



W.P.No.16796 of 2022 and W.M.P.No.16104 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
15~09~2023	20~09~2023

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.16796 of 2022 and
W.M.P.No.16104 of 2022

1. Union of India Rep.by
The Chairman
Railway Board,
New Delhi.
2. The General Manager,
Southern Railway
Chennai – 3
3. The Principal Chief Personnel Officer,
Southern Railway
Chennai – 3
4. The Principal Chief Materials Manager,
Southern Railway
Chennai – 3
5. The Chief Material Manager,
General Stores Depot (PER)
Ayanavaram, Chennai 600023.
6. Senior Material Manager,



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Loco stores Depot (PER)
Ayanavaram, Chennai 600023.

... Petitioner

vs.

1. A. Marimuthu
Junior Clerk, O/o Senior Materials Manager,
Loco Stores Depot, Loco Works, Perambur,
Southern Railway, Chennai-600 023.
2. Chief Commissioner for Persons with Disabilities,
Sarojini House, Bhagavandas Road,
New Delhi 110001.

... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorari to quash the impugned order dated 06.01.2021 of the 2nd Respondent, passed in Complaint No.12086/1021/2020 as the same is unsustainable in law and also against the Principles of Natural Justice.

For Petitioner : Mr. V. Radhakrishnan,
Senior Counsel for
Mr.M. Vijay Anand

For Respondents : Mr.K. Venkatramani,
Senior Counsel for
Mr.M. Muthappan [for R1]

Mr. R. Rajesh Vivekananthan
Deputy Solicitor General of India [for R2]

ORDER

Challenging the impugned order dated 06.01.2021 passed by the 2nd



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Respondent The Chief Commissioner for Persons with Disabilities, this Writ
Petition has been filed.

2. The 1st Respondent was originally appointed as Constable in Railway Protection Force on 25.09.1984. In the year 2013 due to an accident the 1st Respondent was declared medically not fit to carry out strenuous duties. Subsequently he met with another accident on 10.07.2014 and sustained Bicondylar fracture in the left libia and the Medical Board recommended for alternative employment on medical ground in the medical classification-C1 and below with sedentary duties. Hence, it is the case of the 1st Respondent that since he suffered disability during his employment, when he accommodated in the alternative post, his pay scale should be protected. The 1st Respondent was drawing a Grade Pay of Rs.2,400/- at the time of joining on the alternative post as Junior Clerk. Whereas the Junior Clerk Grade Pay is Rs.1900/- at the bottom of seniority. Hence, the 1st Respondent in earlier occasion gave representation and also filed O.A.No.71 of 2019 before the Administrative Tribunal wherein the Tribunal has directed the Respondents therein to consider the representation dated 24.02.2018 and 07.11.2018. Thereafter, the 1st Respondent also approached the



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Chief Commissioner under the Rights of Persons with Disabilities Act, 2016. The

impugned order has been passed recommending the Writ Petitioner to secure and restore the pay scale and other service benefits of the complaint/R1 to the level at which he already existed on the day before the Complainant was declared not suitable for the post he was holding just before acquiring disability. Challenging the said order of the Chief Commissioner 2nd Respondent herein, the Writ Petition has been filed by the Railway Board Chairman mainly on the ground that there was no opportunity given to the Petitioner. Further the Commissioner has no jurisdiction to go into the service matter, only Administrative Tribunal has power.

3. In the counter, the main contention of the 1st Respondent is that though he was given alternative job as Junior Clerk, he should have been accommodated in Senior Clerk with Grade Pay of Rs.2,400/-.

4. The learned Senior Counsel appearing for the Petitioner mainly submitted that no opportunity was given to the Railways. The 2nd Respondent, despite the objection of the Railways, passed an order as if none appeared for the Respondent/the Petitioners herein. Further as per the direction of the Tribunal to



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6. It is relevant to note that the 1st Respondent has admittedly declared unfit medically and suffered disability and he was given alternative post as per the recommendations of the Medical Board and he has been accommodated as a Junior Clerk in the Grade Pay of Rs.1,900/-. It is the admitted case that the 1st Respondent before accommodating in the alternative post was drawing Grade Pay of Rs.2,400/-. It is relevant to refer section 20 of the Rights of Persons with Disabilities Act, 2016 which reads as follows:

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



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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.

7. Above provision makes it very clear 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. The above Section also makes it clear that while shifting the person suffered disability to some other post his pay scale and service benefits will be



protected.

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8. In ***Civil Appeal No.9324 of 2022 dated 02.07.2013 [Geetaben Ratilal Patel vs. District Primary Education Officer]*** the Honourable Apex Court after considering various provisions under the Persons with Disabilities (Equal Opportunities , Protection of Rights and Full Participation) Act, 1995, in para 16 held as follows:

“16. The provisions of [Sections 47 and 62](#) of the Act, when read together, empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank. The power of the Commissioner “to look into the complaints with respect to the matters relating to deprivation of rights” as provided under [Section 62](#) of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after



giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. A complaint may be made by any disabled person himself or any person on behalf of disabled persons or by any person in the interest of disabled persons. Thus the issue as involved is decided affirmatively in favour of the appellant and against the respondent.”

9. As per the above dictum of Apex Court and Section 20 of the Rights of Persons with Disabilities Act, 2016, this Court is of the view that the recommendation made by the 2nd Respondent cannot be found fault with.

10. It is an admitted case of the Petitioner that since there was no post available in Grade Pay of Rs.2,400/- which was the Grade Pay drawn by the 1st Respondent, at the time of medical decategorisation he was accommodated as Junior Clerk with Grade Pay Rs.1,900/-. In view of the above factual aspect the



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very act of the Writ Petitioner reducing the pay scale from Rs.2,400/- to Rs.1,900/-

is not valid as per the Section 20 of the Rights of Persons with Disabilities Act, 2016.

11. In such a view of the matter, the Writ Petitioner cannot deny the Pay Scale and it is an obligation on the part of the Writ Petitioner to protect the pay scale and service benefits to the 1st Respondent who acquired disability during the employment. Even there is no alternative post available in the same Grade Pay, it is an obligation on the part of the Writ Petitioner to keep the 1st Respondent on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier as per Section 20 of the Rights of Persons with Disabilities Act 2016.

12. In such a view of the matter the Writ Petition has to fail. The Writ Petitioner has to comply with the mandate of Section 20 of the Rights of Persons with Disabilities Act 2016 by granting protection to the same pay scale and service benefits to the 1st Respondent.



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13. With the above observation the Writ Petition is dismissed. No costs.

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Consequently, connected Writ Miscellaneous Petition is closed.

20.09.2023

Index : Yes/No

Neutral Citation : Yes/No

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Note: Issue Order copy on 21.09.2023

copy to:

The Chief Commissioner for Persons with Disabilities,
Sarojini House, Bhagavandas Road,
New Delhi 110001.



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N. SATHISH KUMAR, J.

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Order in:

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