

2025:PHHC:106912-DB



**210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-570-2021 (O&M)

Date of decision: 18.08.2025

Sudhir Pal

.....Petitioner

vs

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr.Sandeep Siwatch, Advocate for the petitioner

Mr. Anil Chawla, Advocate
for the respondents

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HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the order dated 05.05.2019 passed by the respondents for effecting recovery from the petitioner for the period starting from 23.07.2015 to 28.10.2016, on the ground that no supernumerary post could be created to adjust the petitioner, who had become incapacitated to perform the duties of the post, on which, he was substantially appointed *i.e.* Assistant Loco Pilot. Further, challenge is to the order dated 20.11.2020, passed by the Central Administrative Tribunal, Chandigarh Bench, a copy of which has been appended as Annexure P-1, vide which, the said claim raised by the petitioner has been declined.

2. Learned counsel for the petitioner argued that initially, the petitioner was appointed as Assistant Loco Pilot, but he was declared unfit for category A-1 and A-2 and was medically decategorised on 21.10.2010 and by



declaring him fit for category A-3 from 09.11.2010, he was not allowed to work but he was drawing salary against a supernumerary post of Assistant Loco Pilot. Thereafter, the petitioner **was** declared suitable for the post of Technician-II/Boiler Maker in Mech/Loco Department on 21.07.2014 but again, he was found unfit to discharge the duties even on the said post as per Certificate dated 20.01.2015. The petitioner was again recommended for the alternative post as Running Room Cool and Dresser on 02.12.2015, but the respondent submits that the petitioner did not join the said post and ultimately, he was redeployed as Clerk-cum-Typist on 14.10.2016, on which post, he joined on 28.10.2016.

3. Learned counsel for the petitioner further submits that though, till his redeployment as Clerk-cum-Typist on 14.10.2016, on which post he joined on 28.10.2016. The petitioner was given salary for the post of Assistant Loco Pilot, but the same was sought to be recovered on the ground that from 2015 onwards, the supernumerary post of Assistant Loco Pilot, which was created so that the petitioner could draw salary, was not extended and, therefore, till his redeployment as Clerk-cum-Typist on 14.10.2016, wherein he joined on 28.10.2016, no salary could have been paid to the petitioner, hence, for the period starting from 23.07.2015 to 28.10.2016, the salary paid to the petitioner was beyond his entitlement and recovery of Rs.3,95,188/- was ordered upon monthly installment of Rs.7,432/-, payable by the petitioner.

4. Learned counsel submits that the Original Application was filed by the petitioner against the order of recovery, which was dismissed without



considering the fact that once, the petitioner was a regular appointee to the post of Assistant Loco Pilot, from which post, he was decategorised medically on 21.10.2010 and was only adjusted as Clerk-cum-Typist after a period of six years, given to him, salary for the intervening period, when the supernumerary post was discontinued, cannot be withdrawn by the respondents.

5. Per contra, learned counsel for the respondents submits that though it is a matter of fact that the petitioner was medically decategorised from the post of Assistant Loco Pilot in October 2010, but he was allowed to continue against the supernumerary post, period of which post continued upto 23.07.2015, but as the petitioner never joined the post of Running Room Cook and Dresser, which was offered to him and ultimately joined as Clerk-cum-Typist on 28.10.2016, hence the salary paid to the petitioner for the period starting from 23.07.2015 to 28.10.2016, till he joined on the post of Clerk-cum-Typist, has rightly been withdrawn as he did not perform the duties of the post of Assistant Loco Pilot during that period and the supernumerary post was not extended beyond 23.07.2015.

6. We have heard the learned counsel for the parties and have gone the record with their able assistance.

7. As per Section 47 of *the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995* (in brevity 'the 1995 Act'), any person, who has been declared medically unfit to perform duties of a particular post, on which he was appointed and has later



on, either allowed to continue on the said post or be adjusted in any other post, and such employee is allowed to continue upto the date of superannuation without causing any prejudice to him/her.

8. The relevant Section 47 of the 1995 Act, thus, reads:-

“47. Non-discrimination in Government employment:-

- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his 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 earlier.

- [\(2\)](#) 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”.



9. In the present case, in the year 2010, the petitioner was declared medically unfit and rightly a supernumerary post was created in his favour so as to allow him to draw salary, which period continued up to 23.07.2015, thereafter, the period qua supernumerary post was not extended and the petitioner was not adjusted in any post until 14.10.2016, on which date, he was redeployed as Clerk-cum-Typist, in which post he actually joined on 28.10.2016. The arguments of the respondents that the petitioner did not perform any duties from 23.07.2015 upto 28.10.2016 of Assistant Loco Pilot, cannot be taken as a ground to recover the salary paid to him, especially when on the said post, on which, he had been appointed, he was declared medically unfit for carrying out the duties of the said post. However, it was for the respondents to continue the supernumerary post until the petitioner was adjusted on any post i.e. upto 28.10.2016, rather, the respondents in, their own wisdom, did not continue the supernumerary post beyond 23.07.2015, but it is a matter of fact that the petitioner was paid salary continuously for the said period without any default. It is only thereafter, the respondents decided to withdraw the salary for the period starting from 23.07.2015 to 28.10.2016. The said act on the part of the respondents is incorrect. As per the 1995 Act, no prejudice can be caused to a disable employee, who became disabled while performing his/her duties. Hence, withdrawing of salary after paying the same to the petitioner, who became disabled during performance of his duties, is beyond the jurisdiction of the respondents.



10. The learned Central Administrative Tribunal has failed to appreciate the said fact that the reason given by the respondents, which has been taken as a ground by the Tribunal, to deny his claim, that the petitioner was not performing the duties of any post after 23.07.2015, which is when the supernumerary post was discontinued. Once under Section 47 of the 1995 Act, petitioner is entitled to get the same salary after being declared medically unfit, which salary was paid, same could not be withdrawn and, that too, on the ground that supernumerary post was not extended beyond 23.07.2015, which act is attributable to the respondents only.

11. It may be noticed that nothing has come on record to show that the petitioner was appointed on any post after being disabled. Qua the post of Technician-II/Boiler Maker in Mech/Loco Department, he was declared unsuitable. For the post of Running Room Cook and Dresser, nothing has come on record to show that he was appointed as there was only a recommendation for the petitioner to join in the said post. The redeployment has only been given for the post of Clerk-cum-Typist on 14.10.2016, on which post, he did not join upto 28.10.2016. Hence, the petitioner remained in job with the respondents continuously, entitling him for salary of the post, on which he was working at the time when he became disabled *i.e.* Assistant Loco Pilot, which was rightly paid and cannot be withdrawn.

12. Keeping in view the totality of the circumstances, petition is allowed and the impugned orders are set aside and the recovery, which has been effected to be made from the petitioner, is contrary to the provisions of



the 1995 Act, keeping in view the peculiar facts and circumstances of the present case. Hence, the said order of recovery of salary for the period from 23.07.2015 to 28.10.2016 from the petitioner by treating him that he is not entitled for any salary for the period in question on any of the post, is incorrect and cannot be accepted and the same is set aside. Any recovery already made from the petitioner be refunded to him within a period of eight weeks from the date of receipt of a certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

August 18, 2025
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Whether speaking/reasons:	Yes/No
Whether reportable :	Yes/No