 were amended vide the Department of Personnel and Training Notification No. 13026/1/2002-Estt(L) dated the 15/16th January, 2004 consequent to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, 1995) which came into force from 7th February, 1996.

2. Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability. In Kunal Singh v. Union of India, [2003] 4 SCC 524, Hon'ble Supreme Court has observed that the very frame and contents of Section 47 of the PWD Act, 1995 clearly indicate its mandatory nature.

3. The issues relating to leave or absence of Government servants who have acquired a disability while in service are required to be dealt with in the light of the provisions of the Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The case of a disabled government servant who is declared fit to resume duty but who may not be able to perform the duties of the post he was holding earlier may be dealt with as per the first proviso to Section 47 of the PWD Act, 1995. The second proviso shall apply if it is not possible to adjust him against any existing post. In all such cases, the Government servant so adjusted shall be entitled to the pay scale and other service benefits attached to the post he was holding.

4. A disabled Government servant who is not fit to return to duty shall be adjusted as per second proviso to the Section 47 mentioned above, until he is declared fit to resume duty or attains the age of superannuation whichever is earlier, with the same pay scale and service

benefits. On being declared fit for resuming duty, the Government servant who is not fit for the post he is holding, may be adjusted as per the first proviso to Section 47.

5. Leave applied on medical certificate in connection with disability should not be refused or revoked without reference to a Medical Authority, whose advice shall be binding. The ceiling on maximum permissible leave laid down in Rule 12 may not be applied to leave on medical certificate applied in connection with the disability. Any leave debited for the period after a Government servant is declared incapacitated shall be remitted back into his/her leave account.

6. For a government servant who is unable to submit an application or medical certificate on account of disability, an application/medical certificate submitted by a family member may be accepted. The provisions relating to examination of disabled Government servants and the Medical Authorities competent to issue such certificates are also being amended.

7. Necessary amendments to the Central Civil Services (Leave) Rules, 1972 are being notified separately.

*Sd/-
(Mukesh Chaturvedi)
Director
Tel: 23093176"*

9. Section 47 of the PWD Act, 1995 has an overriding effect on other laws including the provisions of Rules 38 of CCS (Pension Rules). The provision of Section 47 of the PWD Act, 1995 made it abundantly clear that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

10. In the case of ***Kunal Singh Vrs. Union of India***, reported in ***(2003) 4 SCC 524***, the Supreme Court has categorically observed that by virtue of the provision of Section 47 of the Act, a disabled person should not only be retained in service but also all service benefits should be provided to him. The following observations are relevant to decide the instant case:

"7. From the facts, which are not in dispute, it is clear that the disability suffered by the appellant is covered by Section 2(i)(v) read with Section 2(o) of the Act. It is also not in dispute that this disability was acquired by the appellant during his service. Under Section 2 "disability" and "person with disability" are separately defined and they are distinct. We may also notice some provisions in Chapter VI of the Act relating to

employment. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor disability or cerebral palsy. Section 38 requires the appropriate Governments and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 47 is included in Chapter VIII of the Act. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this Chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service.”

“8.The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the 'Meet to Launch the Asian and Pacific Decades of Disabled Persons' was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure 'full participation and equality of people with disabilities in the Asian and Pacific Regions'. This Meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said Proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1st January, 1996. The Act provides some sort of succor to the disabled persons.”

“9.Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. 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 Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

11. The Apex Court also held similar views in ***Union of India Vrs. Sanjay Kumar Jain***, reported in (2004) 6 SCC 708 & ***Union of India Vrs. Debendra Kr. Pant***, reported in (2009) 14 SCC 546. In the case of ***Bhagwan Dass & Anr. Vrs. Punjab State Electricity Board***, reported in (2008) 1 SCC 579, the Supreme Court in an almost similar nature of case came out with strong observation about the insensitiveness and apathetic attitude by some of us in the society who are living a normal life, towards those unfortunate fellowmen, who fell victim to some incapacitating disability.

12. In the case of ***Bhagwan Dass (supra)***, Sri Dass suffered visual impairment while in service and then became completely blind. He was a Class-IV employee and knew nothing about the provisions of PWD Act, 1995. Since he was not in a position to serve, the department was trying to get rid of him and he also approached for pension but when he came to know about the provisions of the Act, he prayed for the benefit as prescribed under Section 47 of the Act. While deciding the questions, the Supreme Court had observed thus:

“This case highlights the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of Appellant 1 and

their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous.”

In Para 20 of the judgment, the Court held and passed following directions:-

“In the light of the discussions made above, the action of the Board in terminating the service of the disabled employee (Appellant 1) with effect from 21-3-1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22-3-1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.”

13. In the instant case, the petitioner was willing to continue his service under the respondents and for that purpose, he had submitted representations but these were not acceded to. The PWD Act was introduced and promulgated in the year 1995. It would be unwise and hard to digest that the respondents were not aware of the said Act. But the respondents ignoring the provisions protecting the interest of such disabled employees asked him to go on retirement.

14. It is noticed by this Court that in the writ petition, there is no whisper about the applicability of the PWD Act in the present case, however, the Court is to render justice and a legitimate person who has a right to get service benefit under the law of the land, then, it must be extended to such person. The object and spirit of Section 47 of the PWD Act is further clarified and reiterated under Office Memorandum dated 25th February, 2015 issued by

the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Govt. of India.

15. In the light of above established principles and particularly, keeping in mind the object and intention of the legislature incorporating Section 47 under the PWD Act as well as further reiteration vide office Memorandum dated 25th February, 2015 issued by the Govt. of India, sending the petitioner on retirement by issuing the release order dated 25th September, 2006 is illegal, arbitrary and is liable to be set aside and quashed and the same is accordingly set aside and quashed.

16. Accordingly, the respondents are directed to reinstate the petitioner in service within 7 (seven) days from today and his name shall be incorporated/included in the strength of 1st BN TSR w.e.f. the date of his release (25.09.2006). After such reinstatement, if the respondents find the petitioner is incapable of performing his duties as Cook, then, his service may be put in such a suitable post which he can perform. If it is found that he is not capable of performing any duties to any post, then, his service has to be put in a supernumerary post till the normal date of his retirement/superannuation according to the service record. The petitioner shall also be provided with all service benefits including promotion, if any, for the period he was not allowed to resume in service and all financial benefits which shall include his salaries/allowances/increments, etc. be sanctioned and released in favour of the petitioner with effect from the date he was sent on retirement within a period of 6 (six) months from today.

Needless to say, the petitioner shall be paid his usual legitimate monthly salary which he is entitled to at present, treating the petitioner in service all along i.e. with effect from the date of his release order dated 25.09.2006. The financial benefits provided to the petitioner at the time of his release vide order dated 25th September 2006, shall be adjusted with the salaries which the petitioner is entitled to.

With the aforesaid observations and directions, the instant writ petition stands allowed and disposed.

JUDGE

SANJAY GHOSH

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