
(2003) 07 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 32349 of 2003

Ram Pratap Singh and Another	Vs	APPELLANT
U.P. State Road Transport Corporation and Others		RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

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

Citation : (2003) 6 AWC 4789

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : B.N. Singh, for the Appellant; C.P. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Subject matter of impugnmnt in the instant petition is the order dated 5.7.2003 (Annexure-7 to the petition) whereby the Petitioners have been sought to indicate three stations of choice ostensibly for their transfer from the place of presenting posting.

2. The background furnishing foundation for seeking such option by means of the impugned order appears to be that the Petitioners suffered disabilities in respective accidents and were medically boarded out. He was pronounced unfit to work as Drivers and were consequently harnessed to other posts under the Service Regulations. The Petitioner No. 1 was initially appointed in the year 1986 as Driver in the Unnao Depots and in the year 1988 his services were regularised on the post of Driver. He suffered accident on 19.5.1985 and was discharged from the hospital on 25.5.1989. As stated supra, he was pronounced unfit and was transferred to Fatehpur Depot where he was assigned the work of chowkidar. Likewise, the Petitioner No. 2 inducted in the service as Driver on 1.6.1979 and was assigned Fatehpur Depot. His services were regularised in the year 1981 in Fatehpur Depot. He too met with accident on 28.7.1998 and was discharged from hospital on 30.8.1998. After he had been pronounced unfit he was assigned the

work of chowkidar in Fatehpur Depot.

3. The gravamen of the Petitioners is that despite disabilities due to which their movement is hampered they have been discharging their duties as chowkidar since 1999 and there have never been any room for complaint and further that it is not the case that the Petitioners have been adjusted against supernumerary posts but as against 13 posts of chowkidar in the Fatehpur Depot, six posts have already fallen vacant due to superannuation of the incumbents and in the circumstances, their continuance in the Fatehpur Depot would not operate to any detriment or loss to the exchequer of the Corporation. In the ultimate analysis, it has been canvassed that the impugned order requiring choice of station is not born of any administrative exigencies and is quite arbitrary and discriminatory inasmuch as other employees who are not impaired by disability have not been subjected to the grind of furnishing options allegedly for ostensible object of effecting transfer. The learned Counsel for the Petitioner has drawn attention to Section 47 of the Act, 1995, known as "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to hammer home the point that no such transfer can be effected in relation to a person with disabilities. The aforesaid section is excerpted below :

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.

4. It was further canvassed that the Petitioner No. 1 met with serious accident resulting in grievous head injury and was pronounced unfit for motor driving. The Medical Board vetted the Petitioner and he was further referred to Senior Orthopaedic Specialist of K.P.M. Hospital Kanpur Nagar, who opined the injury to be "chronic discyndrome with Acute Exacerbation". Regard being had to grievous nature of injury it has been quipped by the learned Counsel, seeking option ostensibly for transferring him/them to some other station, would be fraught with grave consequences and detriment to the health and well-being of the Petitioners.

5. In opposition, the learned Counsel for the Respondents in legitimization of the impugned order submitted that transfer being implied condition of service, the appointing authority has wide discretion in the matter. It was further contended that responsibility to run the administration is that of the authority and the sufficiency or propriety of such transfer cannot be evaluated by the Court.

6. I have heard learned Counsel for the parties and made a sedulous scrutiny of the respective contentions made across the bar.

7. From a perusal of Section 47 aforestated as well as other relevant provisions, it is explicit that option could be sought from disabled employees who were offered appointment on supernumerary posts for being adjusted finally against vacancies. It is also clear that option could also be sought for giving promotion to such disabled employees. Besides the above, the aforesaid provisions contemplate seeking of options in other exigencies such as inadequacy of work or inability of disabled person to perform the job efficiently and his inability to perform his duties to the optimum use or that the persons may be surplus to requirements at one place which could necessitate consideration of shifting the surplus from one station to another. Since administrative authorities have wide discretion and are the best judge to assess the ground situation having regard to exigencies of service and interest of administration, what weighed in the mind of the authority concerned or what appealed to him qua the ground realities has not been unfolded in the order nor does the arguments tear the veil off the real purpose. But having regard to the fact that the impugned order is restricted to seeking options and no real transfer has taken place, I am of the view that the Petitioners have rushed to this Court prematurely. However, in case the matter escalates into any further order and the Petitioners still feel aggrieved by the orders so passed, they would be at liberty and within their rights to prefer representation against such order setting out their respective case in detail for consideration and the authority while considering the representation will reckon into consideration, the sufficiency of vacancies at the station, the disabilities of the Petitioners and having regard to the fact that in case of transfer, the Petitioners are not hampered in their treatment at the place where they are sought to be transferred or that they will be taken care of at the transferred station by the family members of the Petitioners. All these matters can be looked into by the Administrative authority and since it is the concerned administrative authority who can assess the ground reality having regard to all the facts aforestated, this Court does not feel called to intervene with the order at this stage. In case the Petitioners are aggrieved and they feel obliged to prefer representation, the authority concerned would be under a duty to consider the representations in a fair and objective manner giving proper deal to each and every aspects as embodied in this judgment and pass orders assigning reasons for his conclusion. Till final decision consequent upon the representations is taken, the Petitioners will not be disturbed and will be allowed to work uninterruptedly.

8. As a result of foregoing discussions, the petition is dismissed at this stage as being premature subject to the above directions/observations.