



W.P.(MD) No.21014 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 26.09.2023

ORDERS PRONOUNCED ON : 17.11.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.21014 of 2015

and

W.M.P.(MD) No.11059 of 2023

C.Rangal Das

... Petitioner

Vs.

1.The Director General,
Border Security Force,
Block 10, 5th Floor,
CGO Complex Lodi Road,
New Delhi-03.

2.The Commandant,
80 BN, Border Security Force,
C/O 56 APO,
Khemkharan,
Dist – Dardaran (Pb),
Pin – 143 419.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records on the



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files of the 2nd respondent pertaining to its order in No.Estt/2nd ACP/80 BN/15/1767-68 dated 07 Feb 2015 and to quash the same and consequently direct the respondents to fix the 2nd financial upgradation to the petitioner from the date of completion of 24 years during 1996 and revise the pension pursuant to the grant of 2nd financial upgradation from the date of retirement 30.04.2005.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.C.Nandagopal

ORDER

This writ petition is filed to quash the order of the 2nd respondent in Order No.Estt/2nd ACP/80 BN/15/1767-68, dated 07.02.2015 and direct the respondents to fix the 2nd financial upgradation to the petitioner from the date of completion of 24 years during 1996 and revise the pension pursuant to the grant of 2nd financial upgradation from the date of retirement i.e., 30.04.2005.

2. Heard Mr.S.Sivakumar, learned counsel for the petitioner and Mr.C.Nandagopal, learned counsel appearing for the respondents.



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3. Learned counsel for the petitioner would submit that the petitioner has joined the respondent-department on 29.11.1972 as a Constable. During his service, the petitioner discharged his duties to the utmost satisfaction of the higher officials without giving any room and as such, he was having good entries in his Service Book. He submits that during the period of the petitioner's service, he did his service at Jammu & Kashmir, Punjab, Rajasthan, West Bengal and also in the National Security Guard. Considering the petitioner's unblemished record of service, he was promoted as a Head Constable on 01.10.1991. While he was selected and entered into the service, his physique was fit and the respondents selected him for the National Security Guard during the year 1986. While so, when he was travelling along with other Constables in the respondents' jeep to Jammu Kashmir Kiran Sector, the same capsized and fell into dent, due to which the petitioner sustained head injury. So he was taken to Military Hospital, where he had undergone surgery in his head and the same was cured. While he was working in National Security Guard, due to heavy work, he got pain in his eyes. So he was sent for medical checkup and the same was cured after treatment.



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4. Learned counsel further submits that the petitioner continued his service and discharged his duty along with other Border Security Force persons. According to the Government Policy, one can continue five years of full time service in the National Security Guard. The petitioner also worked for the entire five years, which is the maximum period prescribed in the Rules. After that also, he was discharging his service in the Border Security Force and continuing his service till 30.04.2005. The petitioner did his service in the Border Security Force for a period of 32 years and he was permitted to retire under VRS from service on 30.04.2005.

5. Learned counsel further submits that in the year 1999, the Government of India, introduced Assured Career Progression (ACP) Scheme. According to that scheme, two financial upgradation were allotted to all the Central Government Employees of Group 'B', 'C' and 'D' posts to the next higher grade on completion of 12 and 24 years of regular service and subject to fulfilment of promotional norms. The petitioner has also completed 24 years of service and rendered 32 years of service in the respondents Office to safeguard our nation. But, the Border Security Force



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Department withheld the benefit for the GD personnel. Therefore, various persons approached the Delhi High Court in W.P.(C) No.5539 of 2013 and etc. The Delhi High Court was pleased to direct the respondents therein to extend the benefit to the GD personnel as per hierarchy of promotion. Accordingly, the Ministry of Finance of Expenditure *vide* their letter dated 23.08.2012 in I.D.No.100430/E-111(A)/2012 agreed to the implementation of the grant of benefit of erstwhile ACP Scheme to all similarly placed employees in Central Para Military Forces. Based on the judgment rendered by the Delhi High Court, in pursuant to the ACP Scheme 1999, the petitioner is also eligible to get the 2nd financial upgradation. So he sent a representation to the 1st respondent. But, the 2nd respondent, without considering the petitioner's legitimate claim, even though he has completed 24 years of service during 1996 itself and totally 32 years under the respondents, rejected the petitioner's claim, which is impugned in this writ petition.

6. Learned counsel for the petitioner submits that the impugned order is highly arbitrary, illegal, unjust and against to the principles of



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natural justice and sought for allowing the writ petition.

7. A counter affidavit has been filed by the respondents denying the averments made in the affidavit filed along with the writ petition.

8. Learned counsel for the respondents, relying on the counter affidavit filed by the respondents, submits that there is no record to show that the petitioner met with an accident while travelling along with other Constables. The petitioner served in National Security Guard from 01.04.1986 to 15.01.1991 and then he was promoted to the post of Head Constable. As per the Service Record of the petitioner, he was placed under low medical category from 12.08.1993 for a period of six months. He was periodically reviewed by the department and was further placed under low medical category on 17.01.1995, 26.03.1996, 13.02.1998 and finally from 14.07.2000 to 13.07.2001. The petitioner rendered 32 years of service for which all pay and allowances were paid to him by the Government of India and as per the records, his medical category was not upgraded till his retirement and he remained under low medical category.



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9. Learned counsel further submits that the petitioner voluntarily retired on 30.04.2005 on his own will with applicable pensionary benefits. As per the policy of the Government of India *vide* OM.No.35034/1/97-Estt (D) dated 09.08.1999, two financial upgradation under ACP Scheme were granted to Central Government Employees on completion of 12/24 years of service from 09.08.1999 subject to fulfilment of all promotional norms. In respect of prescribed promotional norms, as per GD Cadre (Non Gazette) Recruitment Rule, 2002, and as per SOP, 2003, the following criteria is required to be fulfilled by a Border Security Force personnel for grant of financial upgradation under ACP Scheme, 1999:

- (a) Matriculation/10th Class pass or equivalent;
- (b) Basic Training;
- (c) Map Reading Std-1st (Relaxed *vide* letter dated 22.09.2014);
- (d) Pre Promotion Course (relaxed *vide* letter dated 22.09.2014); and
- (e) Medical Category-Shape-I.

10. He would therefore, submit that as per the existing rules, there is no relaxation for medically unfit person for grant of financial upgradation



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under ACP Scheme and hence, the petitioner was not granted 2nd financial upgradation and sought for dismissal of the writ petition.

11. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the material available on record.

12. It is an admitted fact that the petitioner served in the respondent-Border Security Force from 29.11.1972 to 30.04.2005, in total 32 years as Constable and Head Constable. He also worked as the National Security Guard from 01.04.1986 to 14.01.1991. He was placed under low medical category from 12.08.1993 for a period of six months and thereafter, he was periodically reviewed and was further placed under low medical category till 13.07.2001.

13. The contention of the petitioner is that he met with an accident when he was travelling along with other Constables in the respondent's jeep to Jammu Kashmir Kiran Sector, the same was capsized and fell into dent



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due to which he sustained head injury. As per the petitioner, he was taken to military hospital, where he had undergone surgery. But, the petitioner is not able to produce the medical record. It appears from the material placed before this Court that though the petitioner sent several representations to the respondents to furnish the relevant record, it was not furnished by the respondents. Admittedly, after permitting the petitioner to retire under VRS from 30.04.2005, after rendering 32 years of service, the petitioner was paid all pay and allowances for which he is entitled. But, the grievance of the petitioner raised in this writ petition is that the respondents rejected the claim of the petitioner for second financial upgradation from the date of completion of 24 years of service till 1996 and to revise the pension by granting the second financial upgradation.

14. The contention of the petitioner is that he has completed 24 years of service during 1996 itself. He was placed under low medical category from 12.08.1993 to 13.07.2001. Even after placing him under low medical category from 12.08.1993 also, the respondents permitted the petitioner to render service in the Border Security Force till his retirement



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under VRS on 30.04.2005. As such, the learned counsel for the petitioner contends that the petitioner is entitled for the second financial upgradation.

15. It is an undisputed fact that the petitioner rendered service in the Border Security Force for a total period of 32 years. He has completed 24 years of service during 1996. Thereafter also, the petitioner served in the respondent force till his retirement under VRS on 30.04.2005. The reason for rejection to grant second financial upgradation in favour of the petitioner is that the petitioner was placed under low medical category from 12.08.1993 and thereafter, his medical category was not upgraded till his retirement and he remained under low medical category and as such, he is not entitled for grant of financial upgradation under ACP Scheme and accordingly, he was not granted second financial upgradation.

16. Learned counsel appearing for the petitioner has drawn the attention of this Court to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act 1995”) and contended that the petitioner



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is entitled for all benefits provided under Section 47 of the Act 1995. In support of his submissions, he placed reliance on the judgment of the Hon'ble Apex Court in ***Kunal Singh vs. Union of India and Another***⁽ⁱ⁾; order dated 28.01.2014 of the Jharkhand High Court in ***Union of India vs. Ram Chander Pandey*** and a judgment of a Division Bench of this Court in ***G.Muthu v. Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.***⁽ⁱⁱ⁾.

17. Learned counsel for the respondents placed reliance on ***Mitru Singh vs. Union of India and Others***⁽ⁱⁱⁱ⁾.

18. While dealing with a case of a Constable in Special Service Bureau, the Hon'ble Supreme Court in the case of ***Kunal Singh*** (cited supra), has considered Section 2 and Section 47 of the Act 1995 and held as extracted hereinunder:

“7. From the facts, which are not in dispute, it is clear that the disability suffered by the appellant is covered

(i) (2003) 4 SCC 524

(ii) 2006 (5) CTC 413

(iii) 2018 SCC OnLine Del 6432



by Section 2(i)(v) read with Section 2(o) of the Act. It is also not in dispute that this disability was acquired by the appellant during his service. Under Section 2 “disability” and “person with disability” are separately defined and they are distinct. We may also notice some provisions in Chapter VI of the Act relating to employment. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from: (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy. Section 38 requires the appropriate Governments and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 47 is included in Chapter VIII of the Act. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this Chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service.



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“8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the “Meet to Launch the Asian and Pacific Decades of Disabled Persons” was held in Beijing in the first week of December 1992 by the Asian and Pacific countries to ensure “full participation and equality of people with disabilities in the Asian and Pacific regions”. This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1-1-1996. The Act provides some sort of succour to the disabled persons.

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different



definitions of “disability” and “person with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires 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 possibly 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 the 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



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contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a 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 serves 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.

10. The argument of the learned counsel for the respondent on the basis of the definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired “disability” within the meaning of Section 2(i) of the Act and not a person with disability.”

19. A Division Bench of this Court while dealing with a case of a Driver in **G.Muthu** (cited supra), having considered the provisions of the



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Act 1995 and various case laws placed before it, held at Paragraph No.26 as extracted hereinunder:

“26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the courts cannot shut its eyes if a person knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of 'colour blindness' without providing alternative job as per Section 47 of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated 26.3.2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under Section 47 of the Act. He should have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of 'colour blindness'. Viewed from



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any angle, the order of the learned Single Judge dismissing the writ petition on the mere ground of laches without considering the claim of the appellant on merits is liable to be set aside.”

20. A Division Bench of the Jharkhand High Court in L.P.A.No. 209 of 2013, while dealing with a case of an employee in Border Security Force, confirmed the order passed by the learned Single Judge, wherein it was held that even in case of low medical category, the respondents were directed to consider the case of promotion taking into consideration Section 47 of the Act 1995.

21. On careful perusal of the judgment of the Jharkhand High Court, it appears that in an identical circumstances, arise in the present case, it was held that the provisions of the Act 1995 are applicable to the petitioner therein.

22. Admittedly, as per Section 47 of the Act 1995, when an employee suffers disability during his service, no establishment shall



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dispense with or reduce in rank, an employee who acquires disability during his service. Till the year 2001, the Act 1995 was applicable to Border Security Force. *Vide* notification dated 10.09.2002, the Ministry of Social Justice and Empowerment exempted the Border Security Force from the Act 1995.

23. In the present case, the petitioner has completed 24 years of service during the year 1996 itself and he was permitted to continue in service till his retirement under VRS on 30.04.2005. In view of the above factual position, the notification dated 10.09.2002, from which date the Border Security Force is exempted from the Act 1995, would not come in the way to give the benefits provided under the Act 1995 to the petitioner.

24. On perusal of the judgment of the Delhi High Court in ***Mitru Singh*** (cited supra), relied on by the learned counsel for the respondents, it appears that though the petitioner therein worked as Constable in the CRPF and his claim was for benefit of ACP Scheme, though the respondents therein resisted the claim of the petitioner, it was held that the petitioner



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therein is entitled to receive his financial upgradation and the second financial upgradation under the ACP Scheme. In fact, the judgment is useful for the petitioner to support his case.

25. For the aforesaid reasons, this Court is of the considered opinion that the claim of the petitioner for second financial upgradation under the ACP Scheme after completion of 24 years of service, in the light of Section 47 of the Act 1995, is to be considered and as such, the order impugned in this writ petition, rejecting the claim of the petitioner is illegal, unjust and contrary to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and as such, the order of the 2nd respondent dated 07.02.2015 impugned in this writ petition is liable to be set aside.

26. For the above stated reasons, this Writ Petition is allowed with the following directions:

- i. The order of the 2nd respondent in No.Estt/2nd ACP/80 BN/15/1767-68 dated 07.02.2015 is hereby set aside; and



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ii. The respondents are directed to grant the second financial upgradation to the petitioner from the date of completion of 24 years of service in the respondent-Force and revise the pension pursuant to the grant of second financial upgradation from the date of retirement viz., 30.04.2005.

27. There shall be no order as to costs.

28. Consequently, connected miscellaneous petition is closed.

17.11.2023

Note: Issue order copy by 17.11.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1. The Director General,
Border Security Force,
Block 10, 5th Floor,
CGO Complex Lodi Road,
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Pre-delivery Order made in
W.P.(MD) No.21014 of 2015

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