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**(2012) 02 DEL CK 0509**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 254 of 2012**

Sandeep Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 22-02-2012**

**Acts Referred:**

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 14(7), 47

**Citation :** (2012) 189 DLT 140 : (2012) 134 FLR 51

**Hon'ble Judges :** Sudershan Kumar Misra, J; Anil Kumar, J

**Bench :** Division Bench

**Advocate :** A.K. Mishra and Mr. Ajay Tiwari, for the Appellant; Rajinder Nischal, Advocate., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Anil Kumar, J.—The petitioner has sought quashing of Office order dated 22nd October, 2011, whereby he was boarded out from the service and has also sought directions to the respondents to reinstate the petitioner with full back wages. The petitioner contended that he was recruited in the Central Reserve Police Force (hereinafter referred to as "CRPF") on 29th December, 2005 after fulfilling all the criteria and norms as prescribed under the Recruitment Rules. The petitioner had been found to be physically and medically fit for enlistment as a Constable (GD).

2. After the enlistment in the CRPF and completing the training at Shivpuri (M.P.), the petitioner was posted at 156 Bn CRPF, Pehlgaon (Jammu & Kashmir).

3. According to the petitioner, he suffered a paralytic attack in December, 2007 due to which he was admitted in the Hospital. After paralytic attack, he was on leave from 9th January, 2008 to July, 2008 as per the recommendation of the doctors who treated the petitioner. Thereafter, the petitioner was declared medically fit and he re-joined the duty in August, 2008 at Kukurmari, Chirang District, Assam. After the petitioner re-joined the duty, he was examined by

various medical boards from time to time at different places.

4. The petitioner contended that in the month of March, 2011 he received a disqualification notice. Consequently, the petitioner requested his Commandant to retain him in the service as he is the only employed member in the family. The petitioner also requested for his retention as a peon in the office. The petitioner was, however, disqualified from the service and boarded out on 22nd October, 2011 as the petitioner was having 75% disability.

5. The request of the petitioner to continue to retain him in the service as he had recovered and ready to perform his duty with full dedication and devotion was not accepted by the respondents. Even the petitioner's representations were not accepted, entailing the filing of the present writ petition on the ground that he was boarded out by the respondents contrary to the rules and regulations, as he was not given an opportunity of being heard by the concerned authorities and that he could not be disqualified from the service.

6. The petitioner contended that he only has partial deficiency which is not sufficient to board him out and to disqualify him from the service as a general duty Constable.

7. Learned counsel for the petitioner has also contended that the petitioner could not be boarded out in view of the Section 14 (7) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and has also relied on the decision in the Civil Misc. Writ Petition No. 17585/2003, titled as "Mohd. Yasin Ansari & Ors. v. Union of India & Ors.", wherein the claimants who had suffered from one disability or the other while they were in service, were discharged on account of their disability. Learned counsel for the petitioner has emphatically contended that in any case the petitioner was on non-combatant duty and consequently, the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are applicable to him. Reliance was also placed on behalf of the petitioner on the description of the CRPF given in the Wikipedia which is a free encyclopedia wherein it is stated that even though the CRPF has 220 Battalions and various other establishments and is largest para military force in the world, however, according to new definition of "para military" it does not fall under the said category.

8. Referring to dictionary meaning of 'combatants' as persons who are engaged in or ready for combat, learned counsel for the petitioner has asserted that the petitioner could not be boarded out and should have been given shelter appointment and consequently, the decision of the respondents dated 22nd October, 2011 is not sustainable and is thus liable to be set aside.

9. Mr. Rajinder Nischal, learned counsel for the respondents who has appeared on advance notice has contended on instructions, that the petitioner cannot rely on the provision of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 as the Govt. of India by notification dated

10th September, 2002 exempted the "combatants" of the CRPF from the applicability of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 in exercise of the power conferred u/s 47 of the said Act. Consequently, it is urged that the petitioner cannot contend that he could not be boarded out and that he should have been accommodated on some post in the CRPF. The notification dated 10th September, 2002 is as under:-

#### NOTIFICATION

New Delhi, the 10th September, 2002

S.O. 995 (E)- In exercise of the powers conferred by proviso to Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 (1 of 1996) the Central Government having regard to the type of work carried on hereby exempt all categories of posts of "combatant personnel" only of the Central Para Military Forces (CPMFs), namely, Central Reserve Police Force (CRPF), Border Security Force (BSF), Indo-Tibetan Border Police (ITBP), Central Industrial Security Force (CISF) and Assam Rifles from the provisions of the said section.

[No. 16-39/2(x) 2-NI.1]

SMT RAJWANT SANDHU, Jt.Secy."

10. Learned counsel for the respondents has also relied on an order of the Division Bench of this Court in W.P.(C) No. 9797/2003, titled as "Ex. Constable Raj Kumar v. Union of India & Ors.?", holding that the petitioner in the said case who had sustained injury and who had sought benefit of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 was not entitled for the protection under the said Act on account of the notification stipulating the exemption granted by the respondents from the applicability of the provisions of the said Act.

11. This Court has heard the learned counsel for the parties. The petitioner has challenged the order of the respondents dated 22nd October, 2011 wholly on the ground that it is contrary to the rules and regulations and that the respondents have committed gross error in disqualifying the petitioner from the service without giving him any opportunity of being heard. The learned counsel for the petitioner has, however, not pointed out any rule or regulation which would render the boarding out of the petitioner as illegal. Though, it has been asserted that the partial disability of the petitioner will not be a ground to disqualify the petitioner from the general duty constable, however, the petitioner has not been able to refute the decision of the medical board of the respondents that the petitioner is having 75% disability and on account of having such disability, he is still entitled to continue in his service and cannot be boarded out. Consequently, this plea of the petitioner cannot be accepted.

12. The plea of the petitioner that he is entitled to be retained in the service in view of Section 47 of The Persons With Disabilities (Equal Opportunities,

Protection of Rights And Full Participation) Act, 1995 also cannot be accepted due to the notification of the Govt. dated 10th September, 2002 issued in exercise of the power conferred by the proviso to Section 47 of the said Act exempting all categories of the post of "combatant persons" of the CRPF from the provisions of the said Act.

13. The next contention of learned counsel for the petitioner that the petitioner is not a combatant person also cannot be accepted since the petitioner was appointed as constable (general duty) and had undergone training for the same and is governed by rules and regulations of the CRPF Act, 1949. The CRPF Act, 1949 does not contemplate the appointment of constable (GD) as "non-combatant" and the Act does not even define the term "combatant" and "non-combatant". If the Act does not contemplate the post of "non-combatant" in the CRPF, then the petitioner cannot contend that he is a "non-combatant" and exemption notification is not applicable to him. Thus, the contention of the learned counsel for the petitioner that the petitioner was engaged in non-combatant work and, therefore, he is not a "combatant" cannot be accepted in the facts and circumstances. This also cannot be denied that the petitioner was trained for combatant duty as he was appointed as Constable (GD) and that he had undergone appropriate training for the same. After being trained as a "combatant", the petitioner is deemed to be ready for combat at any time and by no stretch of argument, the petitioner can be held to be "non-combatant".

14. The judgment of Mohd. Yasin (supra) by a single bench of Allahabad is an unreported judgment and the petitioner has not produced the copy of the same but what is produced is merely an extraction from an unidentified source. It cannot be relied on in the facts and circumstances. A perusal of the said extract of the judgment, in any case, shows that it is apparently distinguishable in the facts and circumstances, as it is pertains to a notification of the Government dated 28th March, 2002 whereas, the respondents are claiming exemption from the provision of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 on the basis of notification dated 10.9.2002. For the foregoing reasons, it cannot be accepted that the exemption notice dated 10th September, 2002 in respect of the non applicability of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is not applicable to the petitioner. Consequently, the petitioner cannot claim that he could not be boarded out in view of the provisions of the said Act. The pleas raised by the petitioner are therefore, not sustainable in the facts and circumstances.

The writ petition, therefore, is without any merit and it is dismissed.