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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 258 of 2016**

{Arising out of order dated 08.01.2016 passed in Writ Petition (S) No. 426 of 2010 by the learned Single Judge}

Mukesh Kumar Sahu S/o C.R.Sahu, Aged about 46 years, Posted as Junior Engineer, Ambagarh Chowki, CSPDCL, R/o Tulsipur, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

1. Union of India, Through Secretary, Ministry of Power, Government of India, Shram Shakti Bhawan, New Delhi 01
2. The Managing Director, Chhattisgarh State Power Holding Company Limited, Danganiya, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri H.S.Ahluwalia, Advocate.
For Respondent/UoI	: Shri B. Gopa Kumar, Assistant Solicitor General
For Respondent/Company	: Shri Kanak Tiwari, Shri Varun Sharma, Ms. Neha Shukla, Ms. Richa Shukla, Shri Apoorva Goyal, Shri Faiz Khan, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****24/10/2018**

1. Writ Petition (S) No. 426 of 2010 was filed by the present Appellant for a direction by the writ court to provide benefit of reservation in promotion in accordance with the provisions as contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*hereinafter referred to as 'the 1995 Act'*).
2. The Appellant is working as Assistant Engineer in the Chhattisgarh State Power Distribution Company Limited (*for short 'the Company'*). He wanted a

direction upon the said Company to grant him promotion to the post of Assistant Engineer *w.e.f* 1996 and then on the post of Executive Engineer *w.e.f* 2001 and thereafter, on the post of Superintending Engineer *w.e.f* 2006.

3. It is not a matter of argument that the Appellant, when he entered into service of the Company, was medically fit and evidence thereof has been brought on record by way of a declaration made him. Somewhere down the line, he claims that he became disabled by certain affliction and that puts him in a special category in terms of the right which has been conferred upon the person with disabilities under the 1995 Act.
4. The stand of the Company before the learned Single Judge was that it is not a limb of the State. They have provided for reservation for the people suffering from disability in the matter of direct recruitment and 39 posts had been identified in this regard. However, no provision has been made with regard to reservation in promotion for physically disabled category candidates. The Court disposed off the writ application with a direction to the Respondent-Company to make suitable provisions, but no writ was issued in favour of the Appellant creating a right for such consideration. It is in this background that the appeal has been preferred.
5. When the matter was earlier heard and since some controversies arose whether the claim of disability on behalf of the Appellant was a bonafide one or it is only a ploy to steal a march over the rest of his colleagues, keeping in mind that the Company never had any information or history or input that the Appellant became disabled because of any accident or incident while he continued to be in service. In the above background, this Court directed the Appellant to present himself before the Superintendent of Medical College, Raipur for constitution of a Medical Board vide order dated 08.08.2018. The Medical Board's opinion was tendered before the Court in a sealed

envelope. The certificate of disability issued by the Medical Board indicates that it is a case of "Post Polio Residual Palsy, Left Lower Limb". The disability is to the extent of 63%, as assessed.

6. Without going into any controversy about the said disability or whether such disability of the kind identified by the Medical Board could have suddenly arisen, as if, the Appellant came to be afflicted by Polio at a much later part of his life.
7. The right for grant of benefit of reservation in promotion is no longer an issue of debate before us because Section 47(2) of the 1995 Act categorically states that "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. On reading of the above provision, it is reflected that this right is not an absolute right but is visited with certain conditionality.
9. Learned senior counsel representing the Respondent-Company, when confronted with the said provision and the obligation of the Company to make provision for grant of benefit of reservation in promotion for a disabled candidate, brings to the notice of this Court a decision rendered by the Hon'ble Supreme Court when the Court had the occasion to render its judicial opinion in the case of ***Union of India v. Devendra Kumar Pant***; (2009) 14 SC 546. Reliance has been placed on paragraphs 30 to 34 which are reproduced hereinbelow:

30. Sub-section (2) of section 47 deals with non-discrimination in promotion and provides that:

47. (2) No promotion shall be denied to a person *merely on the ground of his disability*.

(emphasis supplied)

This would mean that a person who is otherwise eligible for promotion shall not be denied promotion merely or only on the ground that he suffers from a disability. Thus section 47(2) bars disability *per se* being made a disqualification for promotion. To give an example, a person working as a Lower Division Clerk (LDC) suffering from the disability of low vision, cannot be denied promotion to the post of Upper Division Clerk (UDC) merely because of his disability. This is because the efficiency with which he functioned as an LDC will be the same while functioning as a UDC also and the disability as such will not affect his functioning in a higher post. But the position is different if the disability would affect the discharge of functions or performance in a higher post or if the disability would pose a threat to the safety of the co-employees, members of the public or the employee himself, or to the assets and equipments of the employer. If promotion is denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion *merely on the ground of his disability*, but is denial of promotion by reason of the disability plus something more, that is adverse effect of the disability upon the employee's performance of the higher duties or functions attached to the promotional post.

31. It is significant that section 47(2) does not provide that even if the disability comes in the way of performance of higher duties and functions associated with the promotional post, promotion shall not be denied. Section 47(2) bars promotion being denied to a person on the ground of disability, only if the disability does not affect his capacity to discharge the higher functions of a promotional post.

32. Where the employer stipulates minimum standards for promotion keeping in view safety, security and efficiency, and if the employee is unable to meet the higher minimum standards on account of any disability or failure to possess the minimum standards, then section 47(2) will not be attracted, nor can it be pressed into service for seeking promotion. In other words where the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability, promotion, merely on the ground of his disability.

33. When invoking or applying the provisions of the Act, it is necessary to keep in view that the intention of the Act is to give a helping hand to persons with disability so that they can lead a self-reliant life with dignity and freedom. But the intention of the Act is not to jeopardize the safety and security of the public, co-employees, or the employee himself or the safety and security of the equipments or assets of the employer nor to accept reduced standards of safety and efficiency merely because the employee suffers from a disability. In this case, office order No.4/1990 makes it clear that the minimum medical standards have been fixed taking

into account the requirements in the medical manual with reference to interest of public safety, interest of the employee himself and fellow employees and in the interest of the administration.

34. If any employee or group of employees are of the view that a particular minimum medical standard prescribed does not serve the interest of public safety, interest of the employee and fellow employees or the interest of administration, but has been introduced only with the intention of keeping a person with disability from securing the promotional post, it is always open to him or them to give a representation to the employer to review/revise the minimum medical standards. On such representation the employer will refer the issue to a committee of experts to take appropriate decision, if that was not already done. But once a decision regarding medical standards has been taken by the management bonafide and in the usual course of business on the report/recommendation of an expert committee, the same cannot be found fault with on the ground that it affects the right of a person with disability for promotion."

10. Taking cue from the opinion and view of the Hon'ble Supreme Court in the above case, learned senior counsel for the Respondent-Company submits that some kind of exercise has been done by the Power Distribution Company and they have identified the posts and positions where benefit as a matter of course or right for grant of promotion cannot be given or the kind of disabilities which may come in the way of such claim or not stand in the way of grant of such promotion. The detailed exercise so done has been brought on record as part of an application for taking documents on record filed on 02.02.2017. Annexure R-A/1 and R-A/2 are part of the decisions and resolutions taken by the Board to show that these decisions or resolutions have been taken keeping in mind the minimum standards for promotion keeping in view the safety, security and efficiency etc. as talked about by the Hon'ble Apex Court in the case of **Devendra Kumar Pant** (*supra*), especially what had been reproduced as part of para 32 and 33 of the said decision in the earlier part of the order.
11. In the present case, we have noticed that the Appellant who was initially appointed on the post of Junior Engineer on 27.03.1991 was an otherwise healthy candidate, now wants benefit of promotion as a separate channel,

by seeking promotion to the post of Assistant Engineer *w.e.f* 1996, Executive Engineer *w.e.f* 2001 and Superintending Engineer *w.e.f* 2006. Looking at the kind of prayer and the aspirations which this Appellant wants to fulfill through the present writ appeal, it is not a case of mere non-consideration of his case for promotion to the next higher post, but for carving out a separate channel of promotion right from the date of his initial entry into service and on completion of may be the minimum number of years, on the post of Junior Engineer overlooking the fact that such reservation are horizontal reservation and not vertical reservation.

12. So far as the present issue is concerned, the immediate promotional post which the Appellant is eying is that of Executive Engineer. We have already noticed that the Board of the Respondent-Company have 'stipulated' certain parameters and in view of the identified posts where benefit of promotion cannot be granted as a matter of right on the ground of disability, the said decision or resolution is coming in the way of the Appellant, cannot be said to fall foul of law, specially Section 47(2) of the 1995 Act.
13. Learned senior counsel for the Respondent-Company submits even on the basis of the stand taken in the affidavits filed on behalf of the Company that the Company will keep in mind the long association and his otherwise service track and field record and will surely not deny him the benefit of promotion when his turn comes otherwise by probably identifying posts or creating a post where he could be accommodated.
14. Even though, all these arguments were not part and parcel of the pleadings or submissions which were made before the learned Single Judge, however, keeping in mind that a larger legal question was sought to be raised on behalf of the Appellant in relation to a Central statute, the Court ventured to explain the ambit of the appeal and went into other issues beyond the area of adjudication so made by the learned Single Judge.

- 15.** In totality, therefore, the appeal has no merit. No interference is warranted with the impugned order dated 08.01.2016 passed by the learned Single Judge.
- 16.** In the result, the appeal is dismissed insofar as the right of the Appellant to be promoted on various posts from earlier dates.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE