
(2003) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2944 of 2001

Lance Naik Vinod Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47, 47(1)

Citation : (2003) 4 MPHT 426

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : K.C. Ghildiyal and M.K. Rajak, for the Appellant; Anoop Nair, for the Respondent

Judgement

S.P. Khare, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 22-1-2001 (Annexure P-4) by which the petitioner has been discharged from Army Service.

2. It is not in dispute that the petitioner was enrolled in Army Service on 2-1-1989. He was working as a Soldier in 14, JAK Rifles. He sustained "closed head injury" on 14-5-1993 while playing boxing as a part of organised game in the unit. This injury was held to be attributable to the Military Service by the Court of Inquiry. The petitioner was examined several times and he was treated for the said injury. Ultimately he was put in medical category BEE (Permanent) for two years from 3-6-1999 to 2-6-2001. He was given "sheltered appointment" from 10-6-1995 to 29-12-2000. Thereafter he has been discharged from service by the impugned order dated 22-1-2001 due to "non-availability of sheltered appointment". He has been released on 1-8-2001.

3. The petitioner's case is that he was to be re-examined by the Medical Board on 3-6-2001 to ascertain whether he is still not in a position to perform his duties. After his examination by the Medical Board he could be placed in an appropriate medical category. He was, however, discharged without waiting for

his examination by the Medical Board on 3-6-2001. According to the petitioner he could earn pension on completion of 15 years of service and he was short of 2 years and 5 months for completing 15 years of service. He made several representations to the respondents but these were rejected. He has pointed out that several other similarly situated persons have been given sheltered appointment. Their names are stated in Para 5.9 of the petition.

4. The respondents' case is that the petitioner was given sheltered appointment from 10-6-1995 to 29-12-2000 but due to non-availability of sheltered appointment he could not be given further extension after 1-8-2001. The respondents have stated in Para 6.8 of the return the benefits which had been granted to the petitioner after his discharge from service.

5. The learned Counsel for both the sides have been heard. The petitioner has produced a copy of letter dated 9-6-1999 (Annexure P-9) of the Army Headquarters, New Delhi. In this circular it is stated that every effort will be made to provide sheltered appointment to all LMCs in Units/Centres in keeping with their employability restrictions. It is stated in this circular that "those nearing their minimum pensionable service should preferably be retained. The nature of disability and the circumstances under which the injury was sustained are also required to be considered. In the present case the petitioner was given sheltered appointment and he was due for fresh medical examination on 3-6-2001 for ascertaining medical category in which he was at that time. According to the petitioner he has improved and he is no longer a disabled person. Therefore, it was necessary for the respondents to get the petitioner examined on 3-6-2001 before his discharge and release.

6. The Parliament has now passed an Act known as "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". Section 2(k) of this Act defines "establishment". It includes "department of a Government". Therefore, this Act would apply to the persons employed in the Army also. Section 47 of the Act is as under :--

"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."

7. The provisions of the Act mentioned above came up for consideration before the Supreme Court in *Kunal Singh Vs. Union of India (UOI)* and Another, The Supreme Court laid down the law as under:--

"Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. 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. A person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 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. 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. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service." "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."

8. As mentioned above the second proviso to Section 47(1) of the Act lays down 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. In the present case the petitioner has contended that if he is kept in sheltered appointment for 2 years 5 months more he would be entitled to minimum pension. Therefore, it is necessary for the respondents to consider the case of the petitioner in terms of Section 47 of the Act.

9. In the result this petition is partly allowed. The respondents are directed to consider the case of the petitioner in terms of Section 47 of the Act mentioned above and keep him on a supernumerary post until his service period of 15 years is completed so that he may earn the minimum pension.