HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3504/2026
URN: CW / 7716U / 2026

Sanjay Choudhary Son Of Shri Hari Singh Choudhary, Aged About 28 Years, Resident Of Ward No.5, Badodamev, Alwar, Distt. Alwar (100 Percent Disabled) Through His Wife Anita Wife Of Shri Sanjay Choudhary, Aged About 31 Years, Resident Of Ward No.5, Badodamev, Alwar, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Department Of Finance, Secretariat, Jaipur.
2. Director General Of Police, PHO, Rajasthan, Jaipur.
3. Superintendent Of Police, Kota (Rural), Dist. Kota.

----Respondents

For Petitioner(s)	:	Mr. Tanveer Ahamad with Mr. S.Mohd. Umer Alam, Mr. Prithvi Singh Deora, Mr. Mohsin Khan & Mr. Iliyas Khan
For Respondent(s)	:	Mr. Somitra Chaturvedi, Dy. GC with Mr. Munendra Singh Fauzdar

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HON'BLE MS. JUSTICE REKHA BORANA

Order

REPORTABLE

22/07/2026

1. The present writ petition has been filed aggrieved of order dated 19.06.2018 (Annexure-7) whereby the services of the petitioner were terminated for the reason of he having acquired disability during service and being incapable to discharge the duties of a 'Constable'.

2. Vide order dated 19.06.2018, while terminating the services of the petitioner w.e.f. 29.06.2014, he had been held entitled to

the service gratuity in terms of Clause 10 of Memorandum dated 09.05.2013.

3. Counsel for the petitioner, while relying upon Section 20 of the Rights of the Persons with Disabilities Act, 2016 (hereinafter referred to as 'Act of 2016'), submitted that the petitioner could not have been terminated from services only on account of disability. In terms of 2nd Proviso to Section 20(4) of the Act of 2016, the petitioner was entitled to be either adjusted against any other post or to be kept on a supernumerary post till the date he attains the age of superannuation. As the petitioner had been declared totally incapacitated from performing his duties, he was entitled to be deemed in service and is entitled to all the consequential service benefits.

4. In support of his submission Counsel relied upon Hon'ble the Apex Court judgment in ***Bhagwan Dass & Ors. Vs. Punjab State Electricity Board; (2008) 1 SCC 579***, the Division Bench judgment of Delhi High Court in ***Pawan Kumar Vs. Delhi Transport Corporation; W.P. (C) No. 4261/2023*** (decided on 16.01.2015) and a Co-ordinate Bench judgment of this Court in ***Ummed Singh Vs. State of Rajasthan; 2019 (4) RLW 3386***.

5. *Per contra* Counsel for the respondents submitted that as the petitioner was a probationer-trainee and had not been confirmed in service, he was not entitled to claim the benefit in terms of Section 20 of the Act of 2016. Unless the petitioner was confirmed in service, he could not have claimed the service benefits as payable to a regular employee. Hence, the order impugned whereby it was ordered that 10% of the remuneration will be adjusted with NPS and remaining amount shall be paid in terms of

Clause 10 of Memorandum dated 09.05.2013, is in consonance with law.

6. Heard the Counsels. Perused the record.

7. The fact that the petitioner was appointed on 03.06.2013 and was on probation till the date he met with an accident on 29.06.2014, is not disputed. Further, the disability of the petitioner being 100%, as reflected in Disability Certificate dated 25.01.2018 (Annexure-3) issued by the competent Medical Board, is also not disputed. Section 20 of the Act of 2016 provides as under:-

> *"**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."*

8. A bare perusal of the above mentioned provision reflects that the services of any government employee cannot be dispensed with only on the ground of a disability having been acquired by him during his service. Further, the petitioner having been appointed after a regular process of selection, does fall under the category of an 'employee'. Section 20(4) of the Act of 2016 talks of an 'employee' and does not restrict it to any particular class of employee. It is not the proposition of law that a 'probationer' is not an 'employee' until confirmed. Dealing with an akin situation where a probationer was terminated from services on account of a disability, the Bombay High Court in ***Union of India Vs. Pramod Sadashiv Thakre; (2011) SCC OnLine Bom 1407***, held as under:

> *"5....We are, therefore, of the view that respondent is entitled to protection by the Act. It was, however, urged by Mr. Sundaram, learned counsel for the petitioners, that the* ***respondent's services cannot be protected by section 47 of the Act since the respondent was a temporary employee on probation. Section 47 of the Act, reproduced above, protects the services of an employee and makes no distinction between the nature of the services it protects****. The purpose and intention of the provisions is to protect an employee from unemployment on the ground that he has incurred*

> *disability. Parliament has in its wisdom accommodated the possibility that an employee may not be able to discharge the duties of office prescribed for him and to that effect a provision has been made that an employee shall be employed in some other post with same benefits.*
> *6. In the circumstances, we are of the view that the respondent incurred disability during the course of his employment and his services are liable to be protected. The order of termination, which is made only on the ground that the respondent has been found to be Colour Blind is rightly quashed and set aside by the Central Administrative Tribunal."*

9. Dealing with the issue of the status of a probationer, Hon'ble the Apex Court in ***V.P. Ahuja Vs. State of Punjab & Ors.; (2000) 3 SCC 239*** observed and held as under:

> *"7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice."*

10. In view of the above settled position of law, it is incomprehensible as to why the petitioner, who had been appointed after a regular recruitment process, would not be termed to be governed by Section 20 of the Act of 2016. The conclusion of the respondent-Authorities to the effect that the petitioner being a probationer could not be entitled to be governed by Section 20, is in the opinion of this Court, in total contravention to law.

11. Further, while dealing with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was *pari materia* to Section 20 of the Act of 2016, the Division Bench of Delhi High Court in ***Pawan Kumar*** (supra) held as under:-

> *"However, Section 47 does not make any distinction between the nature of services it protects. Relief cannot be denied to the petitioner on the ground that he was still undergoing the probation period at the time of acquisition of the disability."*

12. So far as the security of employment, after having acquired a disability is concerned, the law on the issue is well settled and no more *res integra.* In a recent judgment in ***Union of India & Ors. Vs. Bali Ram; 2026 INSC 689****,* Hon'ble the Apex Court held as under:

> *"74.....An employee like the respondent, while retaining the status of a public servant, is entitled to security of service. A physical disability that he acquires while in service rendering him unfit for the work assigned to him has to be dealt with by the employer in the manner ordained by Section 47. Either he is shifted to some other post carrying same pay and service benefits, or, if it is not possible, the employer is under a duty to adjust him on any other post. If that too is not possible, a supernumerary post has to be created for him which, for all intents and purposes, would be personal to him.*
>
> *76.....* ***Parliament did not limit Section 47 to disabilities attributable to service; the protection is unqualified and unconditional.*** *It*

operates irrespective of how the disability was acquired. The relevant question is not hypothetical fitness at appointment, but whether the appellants explored alternatives before ending the respondent's service. More than ten years of unblemished driving followed by an acquired ophthalmic condition, indeed, provided a case for accommodation or alternate posting, not medical invalidation. Service jurisprudence distinguishes between initial disqualification and subsequent disability, and the law ought to lean towards retention over ouster from service unless, of course, ouster becomes inevitable."

13. In ***Bhagwan Dass*** (supra) Hon'ble the Apex Court while dealing with the same provision, held as under:-

"From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant No.1) with effect from March 21, 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 March 22, 1997 till date. If any balance remains, that should be adjusted in easy monthly installments 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 adjustment 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.

In the result the appeal is allowed with costs quantified at Rs.5,000/-."

14. In view of the above settled position of law, this Court is of the clear opinion that the order impugned is in total contravention to Section 20 of the Act of 2016 and hence, requires interference by this Court.

15. So far as Clause 10 of Memorandum dated 09.05.2013 relied upon by the respondent-Authorities is concerned, evidently the same pertains to the government servants who expired/expires during the period of probation. The said provision definitely could not have been applied to the petitioner, who is surviving till date.

16. In view of the overall analysis, it is hereby held that the petitioner is entitled to all the benefits in terms of Section 20 of Act of 2016. Order impugned dated 19.06.2018 (Annexure-7) is hereby, quashed and set aside. The writ petition is **allowed** with the following directions:

(i) The petitioner shall be deemed to be in service and shall be reinstated with immediate effect;

(ii) The petitioner is held entitled to 50% of arrears of salary w.e.f. 29.06.2014 till 11.02.2026 keeping into consideration the fact that the present writ petition was filed in the year 2026 after a delay of 8 years;

(iii) The petitioner shall be entitled to all the consequential service benefits including the grade increments and promotion, till the date of his superannuation;

(iv) The petitioner shall be entitled to all the retiral benefits after attaining superannuation, in accordance with law;

(v) The amount, if any, paid to the petitioner as service gratuity/NPS or any other head, shall be adjusted from the arrears of salary to be paid now;

(vi) The arrears of salary as directed above, be paid within a period of six weeks of the receipt of the copy of the present order, failing which, it shall carry interest @ 6% per annum.

17. Stay application and all pending application(s), if any, stand **disposed of**.

(REKHA BORANA),J

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