

(2005) 04 AHC CK 0101

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53528 of 1999

Om Prakash Singh

APPELLANT

Vs

Union of India (UOI) and Additional Deputy Inspector
General, Central Reserve Police Force

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full
Participation) Act, 1995 — Section 47

Citation : (2005) 5 AWC 5042 : (2005) 3 ESC 1869

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : C.B. Yadav, for the Appellant; Anoop Kumar Srivastava and S.C., for
the Respondent

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Brief facts leading to the case are that the petitioner was recruited as Constable on 22.3.1983 in Central Reserve Police Force. While he was undergoing Counter Insurgency Anti Terrorists Course at Awadi (1 Madras) after completing the aforesaid requisite training on the last day when the petitioner was appearing in swinging jump (Jhoola jump), the rope was broken and the petitioner met with an accident and suffered fracture at knee and also at back bone in the year 1994. On account of aforesaid serious injuries sustained by the petitioner he was admitted at CRPF Base Hospital on 25.4.1994 for his treatment. The petitioner remained under treatment in ,CRPF Base Hospital upto 8.8.1994. By the order dated 26.4.1994 he was referred to All India Institute of Medical Science, New Delhi and on 27.4.1994 his treatment at All India Institute of Medical Science was started and the petitioner was admitted for his operation on 19.8.1994 and was discharged on 27.8.1994. In All India Institute of Medical Science on 23.8.1994 the petitioner's knee (ACL Tier) re-constructed. It appears that under the treatment provided to the petitioner he could not recoup properly,

therefore, again on 28.8.1994 the petitioner was admitted to CRPF Base Hospital at New Delhi and remained under treatment as In-door patient upto 24.11.1994. On account of aforesaid serious injuries sustained by the petitioner and also having regard to the prolonged treatment provided to the petitioner the Head of department i.e. respondent No. 2 thought it proper to post the petitioner for official work and vide order dated 21.11.1996 he was posted at the office of the Group Centre, CRPF, Allahabad. It is alleged that on account of aforesaid injuries sustained by the petitioner he was again treated in District Hospital, Allahabad i.e. T.B. Sapru Hospital, Allahabad. But in T.B. Sapru Hospital, Allahabad no proper treatment could be provided to the petitioner, therefore, the petitioner was transferred to Neuro Surgeon at Swaroop Rani Nehru Hospital, Allahabad where he has been operated by Dr. S.P.S. Chauhan and remained under treatment at Swaroop Rani Nehru Hospital, Allahabad w.e.f. 20.4.1999 to 3.5.1999. It is further alleged that even today the petitioner is under continuous close watching of Neuro Surgeon at Allahabad as per prescription of the Doctor dated 20.7.1999. According to the petitioner since he has been transferred to Group Centre Office at Allahabad only on medical ground, and the petitioner is physically not in a position to move at the active/mountain areas and even he is not fit to wear heavy shoes and heavy weight work has also been not allowed to the petitioner. 72 Battalion CRPF in Assam is an active service facing the terrorists. 72 Battalion CRPF in Assam is presently posted in mountain areas and it is not proper to the petitioner to go in such active service for the simple reason that he is still under medical treatment since 1994 till date. But by order dated 9.7.1999 a serious punishment has been awarded against the petitioner by transferring him from the office of Group Centre, Allahabad to 72 Battalion CRPF in Assam. Just after receiving the aforesaid order of transfer, the petitioner brought complete facts to the notice of authority i.e. respondent No. 3 by making a detailed representation dated 21.7.1999 through proper channel. While challenging the validity of the order dated 9.7.1999 the petitioner has filed writ petition No. 32353 of 1999. On 4.8.1999 the aforesaid writ petition was disposed of finally with the direction to the respondent No. 3 to consider the petitioner's representation and for the period of two months the order of transfer has been directed to be kept in abeyance.

2. It is further alleged that during the course of petitioner's tenure at Allahabad, the Director General of C.R.P.F. issued a Circular on 6.5.1999 containing the policy for rehabilitation of C.R.P.F. employees who have lost any part of the body or suffered any disease during the course of his duties. The copy of Circular is on record as Annexure-11 of the writ petition and Annexure-7 of the supplementary counter affidavit. In pursuance of the aforesaid policy the petitioner has moved an application on 15.9.1999 (Annexure-14 of the writ petition) for his rehabilitation before Additional Inspector General of Police, Group Centre, C.R.P.F., Allahabad. The aforesaid application was forwarded on 16.9.1999 by the Officer Commanding, C.R.P.F., Allahabad to D.I.G., Allahabad for its consideration in original. On 18.9.1999 under the direction of Inspector General, C.R.P.F.,

Central Sector dated 16.9.1999 the petitioner was required to be examined by the Board of Medical Officers comprising of Dr. S.K. Parimal, Dr. Ashok Kumar and Dr. Prem Kumar, All were Chief Medical Officers. Meanwhile vide order dated 5.10.1999 passed by Inspector General of Police, C.R.P.F., Lucknow in compliance of the order dated 4.8.1999 passed by this Court in Writ Petition No. 32353 of 1999 filed by the petitioner, his representation was rejected and he was directed to be relieved w.e.f. 1st December, 1999 to report his duty to Commandant, 72 Battalion, C.R.P.F. in Assam. It has also been mentioned in the aforesaid order that as regards the rehabilitation and invalidation of individual another letter will be issued. Challenging the validity of order dated 5.10.99 as well as order dated 9.7.99 the petitioner has filed another writ petition No. 44734 of 1999, which is still pending before this Court without any interim stay order. During the pendency of aforesaid writ petition the petitioner received a show cause notice on 11.11.1999 whereby on the basis of opinion of Medical Board, the petitioner was required to submit his explanation as to why the petitioner may not be invalidated out from service. The aforesaid show cause notice was replied by the petitioner on 7.12.1999 but without properly appreciating and considering the reply submitted by the petitioner the impugned order dated 11.12.1999 has been passed whereby the petitioner has been invalidated out from service w.e.f. 11.12.1999 in accordance with Appendix-09-CCS Pension Rule, 1972 and para 2-A pf Government of India decision No. 1. Feeling aggrieved against which the petitioner has filed above noted writ petition challenging the order dated 11.12.1999 contained in Annexure-20-A of the writ petition passed by Addl. D.I.G. (Police), Group Centre, C.R.P.F., Allahabad.

3. A detail counter affidavit and a supplementary counter affidavit has been filed on behalf of respondents of the writ petition, wherein in substance it has been stated in para 9 and 11 of the counter affidavit that the petitioner was transferred to Group Centre, C.R.P.F., Allahabad not on medical ground from 115 Battalion, C.R.P.F. but his transfer was as a general case on rotation basis to give equal chance for static posting like Group Centre to persons who have already completed tenure of their duties of Battalion posting in the field. In para 14 of the counter affidavit it is stated that the transfer to Group Centre and rehabilitation has nothing to do with each other At Group Centre a period of three years have already been completed by the petitioner. Thereafter he was transferred from Group Centre, C.R.P.F., Allahabad to 72 Battalion. In para 17 of the counter affidavit it is stated that a medical board was constituted to examine the petitioner for assessing his suitability for retention in service and/or invalidation. The Board of Medical Officers have examined the petitioner and after examination held that petitioner is completely and permanently incapacitated for further service of any kind in the department of C.R.P.F.. Accordingly IGP, C/S, CRPF, Lucknow vide his letter dated 6.10.1999 directed to take action for invalidation as per report of Medical Board. In pursuance thereof a notice for invalidation was issued with direction to the petitioner to submit his reply, if any, within one month on 11.11.1999. In pursuance of which petitioner

has submitted his reply on 7.12.1999. After consideration of his reply he has been invalidated out from service w.e.f. 11.12.1999 vide office order dated 11.12.1999. In para 21 of the counter affidavit it is further stated that there is no connection between the medical examination and order dated 5.10.1999 passed by IGP, C/S, CRPF, Lucknow. The order dated 5.10.1999 was speaking order on the representation of petitioner dated 21.7.1999 against the transfer whereby the petitioner's representation has been rejected by speaking order on the ground mentioned therein and the petitioner was to be relieved on 1.12.1999 to report his duty to Commandant, 72Battalion, CRPF. It is further stated in para 24,25,26 and 27 of the counter affidavit that after considering the report of the Medical Board and reply submitted by the petitioner against show cause notice dated 11.11.1999 the petitioner has been invalidated out from service w.e.f. 11.12.1999 vide office order dated 11.12.1999. .

4. A supplementary counter affidavit has also been filed in the writ petition whereby in substance the averments contained in the earlier counter affidavit have been reiterated/elaborated and supported by documents. This supplementary counter affidavit has been filed virtually to rebut the averments made in the rejoinder affidavit filed by the petitioner, For ready reference the contents of para 4, 5 and 6 of supplementary counter affidavit sworn by Sri M.S. Yadav, posted as Addl. Deputy Inspector General of Police, Group Centre, CRPF, Allahabad is reproduced as under :

"4. That the contents of paragraph 3 (marked repeatedly) of the rejoinder affidavit are incorrect and false hence denied, in reply the contents of paragraphs 4 and 5 of the counter affidavit are reiterated as correct. In reply it is submitted that No. 831190281 Ex-HC(GD) Om Prakash Singh was transferred from GC CRPF Allahabad to 72 Battalion CRPR vide DIGP, CRPF Allahabad o/o No. T.IX-13/99-EC-2 dated 5.7.1999 The said individual submitted an application dated 21.7.1999 for cancellation of the transfer order. The application was forwarded to the IGP, C/S, CRPF, Lucknow for suitable action. Before passing any order on his representation, the individual filed a writ petition No. 32553 of 1999 in Allahabad High Court against his transfer to 72 Battalion, CRPF. The case was heard on 4.8.1998 and Hon"ble Court directed the IGP, CRPF, Lucknow to decide the representation of the petitioner within two months by a speaking order and stayed the transfer order for two months. The IGP, C/S.CRPF, Lucknow having considered his representation deferred his transfer upto 30.11.1999 vide order dated 5.10.1999. He has again filed a writ petition No. 44739 of 1999 in Allahabad High Court against the order dated 5.10.1999 issued by the IGP, C/S, CRPF, Lucknow and the DIGP, CRPF, Allahabad order dated 5.7.1999 for transfer to 72 Battalion CRPF. The writ petition is still pending in the Hon"ble Court."

"5. That Ex-HC(GD) Om Prakash Singh was reported to be a case of injury sustained during Counter Insurgency and Anti Terrorist Course (CIAT) at Central Training College-II, CRPF, during 1993. He could not perform active duty in CRPF. All medical cover had been provided to him by the department but no

improvement resulted. Hence, a Medical Board was constituted to assess his suitability for active duty/retention in service or invalidation. The Board of Medical Officers carefully examined Ex-HC(GD) Om Prakash Singh and opined that he was completely and permanently incapacitated for further service of any kind in the department (CRPF) due to ACC and reconstructive surgery and leminucting. The Photostat copies of the Medical Report and Medical certificate issued by the Board of Medical Officer are being filed as Annexure-SCA-1 and SCA-2 to this affidavit."

"6. That the report of Board of Medical Officers alongwith all connected documents and representation dated 15.9.1999 of the petitioner were sent to the IGP, C/S, CRPF, Lucknow for consideration of his rehabilitation case. But he did not find place for rehabilitation by the opinion of rehabilitation Board. Therefore, IGP C/S CRPF Lucknow vide his letter No. T.IX-16/99-CS-Adm. I dated 6.10.1999 directed this GC to take action for invalidation as per report of Medical Board. Accordingly, a notice for his invalidation was issued vide this office letter No. P.III-362/99-Pen-GC dated 11.11.1999 with direction to submit reply, if any within one month. Ex-HC(GD) Om Prakash Singh submitted reply dated 7.12.1999 after consideration of his reply, he had been invalidated out from service w.e.f. 11.12.1999 (AN) vide this o/o No. P.III-362/99-Pen-GC dated 11.12.1999. He had filed this writ petition in Allahabad High Court against the order of invalidation which is pending in the Hon"ble Court. The Photostat copies .of the representation dated 16.9.1999 alongwith letter dated 22.9.1999 are being filed herewith and marked as Annexure SCA-3 and SCA-4 to this affidavit, and the photocopy of the letter No. T.IX-16/99-CS-Adm.I dated 6.10.1999 issued by the office of Inspector General of Police is being filed as Annexure SCA-5 to this affidavit."

5. In para 7 of the supplementary counter affidavit it is also stated that the Board was constituted to assess the suitability of petitioner for his active duty/retention in service or invalidation. It was not constituted to assess his fitness or unfitness for proceeding on transfer to 72 Battalion CRPF. In fact it is not at all necessary to do so in the case of transfer. Hence the allegations are denied. The Medical Board carefully examined and opined that the petitioner is completely and permanently unfit for further service of any kind in the department of CRPF. In para 12 of the Supplementary counter affidavit after making certain averments it has been averred that however, the case of petitioner for rehabilitation as per Directorate General Standing Order No. 7/99 was not considered by the competent authority as the case of petitioner is not covered under the purview of existing Rules. Photostat copy of the Standing Order No. 7/99 dated 6.5.1999 is filed as Annexure SCA-7 to the affidavit. Para 12 of the Supplementary Counter Affidavit is reproduced as under:

"12. That the contents of paragraph 11 of the rejoinder affidavit are again incorrect and false hence denied. In reply the contents of paragraphs 19 and 20 of the counter affidavit are reiterated as correct. The petitioner (Ex-HC Om

Prakash Singh) could not perform the duty actively. Hence, a Medical Board was constituted for assessing his suitability for active duty/retention in service or invalidation. The Board of Medical Officers carefully examined Ex-HC (GD) Om Prakash Singh and opined that he is completely and permanently incapacitated for further service of any kind in the department (CRPF). The Report of Medical Officers alongwith all connected documents and representation dated 15.9.1999 regarding rehabilitation of the petitioner in accordance with the instructions contained in Directorate General CRPF Standing Order No. 7/99 were sent to the Inspector General of Police (IGP) C/S CRPF Lucknow for consideration of his case. The IGP C/S CRPF Lucknow vide his letter No. T IX-16/99-CS-Adm. I dated 6.10.1999 directed to take action for invalidation as per report of Medical Board. Accordingly, a notice for invalidation was issued vide this office letter No. P.UI-362/99-Den-GC dated 11.11.1999 with direction to submit reply, if any within one month. He had submitted reply dated 7.12.1999. After consideration of his reply, he has been invalidated out from service w.e.f. 11.12.1999 (AN) vide this o/o No. P.III-262/99-Den-GC dated 11.12.1999. However, the case of the petitioner for rehabilitation as per Directorate General Standing Order No. 7/99 was not considered by the competent authority as the case of the petitioner is not covered under the purview of existing Rules. A Photostat copy of the Standing Order No. 7/99 dated 6.5.1999 is being filed herewith and marked as Annexure-SCA-7 to this affidavit. "

6. I have heard Sri C.B. Yadav, learned counsel for the petitioner and Sri Anoop Kumar Srivastava, learned counsel for respondents and also have gone through records.

7. The thrust of the submission of learned counsel for the petitioner is that in given facts and circumstances of the case, the petitioner was entitled for rehabilitation under the Standing Order No. 7/99 issued by the respondents inasmuch as under the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, but the impugned actions of respondents are wholly erroneous, arbitrary and illegal whereby the petitioner has been invalidated out from service w.e.f. 11.12.1999. In support of his submission, learned counsel for the petitioner has also relied upon decision of Hon"ble Apex Court rendered in Kunal Singh v. Union of India and Anr. reported in JT 2003(2) SC 132. Contrary to it learned counsel appearing for respondents has supported the version made in the two counter affidavits filed on behalf of respondents referred earlier and supported the action of respondents on the basis of stands taken there under.

8. Now crucial question for consideration is as to whether the petitioner was entitled for rehabilitation under the Standing Order No. 7/99 dated 6.5.1999 contained in Annexure SCA-7 of the counter affidavit and under the provisions of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as Act 1995, and as to whether the respondents have considered the case of petitioner in

accordance with the Standing Order and the aforesaid provisions of law or not? In order to answer the aforesaid question it is necessary to have a glance over the provisions of Standing Order No. 7/99 dated 6.5.1999 and provisions of the Act 1995 inasmuch as pleadings of the parties and other available material on record. For ready reference the provisions of Section 47 of Act 1995 is reproduced 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."

9. At this juncture it is also necessary to point out that the effect and scope of the provisions of Section 47 of Act 1995 has been considered by Hon"ble Apex Court in case of Kunal Singh (Supra). In para 12 of the judgment Hon"ble Apex Court has held as under :-

"12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant u/s 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have, proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of section 47 of the Act."

10. Now it is necessary to examine the policy of rehabilitation underlying in the Standing Order No. 7/99 dated. 6.5.1999 contained in Annexure-7 of Supplementary counter affidavit filed by respondents. From a bare perusal of which it is clear in para 2 of the aforesaid Standing Order, the department has categorized three categories of disabled personnels. In para 3 of the aforesaid

Standing Order it is provided that it is the responsibility of department to make all efforts to rehabilitate the personnel mentioned in para 2(A) and para 2(B) and to support their families as, otherwise it will have a very demoralizing effect in force. Para 4 further provides that sick and injured person should be given full medical treatment at Unit level, Civil Hospital and GC, Hospital/Base Hospital. Full medical treatment should include fitment of artificial limbs to those who are in need of them. After the treatment if Medical Officer Incharge is of opinion that the individual is not fit for normal active duty, the case of individual should be referred to the departmental Board for rehabilitation by the Unit concerned. Para 5 provides that the personnel with disability will appear before Departmental Rehabilitation Board constituted for the purpose at Sector level of which IGP will be Chairman, One DIGP, One ADIGP/Commandant. One CMO, One GDO Gd. I will be the members of the Board. In para 6 the Board will subject the person concerned to critical examination with a view to determine his physical capability, educational standard, aptitude, job requirement etc. for assessing his suitability for the jobs specified for this purpose vide para No. 7. Para 7 provides for jobs enumerated there under. Para 10 further provides that the persons who are not fit for being accommodated in any of the post mentioned in preceding paragraphs their cases are required to be referred to medical invalidation board as normal rules. On invalidation the measures will be taken for their rehabilitation to train them for alternative jobs and to find suitable placement for them in various Govt./private establishment etc.

11. From the perusal of records and counter affidavits it is clear that there is no specific averment and detail as to whether the petitioner's case has ever been referred before the Departmental Rehabilitation Board as required by para 4 and 5 of the Standing Order, which was constituted under para 5 of the Standing Order, and he was ever asked to appear before such Departmental Rehabilitation Board as required under para 5 of the Standing Order and was examined by such Board as envisaged by para 6 of the Standing Order inasmuch as his case was considered for the jobs specified in para 7 of the Standing Order. There is no specific averment in the counter and supplementary counter affidavits that the petitioner was not found fit for being accommodated in any of the post mentioned in para-7 of the Standing Order by Departmental Rehabilitation Board before referring his case to the Medical Invalidation Board as normal rules. Even on invalidation the measures requires to be taken for rehabilitation as contemplated in para-10 of the Standing Order, have also not been taken in the matter. Contrary to it in para-12 of the supplementary counter affidavit it has been specifically stated that however the case of petitioner for rehabilitation as per Standing Order was not considered by the competent authority. The case of petitioner is not under the purview of existing rules. But no further details of any rule has been given, which debars the claim of petitioner for rehabilitation. This stand of the respondents also appears to be self contradictory and contrary to the stand taken by them in para 6 of supplementary counter affidavit quoted herein before, wherein it has been stated that report of. Medical Board along with

connected documents and representation of petitioner dated 15.9.99 were sent to IGP C/S C.R.P.F. Lucknow for consideration of his rehabilitation case. But he did not find place for rehabilitation in opinion of rehabilitation Board. These two self conflicting stand of respondents in their supplementary counter affidavit, in which at one place it is said that the case of petitioner has been considered but he was not found fit and at another place it is said that his case was not covered under the rules, therefore, could not be considered by the competent authority, demonstrate that the case of petitioner was in fact not considered by the said Board in accordance of the policy contained in Standing Order. I have carefully examined the provisions contained in the Standing Order No. 7/99. I could not find any such provisions, which debars the claim of rehabilitation of the petitioner in given facts and circumstances of the case. Thus on the basis of material available on record, I am of considered opinion and have no hesitation to hold that before considering the case of petitioner for rehabilitation by the Departmental Rehabilitation Board in accordance of policy decision of respondents as contained in the aforesaid Standing Order his case was referred to the Medical Invalidation Board, which has examined him on 18.9.1999. No material has been placed by the respondents in justification of their such departure from policy decision contained in the Standing Order in case of the petitioner. Thus the aforesaid action is arbitrary, illegal and cannot be sustained.

12. At this juncture it is necessary to point out that the Medical Board constituted and examined the petitioner on 18.9.99 appears to have examined him for assessing his suitability for active duty/retention in service or invalidating out from service, which has also opined that the petitioner is incapacitated to combatised service and he has been considered completely and permanently incapacitated for further service of any kind in CRPF to which he belongs. From the aforesaid report also there is nothing to indicate that the petitioner is not capable of discharging duties on other posts referred in Standing Order on his rehabilitation. Contrary to it the assertion of petitioner made in writ petition that he is discharging the duties at Group Centre CRPF, Allahabad very satisfactorily without any cause of complaint against his work and conduct and there is nothing on record to show that he cannot discharge such duties in case he would have been rehabilitated under the provisions of the aforesaid Standing Order. His incapacity to discharge the duties of combatised services of CRPF in my considered opinion does not mean that he is not capable to discharge the duties of other categories of posts as mentioned in the Standing Order. The Medical Board has not given any opinion as to whether the petitioner is completely unfit for discharging any other kind of duties apart from active combatised duties and the aforesaid opinion of Medical Board can also not be treated to be substitute of opinion of departmental rehabilitation Board before which the petitioner has never been examined at all, as required under the Standing Order. The aforesaid opinion of Medical Board is on record as Annexure-22 of the writ petition. I have carefully examined the report of Medical Board as well as Policy of rehabilitation under lying in the Standing Order No. 7/99 dated 6.5.1999. I do not find any

material on the basis of which it can be held that the petitioner cannot discharge any other duties in the department other than active combatised duties and he cannot be accommodated on any other post of his rank and grade. Thus the action taken by the respondents cannot be said to be in consonance with the provisions of Standing Order. Therefore, on this count also the action taken by the respondents are not sustainable in the eyes of law.

13. Thus from the aforesaid discussion, it is clear that petitioner has sustained the injuries, while he was on active duties of Battalion in C.R.P.F. and on account of such injuries he acquired disability during his services. If he was found not suitable for the post he was holding, he could be accommodated on other suitable post, on his rank in accordance of the provisions of aforesaid Standing Orders and the provisions of Section 47 of the Act, 1995, but respondents have completely ignored the aforesaid provisions of law. Instead of doing so the respondents have wrongly invalidated out the petitioner from service vide impugned order dated 11.12.1999 contained in Annexure 20-A of the writ petition. Thus the impugned order is not sustainable in the eye of law and liable to be quashed, accordingly the same is hereby quashed.

14. The facts of present case are also similar to facts of the case of Kunal Singh (supra) wherein Hon''ble Apex Court has held that once it is held that the appellant of the aforesaid case has acquired disability during his service and he was found not suitable for the post, which he was holding, he could be shifted to some other post with same pay-scale and service benefits. If it was not possible to adjust him against any post, he should be kept on a supernumerary post until a suitable post is made available for him or he attains the age of superannuation, whichever is earlier. It appears that no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without. considering the effect of the provisions of Section 47 of the Act. While setting aside the order appealed against, Hon''ble Supreme Court has directed the respondents to give relief in the terms of Section 47 of the Act, 1995.

15. Before concluding the case, one more aspect of the matter is also necessary to be discussed. Since I have taken the view that the provisions of Act, 1995 and provisions of Standing Order No. 7/99 dated 6.5.1999 both are applicable in case of petitioner and the learned counsel appearing for respondents did not point out any thing contrary to it in written submission submitted by him on 19.11.2003, so as to convince the Court to take different and contrary view in the matter, therefore, an incidental question arises to be answered is what would be position in case of any inconsistency of the provisions of aforesaid two beneficial schemes. In this connection it is necessary to point out that the scheme underlying in the provisions of Section 47 of the Act, 1995 is statutory and mandatory in nature contained in central enactment itself, whereas the scheme contained in Standing Order No. 7/99 dated 6.5.1999 is an administrative instruction of the department, therefore, as a normal rule of interpretation

former would prevail over the latter. Thus in order to reconcile both the schemes together it would be appropriate to hold that the provisions of Standing Order should be treated as supplemental to the provisions of Section 47 of Act, 1995 and for giving the effect to the provisions of Act, the procedure provided under the scheme of Standing Order may be followed by the authorities/respondents.

16. Thus the respondents are directed to consider the case of petitioner in the terms of Section 47 of the Act 1995 inasmuch as the aforesaid Standing Order referred earlier. While doing so the respondents are directed to keep in mind the provisions of Section 47 of the Act having overriding effect upon the provisions of Standing Order. The respondents No. 3 is directed to give relief to the petitioner in the terms of the provisions of Standing Order inasmuch as Section 47 of the Act, 1995 in the light of observation made herein before within a period of two months from the date of production of certified copy of this order before him.

17. With the aforesaid, discussions and observations, the writ petition succeeds hence allowed.

There shall be no order as to costs.