

(2013) 07 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (C) 5687 of 2012

Union of India and Others

APPELLANT

Vs

Ravindra

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

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

Citation : (2013) 07 DEL CK 0153

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jagjit Singh and Mr. Amit Dubey, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The General Manager, Northern Railway, Baroda House, New Delhi and its functionaries have filed this Writ Petition challenging the order dated January 27, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) whereby the Tribunal has disposed of the Original Application observing that till such time the petitioners herein identify an alternative post equivalent to the post which the respondent was holding earlier, he shall continue to be kept on supernumerary post and shall be paid salary and allowances as per Rules and further directed to pay the respondent withheld salary and allowances with effect from October 30, 2010 and order dated July 05, 2012 passed in Review Application No. 83/2012 in Original Application No. 2750/2011, which was dismissed. While working on the post of Goods Driver (Loco Pilot Goods), the respondent was medically examined by the Medical Board on June 26, 2010, which declared him unfit in A-one category for running the train as driver. He was declared fit in medical category below A-one for other duties including shunting duties. Accordingly vide order dated July 09, 2010 the petitioners had put the respondent on supernumerary post and directed him to attend his office till he gets an alternative job. He was ultimately recommended

for the shunting duties at Railway Stations.

2. Vide a representation dated October 29, 2010 the respondent refused to work as Shunter and requested the authorities to give him some other duty. According to the petitioner a reminder was sent vide letter dated December 21, 2010 calling upon the respondent to report for shunting duties. The respondent challenged the letters dated December 21, 2010 and October 08, 2010 by which the Suitability Committee recommended that he shall be utilized for shunting duties by filing Original Application No. 2750/2011.

3. The case of the respondent is premised on para No. 1303 of the Indian Railway Establishment Manual Vol. I which stipulates if an officer cannot be immediately adjusted or absorbed in any suitable alternative post he may be kept on a supernumerary post in the grade in which the concerned employee was working on regular basis pending allocation of an alternative employment for him with the same pay scale and service benefits. It is his case that no alternative post was offered to him and the petitioners have arbitrarily stopped his salary from October 2010. He also pleaded that the post of Shunter involves the duties of driving for which he has already been declared unfit and as such he cannot take any risk. He relied upon Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act for Short) to plead that he was entitled to alternative appointment to a post equivalent to the post of Loco Pilot (Goods) with all service benefits.

4. The case of the petitioners before the Tribunal was that the respondent is fit to perform the shunting duties.

5. The Tribunal was of the view that the petitioner's action in accommodating him on the post of Shunter is in violation of the Rule No. 1303 of I.R.E.M. Vol. I and Section 47 of the Disabilities Act. The Tribunal gave directions which have already been noted above.

6. Mr. Jagjit Singh, learned counsel for the petitioners would submit that the action of the petitioners was just proper in accordance with Rule No. 1301 and 1302 of I.R.E.M. Rule 1303 on which the Tribunal has based its conclusion is not at all applicable. He would further submit that the respondent has absconded after October, 2010 and never reported to perform the duties and as such would not be entitled to the pay and allowances as granted by the Tribunal. Since the conclusion of the Tribunal was not justified, the petitioners had accordingly filed a Review Application which was also dismissed.

7. Mr. A.K. Trivedi, learned counsel for the respondent has drawn our attention to the latest communication of the Railway Board dated February 16, 2012 whereby a decision of the Railway Board was communicated to various authorities under the Railway Board. The decision relevant for the purpose of this case is reproduced as under:

No distinction is to be made in the medical standards prescribed for a Loco Pilot

and Shunter i.e. in case of Loco Pilot is declared medically unfit for performing mainline duties, he is automatically unfit for shunting duties.

8. According to him in view of this circular of the Railway Board the respondent could not have been given the shunting duties.

9. We have considered the rival submissions of the counsel for the parties.

10. Mr. Jagjit Singh does not deny existence and the fact that in view of communication dated February 16, 2012 when a Loco Pilot is declared medically unfit he could not be given shunting duties. He only says that this communication was issued subsequent to the order in the Original Application dated January 27, 2012. He is right to that extent but the same was existing when the petitioners had filed Review Application on March 01, 2012. The same was not even referred to by the petitioners in their Review Application.

11. Be that as it may, the intent and the spirit underlying the circular dated February 16, 2012 is clear that if a Loco Pilot is declared medically unfit, he is automatically unfit for shunting duties. Precisely is the case in hand where the respondent was working as a Loco Pilot (Goods) and was declared medically unfit.

12. We agree with the ultimate directions of the Tribunal but not in so far as that direction where the Tribunal has directed the petitioners to release the withheld salary and allowances with effect from October 30, 2010 till date. The petitioners would justify their action on the basis of the instructions as were prevailing when the impugned action was taken. The respondent approached the Tribunal only in the month of January, 2011. We are of the view that the interest of justice would be served if the order of the Tribunal is modified to the extent that the respondent would not be entitled to arrears of pay and allowances with effect from October 30, 2010. The petitioners shall keep the respondent on a supernumerary post till such time an alternative post is identified. When a post is identified, the respondent shall join the post forthwith. He shall be entitled to pay and allowance with effect from date of this order.

13. Before we conclude, we must state that the respondent may have some good valid reasons for not performing the duties of Shunter. His absence must not be construed as wilful for the authorities to initiate any proceedings under the Conduct Rules. The writ petition is disposed of in terms of the above. No costs.