

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Ayesha A. Malik and Athar Minallah, JJ**DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS and another---Petitioners****Versus****UMAR DARAZ---Respondent**

Civil Petition No. 4618 of 2019, decided on 28th November, 2022.

(Against the judgment of Federal Service Tribunal, Islamabad dated 30.09.2019, passed in Appeal No. 1503(R) of 2016)

(a) Civil service---

---Incapacitated employee of Pakistan Railways---Visual impairment---Adjustment in another suitable and appropriate post keeping in view the degree and level of incapacitation---Perusal of Clauses 510 and 512 of the Personnel Manual of the Pakistan Railways reveals that in order to protect and safeguard the interest and right to employment of an officer who has been incapacitated during service, such an employee can be transferred or accommodated against a post in the organization which is more suitable and appropriate to his condition or disability---Under the said Manual efforts are to be made to ensure that the employee gets transferred to a post in an equivalent grade---In the present case the respondent-employee developed visual impairment and as a result was transferred to a post of lower grade against which the respondent agitated and finally the Tribunal transferred him to a post of an equivalent grade i.e. Ticket Collector Grade-I ("TCR")---In terms of the UN Convention on the Rights of Persons with Disabilities ("CRPD"), to which Pakistan is a party, it is the duty of an employer to ensure that reasonable accommodation is provided to persons with disabilities ("PWDs") and that those with disabilities are not discriminated against---Perusal of job description of the TCR provided in clause 6.18 of the Commercial Manual of Pakistan Railways revealed that a visual impaired officer could carry out the duties of TCR, as provided in the said Manual---Supreme Court directed Pakistan Railways to revisit the Personnel Manual in the light of the fundamental rights and principles of policy enshrined in the Constitution, as well as, the CRPD, in particular Article 27 thereof, so that the Personnel Manual was constitution compliant and met the international standards when dealing with persons with disabilities---Petition for leave to appeal was dismissed and leave was refused.

(b) Constitution of Pakistan---

---Arts. 9 & 38(d)--- Civil service--- Incapacitated employee---Adjustment in another suitable and appropriate post keeping in view the degree and level of incapacitation---In case an officer develops physical incapacitation the department has to reach out to said officer to ensure the best possible option available for the officer in his condition to continue to serve the department---Said transfer to another suitable post of the respondent is as a special case and is over and above the regular process of transfer, appointment or promotion---Such a special transfer is to provide "reasonable accommodation" to an employee who has been incapacitated during service and for no fault of his own suffers from a disability---Any such "reasonable accommodation" is a priority action item for the department and must be addressed at the earliest---Suitability of the new post must factor in the earlier job description as well as the grade so that the employee is not worse off in financial terms---Such reasoning finds support from Article 9 and 38(d) of the Constitution which provide for right to life, which includes right to a meaningful livelihood as an integral part of life and policies must be made by the State to safeguard the interest of persons suffering from infirmity or sickness.

Jawad Mehmood Pasha, Advocate Supreme Court (through video-link from Lahore) for Petitioners.

Nemo for Respondent.

Date of hearing: 28th November, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that respondent was appointed as Pointsman in BS-5 by the Pakistan Railways in the year 2001. During his service he was incapacitated and suffered from visual impairment and was declared unfit to serve as a Pointsman. According to the Pakistan Railways

Personnel Manual if an officer in service is incapacitated he is to be adjusted to another post which is most suitable and appropriate keeping in view the degree and level of his incapacitation. In the present case the respondent was adjusted in a lower grade of BS-3 against which he filed departmental representation and finally an appeal before the Federal Service Tribunal ("Tribunal"). His appeal was allowed vide impugned judgement dated 30.9.2019. The Tribunal considering the clauses of Pakistan Railways Personnel Manual moved the respondent to an equivalent grade of BS-5 against the post of Ticket Collector Grade-I ("TCR"). The petitioner, Pakistan Railways, is aggrieved of the said order on the ground that post of TCR is a selection post and the respondent had to go through the process of promotion to be entitled to the said post.

2. Clauses 510 and 512 of the Personnel Manual of the Pakistan Railways specifically deal with the incapacitation of officers in service, particularly, the incapacitation relating to vision. The relevant portions of the said clauses are reproduced here under:-

510. (a) Men incapacitated for service in any class by accident, ill health, failure of eyesight, etc., may be transferred to another class but no guarantee can be given of their employment as this must depend on vacancies. Endeavours will, however, be made to find for them posts for which they, in their incapacitated state, may be suitable and in which they can be usefully and efficiently employed without risk of injury to themselves, their fellow-workers and the travelling public and with due regard to the following considerations:-

- (i) The appointment made does not in any way deprive an efficient and deserving employee who can reasonable (sic) look forward to advancement in that line.
- (ii) The pay of an employee when appointed to a lower grade shall be fixed on the maximum of the grade or at a stage in that grade equivalent to or not below the rate of pay he is actually in receipt of, whichever is less.
- (iii) ...
- (iv) ...
- (v) ...

512. (1) The absorption of vision failed staff should not be left to chance vacancies but every endeavor should be made to find suitable alternative appointments for such staff with due regard to the interests of deserving men who may be looking forward to advancement in their own line. Thus if a Driver is working temporarily as a Shedmen, he should revert to the foot plate to provide a Shedman's vacancy for a suitable member of the Loco Running Staff failing in the vision test.

(2)-(5) ...

Perusal of these clauses reveals that in order to protect and safeguard the interest and right to employment of an officer who unfortunately has been incapacitated during service, such an employee can be transferred or accommodated against a post in the organization which is more suitable and appropriate to his condition or disability. Under the said Manual efforts are to be made to ensure that the employee gets transferred to a post in an equivalent grade. In the instant case the respondent developed visual impairment (the degree of his visual impairment has not been brought on record by the Pakistan Railways) and as a result was transferred to a post of lower grade against which the respondent agitated and finally the Tribunal transferred him to a post of an equivalent grade i.e. TCR.

3. The UN Convention on the Rights of Persons with Disabilities ("CRPD"), to which Pakistan is a party, recognizes and protects the "inherent dignity, worth, equality and inalienable rights of all members of human family as the foundation of freedom, justice and peace in the world".¹ The convention seeks to ensure the protection and promotion of full and equal enjoyment of all human rights by persons with disabilities ("PWDs"). CRPD defines "Discrimination on the basis of disability" to be a distinction, exclusion or restriction on the basis of disability which would hinder enjoyment of equal human rights and fundamental freedoms. Further, the Convention defines "Reasonable accommodation" as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. CRPD in Article 27 provides that the work and employment of a person suffering from disability must be protected and reasonable accommodation required to make the said adjustment must be ensured by the State. Article 27, "prohibits discrimination on the basis of disability" concerning "all forms of employment"

including "continuance of employment, career advancement and safe and healthy working conditions". Further it emphasizes the necessity to provide on "equal basis with others, just and favorable conditions of work" and to promote employment opportunities and advancements. As such it is the duty of an employer to ensure that reasonable accommodation is provided to PWDs and that those with disabilities are not discriminated against.

4. We have also gone through the job description of the TCR provided in clause 6.18 of the Commercial Manual of Pakistan Railways and do not see any reason why the visual impaired officer cannot carry out the duties of TCR, as provided in the said Manual. Even otherwise it is important that in case an officer develops physical incapacitation the department has to reach out to said officer to ensure the best possible option available for the officer in his condition to continue to serve the department. The said transfer to another suitable post of the respondent is as a special case and is over and above the regular process of transfer, appointment or promotion. Such a special transfer is to provide "reasonable accommodation" to an employee who has been incapacitated during service and for no fault of his own suffers from a disability. Any such "reasonable accommodation" is a priority action item for the department and must be addressed at the earliest. Suitability of the new post must factor in the earlier job description as well as the grade so that the employee is not worse off in financial terms. This finds support from Articles 9 and 38(d) of the Constitution of Islamic Republic of Pakistan ("Constitution") which provide for right to life, which includes right to a meaningful livelihood as an integral part of life and policies must be made by the State to safeguard the interest of persons suffering from infirmity or sickness.

5. Learned counsel for the petitioners has not been able to point out as to why the post of TCR is inappropriate for the respondent. He has also failed to place on record the medical fitness certificate to highlight the degree of visual impairment suffered by the respondent. We are, therefore, not inclined to interfere in the impugned judgement. We also direct Pakistan Railways to revisit the Personnel Manual in the light of the fundamental rights and principles of policy enshrined in the Constitution, as well as, the CRPD, in particular Article 27 thereof, so that the Personnel Manual is constitution compliant and meets the international standards when dealing with persons with disabilities.

6. In view of the foregoing, leave is refused, and this petition is dismissed.

MWA/D-1/SC Petition dismissed.