

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP (CAT).No. 3808 of 2012 (Z)

AGAINST THE ORDER IN OA 929/2010 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 27-02-2012

PETITIONERS/RESPONDENTS IN O.A.

1. UNION OF INDIA
REP.BY THE GENERAL MANAGER, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-6000003
2. DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY , TRIVANDRUM DIVISION
TRIVANDRUM-695014

BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS

RESPONDENT:

C.V.GUPTAN
S/O.VASUDEVAN, ASSISTANT LOCO PILOT(SNP)
ERNAKULAM JUNCTION, R/A.CHATHAMANGALAM MANA
SREESANKARA LANE, 'SREYAS NAGAR", OLLUKKARA P.O.
THRISSUR-680665

BY ADV. SRI.MARTIN G.THOTTAN

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 31-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 3808 of 2012

APPENDIX

PETITIONER'S EXHIBITS:

P1 : TRUE COPY OF THE O.A.NO.929/2010 WITH ANNEXURES.

P2 : TRUE COPY OF THE REPLY STATEMENT IN O.A.NO.929/2010 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

P3 : TRUE COPY OF THE REJOINDER IN O.A.NO.929/2010 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P4 : TRUE COPY OF THE ADDITIONAL REPLY STATEMENT IN O.A.NO.929/2010 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P5 : TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 11TH OCTOBER 2011 IN O.A.NO.929/2010.

P6 : TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 31ST JANUARY 2012 IN O.A.NO.929/2010.

P7 : TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 27TH FEBRUARY 2012 IN O.A.NO.929/2010.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

PA. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT). No.3808 of 2012

Dated this the 31st day of August, 2015

JUDGMENT

Surendra Mohan,J.

The petitioners are before us challenging Ext.P7 order of the Central Administrative Tribunal, Ernakulam Bench in O.A No.929 of 2010. As per Ext.P7, the Central Administrative Tribunal (hereinafter referred to as “the Tribunal” for short) has granted the benefits under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act” for short) to the respondent. The contention of the petitioners is that the benefits ought to have been given only from the date of the order passed by the petitioners decategorizing the respondent.

2. The respondent was working as a Diesel Assistant under the petitioners. On 29.07.2004, he met with an accident, suffered fracture of two of his vertebra and was admitted to the Railway Hospital. He was hospitalized for the period from

29.7.2004 to 07.12.2004. After his discharge, on 08.12.2004 the respondent was medically decategorized for the reason that, he had suffered a disability that debilitated him from discharging heavy manual work, lifting of heavy weights etc. He was given the benefits of Section 47 of the Act only with effect from 08.12.2004, the date on which he was actually decategorized.

3. Challenging the above action, the respondent had approached the Tribunal by filing O.A. No.929 of 2010. The petitioners herein contested the claim of the respondent that he was entitled to the benefits of Section 47 of the Act from the date on which he suffered the disability, which in this case is the date of the accident. The Tribunal considered the rival contentions and has by Ext.P7 order held that the respondent would be entitled to the benefits of Section 47 of the Act, with effect from 29.04.2004. In other words, what has been ordered is that the respondent would be entitled to Full Pay and Allowances for the period from 29.04.2004 to 07.12.2004, in addition to the benefits sanctioned by the petitioners herein from 08.12.2004. The petitioners challenge the said direction.

4. According to Sri.James Kurian who appears for the petitioners, the question as to whether a person has suffered a disability or not is a matter that would have to be assessed by the

Medical Experts. The question of granting the benefits under Section 47 of the Act would arise only upon and after a person is certified as disabled by the competent Medical Personnel. Therefore, according to the learned counsel, the benefits of Section 47 of the Act could be extended to the injured person only from the date on which he is certified to be suffering from disability. In the present case, the respondent having been decategorized on the basis of certification by the Medical Personnel only from 08.12.2004, the Tribunal erred in ordering that the benefits should be granted from 29.04.2004, the date of the accident. The said direction, according to the learned counsel, would have widespread repercussions. The order would open the floodgates of litigation for claimants who have suffered similar injuries, all over the country. Therefore, according to the learned counsel, it is only appropriate that the benefits under Section 47 are extended to an injured only from the date on which he is certified to be disabled medically.

5. Sri.Martin G. Thottan who appears for the respondent points out on the other hand that in the present case the injury suffered by the respondent was fracture of two of his vertebrae, namely D-11 and D-12. A vertebral fracture of D-11 and D-12 would debilitate a person, from the date of the accident.

6. Our attention is drawn to the entries made by Dr.R.Soudararajan of Railway Hospital, Trichy extracted in Ext.P1 by the respondent to point out that the injury has been assessed to be a “7 months old injury”, which means that the disability commenced from 29.04.2004, the date on which the injury was suffered. The above observation of the Doctor who treated the respondent is not disputed. According to the learned counsel for the respondent, it is the said observation that has been relied upon by the Tribunal in Ext.P7 to extend the benefits of Section 47 of the Act to the respondent herein from 29.04.2004. The counsel placed reliance on Ext.P6 order of a Full Bench of the Tribunal to point out that in the normal situation, it is from the date of the Medical Certificate that the disability has to be reckoned. However if the Medical Certificate refers to a date anterior to the date of the Medical Certificate, such date could also be reckoned.

7. In view of the above, according to the learned counsel, there is no infirmity in the order of the Tribunal Ext.P7, warranting an interference by this Court.

8. Heard. The short question that arises for our consideration is whether the Tribunal was right in extending to the respondent herein the benefits of Section 47 of the Act, with

effect from the date on which he suffered the disability. The facts are not in dispute. It is not in dispute that, the respondent while working as a Diesel Assistant under the petitioners herein had met with an accident on 29.04.2004, in which, he had suffered vertebral fracture. He was hospitalized from 29.04.2004 to 07.12.2004. On 08.12.2004, he was medically decategorized by the Railway Doctor. It is not in dispute that from the said date onwards, he has been given the benefits of Section 47 of the Act. According to the respondent, he was entitled to the benefits of the Act from 29.04.2004. It was the said claim that was considered by the Tribunal in O.A. No.929 of 2010. We notice that, as per Ext.P5 the said O.A. was referred to a Full Bench of the Tribunal. The question so referred was whether for the purpose of medical decategorization and alternative employment, a person could be considered as having acquired medical disability from the date on which he suffered the injury or whether the benefits should be limited to the date on which he is actually certified to be medically disabled. The said question has been answered by Ext.P6 order by the Full Bench. According to Ext.P6, whether an injury had disabled a person or not, is a matter that would have to be assessed by the Medical Experts. It is only upon certification by the Medical Personnel

could an individual be considered as suffering from a medical disability. Therefore, in the normal circumstances, it is the date of the certificate that would have to be reckoned for the purpose of granting the benefits under Section 47 of the Act. However, the Full Bench has stated in Ext.P6 that where the Medical Certificate mentions some other date anterior to the date of the Medical Certificate as the date from which the disability had commenced, such date could be taken into account.

9. As already noticed above, in the present case, it is not in dispute that, the accident in which the respondent has suffered the disability had occurred on 29.04.2004. Nature of the injuries suffered, as noted by the Railway Doctor is fracture of D-11 and D-12 vertebra. It is the disability that he had suffered consequent to the vertebral fracture suffered on 29.04.2004, that has persisted and continued ever since. The above being the factual situation, it is only appropriate that, the said date is reckoned as the date on which the respondent had actually suffered the disability.

10. The above is clear from the conclusion arrived at by the Railway Doctor himself, as extracted in Ext.P1. What the Tribunal has done in Ext.P7 is only extended the benefits of Section 47 of the Act to the respondent for the period from

29.04.2004 to 07.12.2004. The respondent has already been granted the benefits under Section 47 of the Act from 08.12.2004 onwards.

11. Since the respondent had suffered the disability on 29.04.2004, it is only appropriate that he is extended the benefits of Section 47 of the Act with effect from the said date. We find no infirmity in the order of the Tribunal, granting the benefits to the respondent from the date on which he suffered the injury.

For the above reasons, we find no ground to grant any of the reliefs sought for in the Original Petition. The Original Petition is, therefore, dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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P.A. To Judge

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