

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.3498 of 2019

ORDER: (Per the Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed challenging the order of the Central Administrative Tribunal in O.A No.021/01179/2014 dated 10.10.2018, wherein and whereby the OA filed by the respondent-applicant is allowed setting aside the impugned letter dated 23.12.2018 issued by the 4th petitioner (4th respondent therein).

2. The respondent is the employee of the Railways, having initially appointed as Constable in the Railway Protection Force (RPF) on 17.04.1983 on regular basis. Since he was medically decategorised, he was appointed as peon, which is the lower cadre with that of the constable, vide orders dated 27.03.1997. Though he was entitled to be absorbed in the equivalent grade or post in the scale of payoff Rs.825-1200, which was revised to the scale of pay of Rs.2750-4400 with effect from 01.01.1996 as per the recommendations of V CPC on his medical decategorisation on 24.06.1996 according to the provisions of Section 47 (1) of Persons with Disabilities Act, 1995, the same was denied. Aggrieved by the same, he filed OA No.771 of 2003 before the CAT, which was allowed vide order dated 30.06.2004 with the following directions:

“(a) the applicant shall be placed in a supernumerary post created in the scale of pay of Rs.825-1200/2750-4400/- for the period from 25th June, 1996 to 27th March, 1997 and he be paid the pay and allowance for the said period at the same rate he was drawing prior to his medical decategorisation in the said scale of pay.

(b) the applicant shall be absorbed in the alternative post/grade in the scale of pay of Rs.825-1200/2750-4400/- with effect from 28th March, 1997 consequent on his medical decategorisation as per the provisions of Section 47 (1) of the Persons with Disabilities Act, 1995; and

(c) the applicant shall be granted the first stage financial upgradation under ACP Scheme to the scale of pay of Rs.3050-4550/- with effect from 1st September, 1998 along with arrears of pay and allowances with all consequential benefits, such as, arrears of pay and allowances, seniority etc.”

3. Aggrieved by the said order, the petitioners filed WP No.673/2005 before this Court and the same was dismissed vide order dated 14.03.2005 confirming the order of the Tribunal dated 30.06.2004. However, the directions of the Tribunal were complied with in part. Though the respondent made representations, the 4th petitioner rejected the claim of the respondent for grant of pay of Rs.4200/- with the corresponding pay scale as 3rd stage financial upgradation under MACPS, vide his letter dated 23.12.2013. Aggrieved by the said letter of the 4th petitioner, respondent preferred OA/021/01179/2014, which was allowed by the Tribunal on 10.10.2018 stating that even though the respondent was not able to perform the duties of RPF constable and has been assigned the post of Peon, he is entitled to get the revised scales which his batch mates as RPF constables are getting with effect from 10.10.1997 in the scale of pay of Rs.3050-4590 and also GP Rs.4200/- on par with his batch mates with all consequential benefits. Challenging the same, present Writ Petition is filed by the petitioners.

4. Heard Sri C.V.Rajeeva Reddy, learned counsel for the petitioners and Sri G.V.Shivaji, learned counsel for the respondent.

5. Learned counsel for the petitioners submits that the order of the Tribunal is contrary to Law and Rules. He submits that there was no such direction to pay the revised pay scales to the respondent in the order dated 30.06.2004 in OA No.771 of 2003. He further submitted that since the respondent was medically decategorised on 24.06.1996 and appointed as peon and subsequently got promotion as Duftry on 31.07.2003, which is a separate cadre, he is not eligible to the revised pay scales on par with his 1983 batch mates of RPF constables. He further submitted that since the respondent accepted the post of peon without any protest or objection on his medical decategorisation, he is estopped from seeking the revised pay scales on par with his batch mates of 1983 batch and that there is enormous delay in filing the OA before the Tribunal, as such, the order of the Tribunal is liable to be set aside.

6. Learned counsel for the respondent submits that the Tribunal has considered the material in right perspective and passed the order setting aside the impugned letter of the 4th respondent and that there is no illegality or irregularity in the order passed by the Tribunal.

7. Before considering the rival contentions of both parties, it is necessary to extract relevant provisions of Persons with Disabilities Act, 1995 (for short 'the Act of 1995'). Section 47(1) & (2) of the Act of 1995 reads as follows:

“47(1).Non-discrimination in Government employment-reduce in rank, an employee who acquired a disability during 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 later.

(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.”

As per the above provisions of the Act, if an employee after acquiring disability is not fit for the post he was holding, could be accommodated with some other post with the same pay scale and service benefits. If it is not possible to adjust him against in any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation. In the instant case, even though the respondent initially appointed as RPF constable in the year 1983, on his medically de-categorisation, he was appointed peon subsequently in the year 1997. The cadre of peon is lower than that of RPF constable and there is also variation in the scales of pay. As per the aforesaid provisions of the Act, when the respondent was medically de-categorised due to epilepsy, the petitioners ought to have adjusted the respondent to the post equivalent to that of RPF constable, but the same was not done. The Hon’ble Supreme Court, in similar circumstances, in the case of **Kunal Singh v. Union of India**¹ held as follows:

¹ 2003 (2) SLR 502

“9....It must be remembered that an employee does not acquire or suffer disability by choice. An employee, who acquired 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 possible 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 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 services 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.”

In view of above settled principle of law, it is the statutory duty cast upon the petitioners to protect the respondent since he acquired disability during service.

8. Though, it is contended by the learned counsel for the petitioners that there was no protest or objection while accepting the post of peon by the respondent, but the same cannot be taken as a ground for denying the monetary benefits accrued to the respondent under law. It is to be borne in mind that the respondent was medically de-categorised with effect from 24.06.1996 as he was found unfit for B-1 category and found fit for C-1 category by the Medical Superintendent of Railway Hospital at Lalaguda, as he was suffering with ‘epilepsy’. He was forced to avail LAP and EOL for about nine months, till he was posted as peon on 27.03.1997. It is to be remembered that since the date of his appointment as RPF

constable, till the date of his appointment as peon on medical de-categorisation, the respondent worked as RPF constable. Since it was difficult for the respondent to maintain his family, he was forced to accept the lower cadre post of peon. Therefore, it cannot be said that there was no objection or protest from the respondent while accepting the post of peon. The Tribunal while considering aforesaid facts and also by following the principle laid down by the Hon'ble Supreme Court in the decision supra, has rightly set aside the letter of the 4th petitioner.

9. Though it is contended by the learned counsel for the petitioners that there is an enormous delay in filing the OA, but the said ground was not raised in the reply affidavit filed by them before the Tribunal. That apart, when the WP No.673 of 2005 filed by the petitioners against order dated 30.06.2004 in OA No.771 of 2003, was dismissed on 14.03.2005, the petitioners have complied the orders of the Tribunal partly and denied the revised scales of pay of Rs.3050-4590 and also GP Rs.4200/- on par with his batch mates. As such, on the ground of delay in filing the OA by the respondent, cannot be accepted.

10. It is next contended by the learned counsel for the petitioners that there was no direction to pay the revised pay scales to the respondent on par with his batch mates of 1983 of RPF constables either in the order of Tribunal in OA No.771 of 2003 or in WP No.673 of 2005, as such, the 4th petitioner has rightly rejected the claim of the respondent. The said argument

of the learned counsel for the petitioners does not merit consideration in view of principle laid down in the **Kunal Singh v. Union of India (supra)**. As rightly observed by the Tribunal it was not open to the petitioners to state that the respondent is not entitled to the pay scale of RPF constable since he has been actually working as Peon due to his medical decategorisation. The Tribunal rightly observed that it is immaterial as to whether the respondent had in fact worked as RPF constable or was given an alternate post for any particular reason, by taking the said plea, the petitioners cannot refuse to sanction the financial benefit which his batch mates are getting with effect from 10.10.1997 and that he is entitled to GP Rs.4200/- on completion of 30 years of service under MACPS on par with his batch mates. It is also found that even though the respondent was unable to perform the duties of RPF constable and has been assigned the post of Peon, he is entitled to get the revised scales which his batch mates as RPF constables are getting with effect from 10.10.1997 in view of law laid down by the Apex Court referred to supra.

11. It is pertinent to note that when the petitioners failed to comply the orders in OA No.021/01179/2014 dated 10.10.2018, the respondent filed Contempt Petition No.17 of 2019 before the Tribunal and same is posted to 07.03.2019. Probably, in order to get over that Contempt Petition, the petitioners might have filed this writ petition.

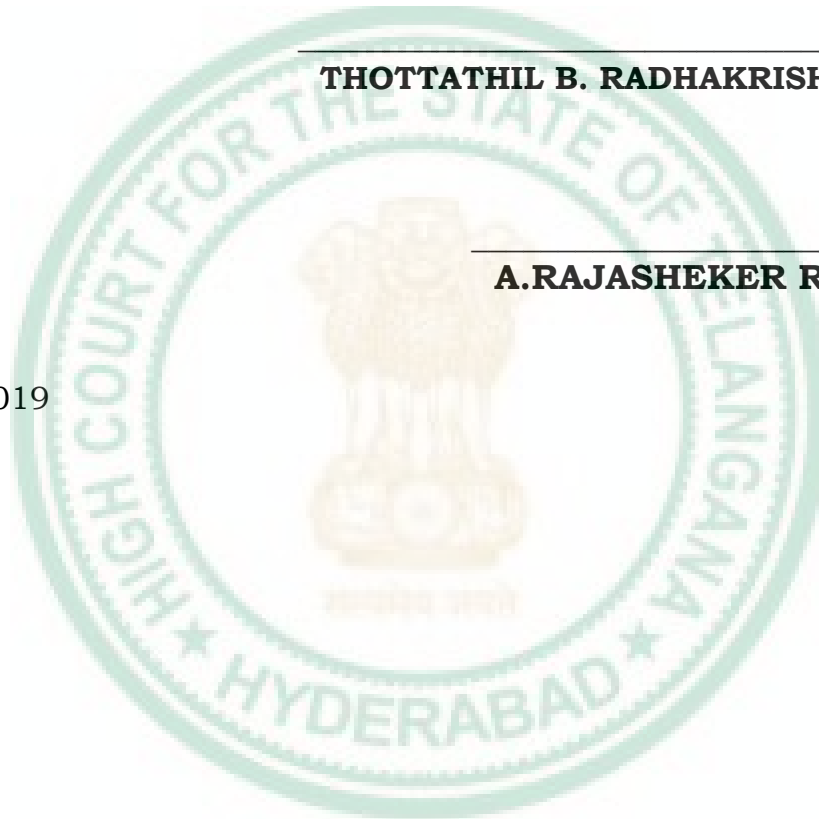
In view of above facts and circumstances, we do not see any illegality or infirmity in the order passed by the Tribunal warranting interference by exercising the power of judicial review under Article 226 of the Constitution of India.

Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, shall stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

07.03.2019
kvs



**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

P.D Judgment for Lordship's kind perusal

WRIT PETITION No.3498 OF 2019

(per Hon'ble Sri Justice A.Rajasheker Reddy)

Date: 7th March, 2019

kvs

