
(1998) 07 J&K CK 0043
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 664 of 1993

Mool Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (1998) 3 SCT 796

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : A.V. Gupta, R.P. Bakshi, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—An order annexure 'D' by which power was exercised under Section 56(j) of the Fundamental Rules read with Section 48

of the Central Civil Service (Pension) Rules 1972, came to be passed against the petitioner. This order was challenged in this court.

2. Petitioner was found to be medically unfit and therefore, action was taken with a view to retire him from service. The order referred to above

was passed on 4th of April 1993. This reads as under :

Whereas the Chief Engineer (Project) Beacon is of the opinion that it is in the Public interest to do so.

Now therefore, in exercise of the powers conferred by clause (j) of Rule 56 of the fundamental Rules read in conjunction with sub Rule 1(b) of

Rule 48 of the Central Civil Service (Pension) Rules 1972, the Chief Engineer (Project) Beacon hereby gives notice to Shri Mool Chand

(Assistant) G/59045X that he on completing thirty years of service on the 16th day of April, 1993 (AN) shall retire from service on the forenoon

of the day following the date of expiry of three months notice period computed from the date following the date of service of this notice on him due

to not granting extension in GREF service on completion of 30 years service, by the competent authority.

It be seen that operation of order was stayed by this Court on 25th of May 1993 and stay continued to be enforced.

3. Learned counsel appearing for the petitioner submits that petitioner has since been transferred to Asst. NorthEast and he is rendering active

duty. It is further submitted that if the petitioner was not fit for doing one particular job, he should have been given other job. In this regard, it

would be apt to refer to decision of Supreme Court of India in the case reported as Narendra Kumar Chandla v. State of Haryana and others,

AIR 1995 SC 519 : 1994(2) S.C.T. 571 One arm of employee amputated due to Sarcoma (Cancer) Employee unable to perform duties of post

he was holding. It was observed that every endeavour must be made to adjust him in a post where he could suitably discharge his duties. This

aspect of the matter was considered in Article 21 of the Constitution of India also. What was said in para 7 is being noticed below :

Article 21 protects the rights 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 endeavour to adjust him in a post in which the

employee would be suitable 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 a LDC. Admittedly on the date when he had unfortunate operation he was drawing the salary in the pay scale of

Rs. 14002300. 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 Rs. 14002300 and direct to pay all the arrears of salary.

4. Article 21 of the Constitution of India protects the right and appointed him as LDC. Position in this case similar. If the petitioner was unable to

perform certain duties on account of medical ailment. This petition is disposed of with a direction that respondent authorities would take notice of

aforementioned position of law and pass such order as admissible under law.

5. Disposed of accordingly.