
(2005) 04 AP CK 0045
In the Andhra Pradesh High Court
Case No : WA No. 122 of 2005

A. Sessaiah

APPELLANT

Vs

Commandant, Central Industrial Security Force Unit

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33, 47

Citation : (2005) 3 ALD 766 : (2005) 3 ALT 628 : (2005) 2 ALT 628 : (2005) 106 FLR 1156

Hon'ble Judges : T. Meena Kumari, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : J.M. Naidu, for the Appellant; Kanthi Narahari, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Petitioner in W.P. No. 8127 of 2004 is the appellant in this writ appeal.

2. The appellant was selected and appointed as Constable in Central Industrial Security Force (C.I.S.F), on 4-7-1991. After training, he joined in

the regular duties on 12-4-1992, at Bhilai. He is said to have physically collapsed on 19-11-1997, while on duty. He was extended the treatment

at various hospitals, and was transferred to Third Reserve Battalion, N.F.C., at Hyderabad.

3. Having regard to the ailment suffered by the appellant, he was assigned ministerial duties of dispatch. Simultaneously, he was undergoing

treatment at Nizam's Institute of Medical Sciences, Hyderabad. He has also been subjected to Annual Range Classification.

4. The appellant was required to appear before the Medical Board, of Gandhi Hospital on 31-3-2004. After examining the appellant, the Board

certified that, he is ""completely and permanently incapacitated for further service in C.I.S.F.,"" due to ""limb-girdle muscular dystrophy"". On the basis of this report, the respondent issued a memo dated 22-4-2004, proposing to retire the appellant from service on invalidation, with effect from 23-

5-2004. He challenged the same by filing the writ petition. He placed reliance upon the provisions of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act 1995 (for short "the Act").

5. The respondent filed counter-affidavit stating inter alia that, on account of permanent disability suffered by the appellant, he became unfit, to

perform any duties in C.I.S.F. It was stated that the appellant was selected as a Constable, to perform combatant duties, and that it is not possible

to assign any other kind of work to him. It was pleaded that the provisions of the Act do not apply to the C.I.S.F., in view of the notification dated

10-9-2002, issued by the Government, exempting C.I.S.F., from the operation of certain provisions of the Act. As regards the plea of

discriminatory treatment, vis-a-vis the case of one Mr. Pramod Kumar, it was pleaded that the disease of "colour blindness", suffered by the said

employee, does not result in medical invalidation, and as such, he was assigned with the duties of vehicle maintenance.

6. The learned Single Judge, who heard the writ petition, dismissed it, on the sole ground that the Act has no application to C.I.S.F. Hence, this

writ appeal.

7. Sri J.M. Naidu, learned Counsel for the appellant submits that his client suffered the setback in his health, while in service, and the respondents

themselves have assigned ministerial duties since 1997. He submits that there is no complaint, whatsoever, ever since then, and the action of the

respondent, in retiring the appellant from service, cannot be justified, either on facts or in law. He submits that even if the provisions of the Act do

not apply to C.I.S.F., the respondent ought to have considered the feasibility of continuing the appellant with ministerial duties.

8. Learned Additional Standing Counsel, Sri Narahari, on the other hand, submits that the appellant was selected as a Constable, to perform

general and combatant duties, and once he is declared to have incurred permanent disqualification, it is no longer possible to continue him in

service.

9. It is a matter of record that the appellant was selected and employed as Constable in C.I.S.F., in the year 1991, and he assumed regular duties

on 12-4-1992, after undergoing training. He suffered ailment and physically collapsed on 19-11-1997. He was subjected to treatment at various

places, and was transferred to Hyderabad, to work in the C.I.S.F. Unit at N.F.C. Ever since 1997, the appellant was assigned non-combatant

duties and was required to work in the dispatch section. As a departmental requirement, he was subjected to periodical tests of firing etc.

10. Obviously, with a view to assess his fitness, to resume the duties as a regular Constable, the appellant was required to undergo a test by the

Medical Board, of the Gandhi Hospital. After examining the appellant, the Board opined that he is unfit, to discharge the duties of Constable. On

the basis of this report, the appellant was issued a memorandum dated 22-4-2004, declaring that he shall stand retired from service with effect

from 23-5-2004. The record does not disclose that the eligibility as to fitness of the appellant, to undertake any other duties, was considered.

11. The Parliament enacted the Act, as part of its International obligation, arising out of the resolutions in the Conference held at Beijing on 5-12-

1992, to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. The theme of the Conference was to ensure full participation and

equality of the people with disabilities in the Asian and Pacific regions. Two important aspects, from the present perspective, can be discerned

from the Act. They are: providing reservation to disabled persons, in various posts, u/s 33, and, to ensure protective measure u/s 47, to persons,

who have suffered or acquired any disability, while in service. Both the sections contain provisos, which enable the appropriate Governments to

exempt establishments from the operation of the respective sections, having regard to the nature of work to be carried, in the establishments. It is

not in dispute that the appellant acquired disability while in service. Therefore, it has to be seen whether he is entitled to the benefit u/s 47 of the

Act. It reads as under:

Section 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.

12. It was obviously in recognition of this obligation, that the respondent has continued the appellant in service, by shifting him to other post. As

observed in the preceding paragraphs, the report submitted by the Medical Board, of the Gandhi Hospital, did not certify that the appellant is not

fit to discharge the functions, which were assigned to him, since 1997. The report deals with the ability of the appellant to resume duties as a

Constable, obviously to perform combatant functions.

13. The only plea raised by the respondent, to resist the claim of the appellant was that, in view of the notification dated 10-9-2002, issued by the

Central Government, they are not under obligation to extend the benefit under the Act, to the appellant. The relevant portion of the counter-

affidavit reads as under:

The Government has exempted the Paramilitary Forces of the Central Government from the purview of applications of Section 33 of the persons

with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act, 1995 (1 of 1996) as per the notification 10.9.2002 (COPY

ENCLOSED AS MATERIAL PAPER-I). Therefore, the petitioner does not have any legal right to claim by virtue of aforesaid Act).

14. This plea weighed with the learned Single Judge. However, on a close examination of the matter, it is evident that the notification dated 10-9-

2002, relied upon by the respondent, is the one, issued under proviso to Section 33, and not the one, under proviso to Section 47. As observed

earlier, both these sections have different purposes, to serve. The exemption

from Section 33, in respect of the Paramilitary Force, including

C.I.S.F., at the most, relieves the Central Government from its obligation to reserve posts in favour of physically disabled persons, while

undertaking recruitment of "combatant personnel". Even this exemption is not in respect of non-combatant personnel in those organizations.

15. On the strength of notification issued under proviso to Section 33 of the Act, the respondent cannot relieve himself of his obligation u/s 47.

Unfortunately, this important distinction was not noticed, when the writ petition was dismissed; obviously it was not properly presented. Once it

has emerged that Section 47 of the Act continues to apply to C.I.S.F., and other paramilitary organizations, the respondent cannot deny the benefit

thereof, to the appellant. It was not pleaded by the respondent that the appellant is not fit, to discharge non-combatant duties.

16. The importance of the protection accorded by the Parliament, u/s 47 of the Act, to the persons, who acquire disability, while in service; was

emphasized by the Supreme Court in its judgment in Kunal Singh v. Union of India 2003 Lab.IC 1133. It was observed that a statutory duty is

cast upon, an employer u/s 47, and where two interpretations are possible, the one, which advances the object under the Act, shall be preferred to

that, which obstructs such object or paralyses the purposes underlying the Act.

17. For the foregoing reasons, the writ appeal is allowed, and the order of the learned Single Judge is set aside. The appellant shall be taken back

into service forthwith, and shall be extended the benefit of Section 47 of the Act. There shall be no order as to costs.