
(2005) 05 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (C) 3890 of 2003

Kumar Bharat Prasand Narain Singh

APPELLANT

Vs

Airports Authority of India

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2005) 120 DLT 545 : (2005) 82 DRJ 717 : (2005) 106 FLR 580 : (2005) 3 LLJ 590

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Amit Kumar and Amit Anand Tewari, for the Appellant; Rajiv Nayyar and Sachin Sood, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—By means of this writ petition the Petitioner has prayed for the issuance of a mandamus commanding the Respondent to appoint the Petitioner on an equivalent post in the pay scale of Co-pilot with all consequential, monetary and other benefits, since 1995. In the course of the arguments the Petitioner has prayed that he should be placed in the pay scale of a Co-pilot thereby rendering it unnecessary to locate an equivalent post thereto. It has also been vehemently contended that a fellow officer by the name of Mr. K.P.S. Nair, with a similar medical disability, has been rehabilitated in a post equivalent to that of a Co-pilot and his emoluments and other benefits receivable by him as a Co-pilot have been protected and are continuing. Article 14 has, Therefore, been pleaded.

2. The facts of the case are that the Petitioner was promoted as an Aerodrome Officer on 30.1.1980. On the creation of the National Airports Authority in 1986 his services stood transferred from the Civil Aviation Department to the newly created Authority. In March 1989 the Petitioner was selected as a Co-pilot in the

pay scale of Rs. 3700-5000/- (revised Rs. 17,500-22,500/-) later increased to Rs. 4100-5300/- (revised Rs. 18,500-23,900/-). On 19.1.1993 the Petitioner suffered a heart attack while on duty as a result of which he was declared unfit to fly. On 19.7.1995 his services as a Co-pilot were terminated but on the very same day he was given a fresh appointment as an Aerodrome Officer in the pay scale of Rs. 2200-4000/- (revised Rs. 13,000-18,250/-). This Order dated 19.7.1995 also states that "keeping in view your services as Aerodrome Officer and subsequently as a Co-pilot, as a special case, you will be considered for a higher start in the scale of pay of Rs. 2200-4000 - and your pay will be fixed at Rs. 3900/-". While accepting the so-called re-employment on humanitarian grounds the Petitioner while expressing his deep gratitude drew attention of the Authorities to the fact that persons junior to him had become senior Aerodrome Officers. Thereafter the Petitioner has made repeated representations in writing seeking his placement in an equivalent rank and the same pay scale of a Co-pilot in terms of letters dated 25.4.1996, 13.5.1997, 28.10.1997, 15.(sic).1999, 1.6.2000, 1.5.2002 and 6.9.2002. This writ petition has been filed in May 2003.

3. In *Narendra Kumar Chandla Vs. State of Haryana and others*, , the Hon'ble Supreme Court has made the following observations which in effect is a harbinger of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (`Disabilities Act" for short):

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavor to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate ,he is eligible for the post of LDC. For LDC apart from matriculation ,passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, Therefore, his last drawn pay has to be protected Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

4. The Disabilities Act has the avowed purpose of giving effect to the Proclamation of the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In Section 2(i) the word "disability" has been defined, regretfully, not in an inclusive manner. Since an adverse heart condition, which is as debilitating as the enumerated disabilities, does not find mention in that definition whereas blindness, low vision, leprosy-cured, hearing impairment, locomotor disability mental retardation and mental illness are included it has been argued that the protection of the said statute does not inure to the benefit

of the Petitioner. Section 47 of the Disabilities Act reads as follows:

Non-discrimination in Government employments.-(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.

5. I had occasion to consider a similar prayer in W.P.(C) 2708/1998 titled as Tarlochan Singh Aujla vs. Delhi Transport Corporation decided on May 12, 2005 and since the Petitioner was suffering from a medical affliction which fell within the definition of disability u/s 2(i) of the Disabilities Act there was no difficulty or impediment in granting relief in that case. It is more than likely that the Legislature did not intend to arbitrarily limit the benefits extendable to persons with disabilities under the said statute. In Narender Kumar Chandla's case (supra) the relief granted by the Apex Court was not circumscribed or restricted only to certain medical disabilities. There appears to be no plausible reason why the definition given to the term "disability" in *Rorabaugh v. Great Eastern Casualty Co.*, 117 Wash. 7, 200 p.2d 587 viz. "absence of competent physical, intellectual, or moral powers; impairment of earning capacity; loss of physical function that reduces efficiency; inability to work" should not be preferred wherever a matter is brought to the Courts of law. While it may be impermissible for the Court to widen the ambit of the term "disability" under the Disabilities Act, since the Supreme Court as already recorded its verdict on a similar issue, a wider meaning can be given to that term by extending relief similar to that granted in *Narendra Kumar Chandla's* case (supra). There is no reason whatsoever to conclude that a person suffering from a heart disease has been specifically kept beyond the amelioration and alleviation of the said statute i.e. the Disabilities Act. This is especially so where the employer has decided that the employment of the employee concerned must be brought to a premature cessation because of a severe setback to the health or an injury suffered by him in the duration of his service. It also appears to me to be unfair to deprive and exclude a person suffering from any congenital or other physical medical disorder other than those enumerated in Section 2(i) of the Disabilities Act from

preferential consideration for job-appointment. It is hoped that the Legislature shall expeditiously consider the question and carry out amendments to the Disabilities Act.

6. In Narendra Kumar Chandla's case (supra) the Hon'ble Supreme Court had been pleased to order the relaxation so far as the passing of typing test was concerned. In the case in hand the Petitioner has already worked as an Aerodrome Officer and it has not been contended by the Respondents that he cannot fulfill these functions. The only question is whether he should be placed in the pay scale of Aerodrome Officer or should receive emoluments in the pay scale of Co-pilot in which he served prior to his severely debilitating heart attack upon which the Respondents have predicated the premature termination of his services. No person desires to suffer any physical disability including a heart malfunction. Therefore, I am of the unequivocal opinion that there would be no warrant for not protecting the financial package receivable by such a disabled person while placing him in a lower post because his disability does not permit him to serve in the higher post.

7. Mr. Rajiv Nayyar, learned Senior counsel appearing on behalf of respondent has drawn my attention to the fact that the Petitioner had correctly expressed his gratitude in July, 1995 when his services had been artificially brought to an end and he was re-appointed to the post of Aerodrome Officer. There is no justification to terminate the services of the Petitioner especially where the "State" is the employer; it is obligated to bestow welfare measures in consonance with law of the land. It is also not possible to accept the argument on behalf of Respondents that the termination of the Petitioner's services in the post of Co-pilot was effected with his consent. Consent must be freely given for it is to be legally efficacious and it is impossible for me to visualise that a person who has recently suffered the trauma of heart attack, is facing the prospects of being rendered unemployed, would give his free and informed consent to the cessation of his services. Any person placed in the Petitioner's position would be left with no option but to succumb to whatever employment is offered to him, regardless of whether this meets with the mandates of law and good conscience. Mr. Nayyar has also contended that since this event took place as far back as in 1995 the Petition ought not to be entertained. In the first place the Petitioner had made repeated representations. Secondly, the cause of action recurs from month to month and at best the claim for arrear of pay can be restricted to a reasonable period prior to the filing of the writ petition. Thirdly, the Petitioner was obviously affected by the different and partial treatment accorded to Mr. Nair. I would not, Therefore, consider it appropriate to apply the doctrine of laches in the circumstances of the present case and thereby decline to grant relief to the Petitioner. It has been belaboured on behalf of the Respondent that a fresh appointment took place in July 1995 and that it was given on humanitarian grounds. Neither of these conditions hold good or are sustainable in law.

8. So far as Mr. K.P.S. Nair is concerned, I find that he has been rehabilitated in a

manner which is today's day and age must come to be expected of every model employer. It has been argued that Mr. Nair's flying license has not been cancelled. However, the fact remains that the Petitioner's flying license has been cancelled as a consequence of his suffering from a heart attack. I need not go into whether Mr. Nair's flying license ought to have been cancelled. The fact that he was rehabilitated in a non-flying assignment is sufficient to show that his case is similar to that of the Petitioner. There is no foundation for concluding that the Petitioner's "vast experience" cannot also be utilized as has been done in Mr. Nair" case. It cannot be ignored that Mr. Nair has been declared medically unfit to discharge the functions of a Co-pilot. No sooner this conclusion is arrived at his case is on all fours with that of the Petitioner. They must be treated in the same sympathetic manner.

9. In this analysis the Petition is allowed by issuing a direction to the Respondents to place the Petitioner in the pay scale of a Co-pilot, which was the job which he was discharging at the time when he suffered a heart attack. The Respondents are obligated to locate promotional avenues for the Petitioner keeping in view his medical disability. The Petitioner shall be entitled to arrears of pay with effect from 1.1.2003, and necessary payment be calculated and paid to him within four weeks from today. However, there shall be no order as to costs.