

(2006) 01 AHC CK 0190

In the Allahabad High Court

Case No : Civil Misc Writ Petition No. 2229 of 2004

Union of India (UOI) and Member Central, Ground Water Board, Executive Engineer, Central Ground Water Board and The Regional Director, B.R. D.C.W.B.

APPELLANT

Vs

Mohd. Mobin Khan and The Central Administrative Tribunal

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38
Companies Act, 1956 — Section 167, 2(i), 2(k)
Constitution of India, 1950 — Article 14, 21, 25, 32
Fundamental Rules — Rule 22
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 20, 47, 47(1), 47(2), 72

Citation : (2006) 5 AWC 5085 : (2006) 2 UPLBEC 1342

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : B.N. Singh and K.C. Sinha, for the Appellant; Ch.N.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for quashing the order dated 30th April, 2003 passed by the Central Administrative Tribunal in Original Application No. 164 of 1999 filed by Mohd. Mobin Khan (hereinafter referred to as the "Applicant"). The Original Application had been filed for quashing the order dated 1st February, 1999 by which the applicant was given compulsory retirement under Rule 38 of CCS (Pension) Rules on the ground of disability and a direction was also sought to appoint the applicant in the same pay-scale as Assistant Foreman or Store Superintendent.

2. The applicant was initially appointed as an ad hoc Helper in October, 1969 under the Central Ground Water Board Division-III Varanasi. He was subsequently regularized and was granted promotions from time to time. While

he was holding the post of DCM at Varanasi, he met with an accident on 21st February, 1995 as a result of which he was hospitalized. His left leg was amputated and he also lost vision in the right eye. He was ultimately discharged from the hospital on 3rd August, 1996 with a fitness certificate for doing light duty and sitting job. He was also referred to the Chief Medical Officer of the S.S.P.G. Hospital Varanasi by the employees for medical examination. The Medical Board of the said Hospital issued a certificate dated 23rd October, 1997 that the applicant was fit to perform duties like writing, maintenance of submission of report, maintenance of log books and store account books etc. The Department considered the case of the applicant and retained him in service on clerical post in the grade of LDC only. The terms indicated in the letter dated 5.1.1998 are as follows:-

Shri Mobin Khan, DCM of this Division has been declared unfit for technical work by the medical authority. However, his case has been considered sympathetically by the competent authority of the Board to be retained in service on Clerical post in the grade of L.D.C. only.

Shri Khan is directed to submit his willingness for appointment to the post of L.D.C. subject to the following conditions:-

1. He will be treated as a fresh recruit.
2. He will be treated as a junior person in the grade of L.D.C.
3. His past services will be counted for pensionery and allied benefits.

His willingness for the post of LDC must reach the office of the undersigned within seven days from the receipt of this O.M.

Further, in the event of his unwillingness for the post of LDC, he can not be continued in the post of DCM and he will have to be retired from Govt. service on invalid pension.

3. The applicant joined as LDC but made a representation to the Authorities to protect his pay by retaining him in service as Store Superintendent/Store Foreman on the ground that he was educationally and otherwise competent to hold that post. However by the letter 21st July 1998, the applicant was informed that his pay cannot be protected and if he did not accept the terms indicated in the letter he would be retired on ground of disability. The applicant again made a request for pay protection so that he could support his family but the Department issued the order dated 1st February, 1999 by which applicant DCM was retired from Central Ground Board Division-III Varanasi, under Rule 38 CCS (Pension) Rules as he failed to accept the post of LDC.

4. It is this order that was challenged by the applicant before the Tribunal with a prayer for a further direction for pay protection. The Tribunal by means of the impugned judgment quashed the order dated 1st February, 1999 and issued the following directions:-

(i) The applicant will be reinstated as LDC in case he gives his willingness within a month of the communication of this order protecting his last pay drawn by grant of personal pay.

(ii) In case the applicant gives his willingness and joins as LDC the applicant shall be entitled for 50% of the wages for the period from 01.02.1999 to the date of reinstatement. Such pay shall be granted after deducting the pension and other allowances already drawn. The period referred to above shall be counted for pension purposes.

(iii) The post retiral benefits already granted to the applicant in the shape of D.C.R.G., leave in cashment etc., shall be adjusted from the post retiral benefits which would accrue to the applicant at the time of his superannuation.

5. We have heard Sri Bhoopendra Nath Singh, learned Counsel for the petitioners and Sri N.A. Khan, learned Counsel appearing for the respondents.

6. Learned counsel for the petitioners submitted that last pay of the applicant cannot be protected in view of the provisions of Rule 22 of the Fundamental Rules and, therefore, the directions issued by the Tribunal were bad in law. He further submitted that the injury had not been caused to the applicant "during the course of employment" and, therefore, there was no obligation on the part of the petitioners to engage the applicant or protect his pay and that the order of retirement was justified as the applicant did not accept the terms as were required under the communication dated 21st July, 1998. Another submission was made that as the petitioner had received compensation for the loss suffered on account of accident as per the order of the Compensation Commissioner, Varanasi, the order of the Tribunal was not justified.

7. Learned counsel appearing for the applicant/respondent, however submitted that there was no infirmity in the judgment of the Tribunal and in any view of the matter the last pay paid to the petitioner had to be protected in view of the provisions of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Disabilities Act"). He further submitted that the applicant had suffered injury during the course of employment and that Rule 22 of the Fundamental Rules or the receipt of any compensation under the Workmen Compensation Act cannot debar the applicant from claiming the relief u/s 47 of the Disabilities Act.

8. We have carefully considered the averments advanced by the learned Counsel for the parties and have perused the materials available on record.

9. A perusal of the Original Application filed by the applicant before the Tribunal indicates that the work of the applicant related to field work and on 21st February, 1995 after completing the tubewell work, the applicant with his companion was returning back in a truck when unfortunately the accident took place and he was admitted in the Hospital. It was on 3rd of August, 1996 that he was discharged and a fitness certificate was given to him. The applicant was also

ordered to be examined by the Chief Medical Officer who had also issued the certificate. It is on a consideration of these reports that the applicant was retained in service on the clerical post in the grade of LDC subject to certain conditions and when the applicant insisted that he should be retained as Store Superintendent/Store Foreman and his pay should be protected, he was retired from service w.e.f. 1st February, 1999.

10. It is true that persons with disability can now avail of the benefits provided under the Disabilities Act but even prior to its enforcement with effect from 1st January 1996, the Constitution provided remedy and relief to the persons with disability when their rights were violated or denied.

11. The fundamental right to equality under Article 14 of the Constitution of India which states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India", is important for this purpose. It implies that only equals must be treated as equals and unequals may not be treated as equals which makes it the constitutional responsibility of the State to ensure that the systemic and historical conditions of disadvantaged classes of persons are taken into account in providing equal status and equal opportunities. Simply put, this notion of equality means that the laws may not have universal application for all persons who are not by nature, attainment, historical reasons or any other circumstance, in the same position and hence, the varying needs of different classes of persons may require separate treatment - the only condition being that the classification for separate treatment should be rational and must further the objective of that law and be linked with it. The right of the persons with disabilities, against any discrimination, which is on the basis of disability of the person, is therefore, within this mandate of Right to Equality under Article 14 of the Constitution of India. It is under this constitutional mandate of equality that even before the Disability Statutes were passed, many persons with disabilities, their organizations or petitioners in public interest approached the Courts for their right to equality and right against arbitrary discrimination.

12. To illustrate, we may refer to the decision of Hon"ble Supreme Court in National Federation of Blind Vs. Union Public Service Commission and Others, . The Writ Petition was filed against discrimination of visually impaired persons in competing for the coveted civil services of the country, and for the government to be directed to permit otherwise qualified blind candidates to appear in the selection examination. The Supreme Court not only allowed the petition, but also directed the government to allow them to write the examination in Braille or with the help of a scribe. The Supreme Court also responded to the Writ Petitions filed under Article 32 of the Constitution of India, against the treatment meted out to persons with mental disabilities in institutions for their care and treatment and laid down guidelines on their living conditions, education, training and rehabilitation facilities in such institutions. In this connection, reference may be made to the following decisions: AIR 1989 348 (SC) B.R. Kapoor v. Union of

India AIR 190 SC 662 Veena Sethi v. State of Bihar and Ors. (1982) 2 SCC 5833 and Sheila Barse Vs. Union of India and Others,

13. Article 21 of the Constitution also protects the rights to livelihood as an integral facet of right to life and persons with disability were given protection under this Article of the Constitution. In this context reference may be made to the famous case of Narendra Kumar Chandla Vs. State of Haryana and others, which was decided by the Hon"ble Supreme Court prior to the enforcement of the Disabilities Act. This was a case of a Sub-Station Attendant of the Haryana State Electricity Board in the pay scale of Rs. 1400-2300 who unfortunately had to be operated in Tata Memorial Hospital, Bombay and was thereafter discharged but his right arm was completely amputated, The Electricity Board absorbed him as Carrier Attendant in the lesser pay scale of Rs. 825-1300. Feeling dissatisfied, he approached the High Court but his petition was dismissed. The Supreme Court while granting relief of protection of last pay scale observed:-

Article 21 protects the right 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. Asking the appellant 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 an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. 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 of Rs. 1400-2300 and direct to pay all the arrears of salary.

(emphasis supplied)

14. We must make reference to two other cases of the Hon"ble Supreme Court delivered prior to the enforcement of the Disabilities Act. In Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, , the Hon"ble Supreme Court examined the question whether a State Road Transport Corporation can retire the bus drivers on the ground of their defective or sub-normal eyesight developed during the course of the employment. The Court held that termination of service was unjustified, inequitable and discriminatory. It was impressed by the Supreme Court that service conditions of the bus drivers must provide adequate safeguards since such bus drivers developed defective eyesight or sub-normal eyesight because of the occupational hazards. A scheme was directed to be framed for providing alternative jobs along with the retirement benefits and for payment of additional compensation proportionate to the length of service rendered by them, in case of non-availability of jobs.

15. In the case of Rameshwar Dass and Anr. v. State of Haryana and Ors. (1995) 3 SC 285 the Supreme Court while considering the aforesaid judgment delivered in the case of Anand Bihari (supra) observed as follows:-

It appears that some of the appellants suffered serious injuries during the course of their employment which incapacitated them from performing their duties. Initially, they were transferred to lighter duties, but while they were working on those posts, they were retired from service on the ground that they were medically unfit. From the written submission filed on behalf of the respondents before the High Court, it appears that the terminal benefits have been paid to them. If the judgment of this Court in Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, , is read in its proper context and spirit, then it has to be held that this Court impressed on the State Road Transport Corporation to first provide for alternative jobs to such drivers who have become medically unfit for heavy vehicles. A direction for payment of additional compensation was given only when it is not possible at all in the existing circumstances to provide alternative jobs to such drivers. It need not be pointed out that the authorities of the Corporation should not take recourse only to the payment of the additional compensation without first examining whether such drivers could be put on alternative jobs.

Taking all facts and circumstances into consideration, we direct the respondents to apply their mind properly to the question whether the appellants who have suffered injuries and have become medically unfit can be put to some alternative jobs by way of rehabilitation. The question of payment for additional compensation will arise only when it is not possible to provide alternative jobs to them or some of them.

16. We may also mention that the First International Forum for Universal Declaration of Human Rights proclaimed by the United Nations General Assembly is a landmark, for Article 25 of the Declaration states that each person has, "the right to security in the event of unemployment, sickness, disability, widowhood, old age, and other lack of livelihood in the circumstances beyond his control. In the year 1971, the General Assembly stipulated that mentally retarded persons be accorded the same rights as other human beings, as well as special rights corresponding to their needs in the medical, educational and social fields; and in 1975 the General Assembly adopted the "Declaration on the Rights of Disabled Persons" which proclaimed equal civil and political rights of disabled persons, and the subsequent adoption of the standard Rules in the equalization of opportunities for Persons with Disabilities in 1993 served as an instrument for policy making and a basis for technical and economic cooperation. The evaluation of these international standards relating specifically to disability reflects on the move to place the rights of persons with disabilities within the category of Universal Human Rights.

17. It was also realised that the disabled need adequate protection through appropriate Legislation. A meeting to launch the Asian and Pacific Decade of the

Disabled Persons 1993-2002 was then convened by the Economic and Social Commission for Asian and Pacific Region. It was held at Beijing on 1st to 5th December, 1992 and it adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India was a signatory to this promulgation and accordingly the Bill was introduced for this purpose and ultimately the Disabilities Act was enacted.

18. The Statement of object and reasons to the Disabilities Act which was appended to the Bill reads as under:-

The meeting to launch the Asian and Pacific Decade of the Disabled persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:-

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream.

Accordingly, it is proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provision of the Bill, appointment of the Chief Commissioner for persons with Disabilities at the Central level and Commissioners for Persons with Disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State governments and also to take steps to safeguard the rights of the persons with disabilities is

also envisaged.

19. The Disabilities Act deals with prevention of early detection of disabilities, education, employment, affirmative action, non-discrimination, research and manpower development, recommendation of institutions for persons with disabilities, institutions for persons with severe disabilities, social security and other miscellaneous provisions

20. Section 47 of the Disabilities Act which is relevant for the purpose of deciding this petition is quoted below:-

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.

21. Section 2(k) defines the "Establishment" to mean a Corporation established by or under a Central Provincial or State, or an authority, or a body owned or controlled or aided by the Government, or a local authority or as defined in Section 167 of the Companies Act, 1956 and it includes departments of a Government. Section 2(i) defines "disability" to mean blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. "Person with disability" has also been defined to mean a person suffering not less than 40% of any disability as certified by a Medical Authority.

22. It has not been disputed by the learned Counsel for the petitioners that the Central Ground Water Board Division is an "establishment" and that the applicant had acquired disability. The provisions of Section 47 of the Disabilities Act are, therefore, clearly applicable. It provides that no establishment shall dispense with or reduce in rank an employee who acquires disability during his service, provided that, if an employee, after acquiring disability is not suitable for the post he was holding, then he can be shifted to some other post with the same pay scale and service benefits. The intention of Section 47 of the Disabilities Act is very loud and clear that the service of a person who acquires disability during

service should not be dispensed with. The purpose is not far to seek as when the objective of the enactment is to provide proper and adequate opportunities to the disabled in the field of education, employment etc., it is obvious that those who are already in employment should not be uprooted merely because they have incurred disability during service. Their service has to be protected if they acquire disability.

23. Section 47 of the Disabilities Act was comprehensively analysed by the Hon'ble Supreme Court in Kunal Singh Vs. Union of India (UOI) and Another, and it was observed as follows:-

Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/ expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides 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: if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

(emphasis supplied)

24. The same view was reiterated by the Supreme Court in Union of India v. Sanjay Kumar Jain AIR 2004 SCW 4577 wherein it was held as follows:-

Sub-section (1) of Section 47 in clear terms provides that there cannot be any discrimination in Government employments and no establishment shall dispense with or reduce in rank an employee whatsoever during his service.

25. It is, therefore, clear that a person who has acquired disability during his service is sought to be specifically protected u/s 47 of the Disabilities Act, the language of which is clearly mandatory in nature. It is a piece of social beneficial enactment giving the disabled persons equal opportunities, protection of rights and full participation. It can be said that it provides succor to the needy.

26. We must also not forget that each year 3rd December is celebrated as International Day of Disabled Persons. On 3rd December, 1999, Ministry of Social Justice and Empowerment, Government of India, came out with its policy decisions and welfare measures taken to assuage the feelings of disabled persons. These messages reflect the commitment of Government to strive for the betterment of the disabled persons. It was widely accepted that disabled persons needed to be treated as valued member of the society who can contribute to the development and progress of the country and that they do not need our sympathy or pity but an opportunity to employment. In fact 2002 was declared as the year for the disabled.

27. It is in the light of the aforesaid observations that we have to examine the contentions advanced by the learned Counsel for the parties.

28. Learned counsel for the petitioners contended that in view of the provisions of Rule 22 of the Fundamental Rules and also in view of the fact that the applicant had received compensation for the loss suffered, there was no occasion to protect his pay. In effect what is sought to be contended is that the applicant had been given advance increment for the number of years of service rendered on the post of DCM while fixing his pay in the grade of LDC as V provided for in Fundamental Rule 22 and the said pay could not under any circumstances, exceed the maximum of the scale for the post of LDC. It was, therefore, not possible to place the applicant in the pay scale of DCM.

29. We shall first deal with the submission relating to payment of compensation. The Hon'ble Supreme Court in the case of Kunal Singh (supra) held that mere grant of invalidity pension cannot be made a ground to deny protection given u/s 47 of the Disabilities Act. It was observed as follows:-

We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS (Pension) Rules. The Act is a special legislation dealing with persons with disabilities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads:-

72, Act to be in addition to and not in derogation of any other law. ? The

provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities.

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, which ever 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 provision of Section 47 of the Act.

(emphasis supplied).

30. The Hon'ble Supreme Court in *Kunwar Pal Singh v. Delhi Transport Corporation and Ors.* Civil Appeal No. 1864/2000 arising out of SLP (C) 7997/99 observed as follows:-

Learned counsel for the appellant has brought to our attention Section 47 of the Persons with Disabilities (Equal Opportunities etc.) Act, 1995.

Having heard the learned Counsel for the parties, we are of the opinion that it is the duty of respondent No. 1 to employ the appellant in Class IV post. If no such post exists, then by virtue of Section 47 of the said Act, a supernumerary post shall be created within eight weeks from today and employment given to the appellant with such measures of relief as the appellant with such measures of relief as the appellant may be entitled to.

31. The Delhi High Court, in Writ Petition No. 5503 of 1999 decided on 13.8.2002 (*Shri Dharambir Swaroop v. Delhi Transport Corporation*), in view of the aforesaid decision of the Supreme Court, observed that it was no more open for the respondent to contend that as the workman had been paid compensation on medical ground and compensation on the ground of disablement, the petitioner was not entitled to reinstatement in view of the specific provision of Section 47 of the Disabilities Act and that even if the above amount was paid under the scheme, the petitioner would be entitled for reinstatement.

32. We, therefore, do not find any merit in the contentions advanced on behalf of the petitioners that as the applicant had received compensation under the Workmen Compensation Act, there was no occasion for the petitioners to protect his pay.

33. We are also of the opinion that the conditions stipulated in Rule 22 of the Fundamental Rules cannot deprive the petitioner of his legitimate claim for

protection of the last pay drawn by him as DCM. The Hon'ble Supreme Court in the case of Kunal Singh (supra) after noticing the provisions of Section 72 of the Disabilities Act had clearly observed that the Disabilities Act was a special legislation dealing with the persons with disabilities, protection of rights and full participation to them. Thus, in our view the provisions of Section 47 will clearly override Rule 22 of the Fundamental Rules. In this view of the matter, the contention raised by the learned Counsel for the petitioners that as the applicant had been given the advance increments taking into consideration the number of years of service rendered on the post of DCM, the protection of last pay cannot be given has to be rejected. This would not only be in conformity with the provisions of Section 47 of the Disabilities Act but would also be in accordance with the decisions of the Supreme Court, to which we have referred above, rendered prior to the enforcement of the Disabilities Act wherein such applicants were clearly entitled to protection of the last pay drawn.

34. There is, therefore, no infirmity in the order of the Tribunal granting protection of the last pay drawn by the appellant as DCM even though he was continued as LDC.

35. The learned Counsel for the petitioners also very feebly submitted that the Tribunal was not justified in quashing the retirement order. In our considered opinion, this contention is dependent upon the fact whether the applicant was entitled to the protection of the last pay drawn by him as DCM as the applicant had been retired merely on the ground that he insisted upon protection of his last pay. The records clearly reveal that after receipt of the communication dated 5th January, 1998, the applicant joined as LDC but had made a detailed representation to the authorities to protect his pay by retaining him in service as Store Superintendent/Store Foreman and even when he was informed by the authorities by the letter dated 21st July, 1998 that his pay cannot be protected, the applicant again made a request for protection of pay so that he could support his family but the department issued the order dated 1st February, 1999 by which the applicant was retired. We have upheld the order of the Tribunal granting pay protection to the applicant and, therefore, this submission of the learned Counsel for the petitioners cannot be accepted as the applicant had merely been insisting for grant of benefits due to him in law.

36. Learned counsel for the petitioners then contended that the applicant was not entitled to any relief as he had not suffered the injury "during the course of employment". This contention cannot be accepted. In the first instance such a plea was not raised before the Tribunal and nor has such a ground been taken in the petition and it is only during the course of the argument that such a plea has been taken. A perusal of the Original Application filed by the petitioners before the Tribunal, however, clearly shows that after completing the tubewell work, the petitioner met with the accident when he was returning back. Thus, it cannot be said that the injury was not caused "during the course of employment".

37. Even otherwise, we are unable to accept such a contention because if we

agree to the submission of the learned Counsel for the petitioners that "during his service" has to be read or be substituted by "during the course of his employment" then the Court will be substituting the words which the Legislature in its wisdom has not used in the section. The Legislature has consciously used the word "disability during his service" in Section 47 of the Disabilities Act and has not defined that the disability must be one which should occur "during the course of employment". We are, therefore, of the considered opinion that Section 47 of the Disabilities Act does not require that the person must suffer the disability "during the course of employment" and even if he suffers the disability during the period of service but outside the course of employment then too he is entitled to the protection. This view was also taken by the Delhi High Court in the case of *Satya Bir Singh v. Delhi Transport Corporation and Anr.* (2005) 1 FDD 398 with which we entirely agree.

38. Before parting with this case we must not forget to refer to a recent decision of the Hon'ble Supreme Court in *Indian Banks Association, Bombay and Ors. v. Devkala Consultancy Service and Ors.* AIR 2004 SC 2491. In the said case vast sum of money had been collected by the Banks in rounding up of interest rates under the Interest Tax Act, 1974. This was declared to be illegal by the Supreme Court but it was observed that by directing the Union of India to refund the excess amount collected through the Banks and consequently ask the Banks to refund the same to the borrowers would take a long time and, therefore, it was thought proper to create a fund for the benefit of the disadvantaged people as it was found that despite the progressive stand of the Court and the initiatives taken by the Government, the implementation of the Disabilities Act was far from satisfactory and that the disabled were victims of discrimination in spite of beneficial provisions of the Act. The Supreme Court, therefore, in larger interest, created a fund for this purpose and the excess amount collected was directed to be deposited in the said fund. It also recommended to the Central Government, with a view to effectively implement the provisions of the Disabilities Act, to amend the same by providing for creation of such a fund.

39. We have referred to the aforesaid decision only to emphasise that time and again it has been pointed out by the Hon'ble Supreme Court that every endeavour must be made to ensure that the disabled are able to reap the benefit of the Disabilities Act.

40. We have not been able to find merit in any of the contentions advanced the learned Counsel for the petitioners. The Writ Petition is accordingly dismissed.