

(2015) 08 PAT CK 0097

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23541 of 2013

Akshaibat Choubey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47(1)

Citation : (2015) LabIC 3936 : (2015) 4 PLJR 238

Hon'ble Judges : N.P. Singh and Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Dharnidhar Mishra, for the Appellant; Sanjay Kumar, A.S.G, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J.—By this writ petition, the petitioner challenges the order of the Central Administrative Tribunal (hereinafter referred to as the "Tribunal") Patna Bench, Patna, passed in order dated 13.08.2012, in O.A. No. 3/2010. The original applicants before the Tribunal were the petitioner and his son who is pro-forma respondent No. 8 in this writ petition. The facts are not in dispute. The petitioner was a Letter Sorting Assistant in the Railways Mail Services at Patna, and had been working since 1973. He has some problem in the eyes. At his request a Medical Board was constituted which certified 100% loss of eye sight in the year 2000. On the basis of the aforesaid certificate of total disability, on 06.02.2000, petitioner was retired. According to the petitioner, he had sought retirement on assurance that being medically boarded out, his son would get compassionate appointment. The Department maintains that he opted for voluntary retirement.

2. Be that as it may, the fact remains that petitioner retired and accepted retirement w.e.f. 06.02.2000. He then applied for compassionate appointment for his son, which was rejected in the year 2001. He contested the matter and

filed appeal in the year 2006. His appeal, in respect of compassionate appointment, was also rejected. He then, in the year 2008, filed petition before the Chief Commissioner, For Persons with Disabilities, a claim case in terms of proviso 47(1) of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3. Here, apparently on the plea that he had taken voluntary retirement and, as such, after 8 years could not move claiming benefit of Section 47(1) of the said Act, the application was dismissed on 27.07.2009. It is, thereafter, this O.A. Application has been filed in 2010, claiming that in terms of Section 47(1), proviso thereof, he had to be put on a supernumerary post the moment 100% disability was found till his superannuation. In other words, he claims that from year 2000 to 2009, he should have been paid full wages. The Tribunal rejected his claim, though, it held that the plea of the respondents that he had taken voluntary retirement was not entirely correct and allowed pensionary benefits for the notional period of service. The Tribunal denied him the relief of pay for 9 years as he did not work and was not available for work being taken. As such, he could not now be paid any monetary compensation.

4. Having considered the matter and heard the parties, we are not inclined to interfere, apart from what the Tribunal has said. We would like to note that the petitioner had an option when he was found medically unfit, at that time, he could have either sought enforcement of proviso 47(1) of the Act, but, he chose not to do so, because, it was advantageous for him in the long run to seek retirement and then get compassionate appointment for his son. He exercised an option that was available to him. Now, having failed to achieve the object for which he had exercised the option, on the basis of doctrine of election, he cannot now be permitted to retract to go for second option which he had failed to exercise or enforce. Thus, we find no merit in this application. It is, accordingly, dismissed.