

F.No.25012/1/2015-Estt (A-IV)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment (A-IV) Desk

North Block, New Delhi-110 001

Dated : May 19, 2015

OFFICE MEMORANDUM

Subject : Request for Voluntary retirement from persons suffering from disability – Supreme Court Order in *Bhagwan Dass & Anr Vs Punjab State Electricity Board*, (2008) 1 SCC 579.

The undersigned is directed say that vide Department of Personnel and Training's OM No.18017/1/2014-Estt(L) dated the 25th February, 2015, certain clarifications regarding treatment of leave and absence of disabled Government servants have been issued.

2. Instances have come to notice where Government servants apply for voluntary retirement under various provisions like Rules 38, Rule 48 and 48A of CCS (Pension) Rules, 1972 or Rule 56 of the Fundamental Rule on account of hardships faced by them due to a disability, as they are unaware of the protection provided by the Section 47 of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act)*. Section 47 of the *PwD Act, 1995* is reproduced below for reference:

"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.

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".

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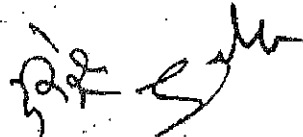
3. The issue had come up in *Bhagwan Dass & Anr Vs Punjab State Electricity Board* (2008) 1 SCC 579, decided by the Hon'ble Supreme Court where the employee who had during his service suffered from blindness, had applied for voluntary retirement. The Hon'ble Supreme court has observed that the Petitioner was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, which was the source of livelihood of his family. In those circumstances, it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights.

4. Keeping in view the provisions of the Section 47 of the *PWD Act, 1995* and the above mentioned judgement, it has been decided that whenever a Government servant seeks voluntary retirement citing medical grounds, or when the said notice has been submitted due to a disability, the administrative authorities shall examine as to whether the case is covered under Section 47 of *PWD Act, 1995*. In case the provisions are applicable, the Government servant shall be advised that he/she has the option of continuing in service with the same pay scale and service benefits.

5. In case a disabled Government servant reconsiders his decision and withdraws the notice for voluntary retirement, his case shall be dealt with under the provisions of the Section 47 read with the Department of Personnel and Training OM dated 25th February, 2015, mentioned above. If however, in spite of being so advised, such Government servant still wishes to take voluntary retirement, the request may be processed as per the applicable rule.

6. All the Ministries and Departments are requested to keep the above in view while processing cases of requests for Voluntary retirement from disabled Government servants.

7. Hindi version follows.


(Mukesh Chaturvedi)
Director
Tel.23093176

To

The Secretaries,
All Ministries/ Departments of the Government of India.

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From pre-page:

Copy to:

1. Comptroller & Auditor General of India, New Delhi.
2. Union Public Service Commission, New Delhi.
3. Central Vigilance Commission, New Delhi.
4. Central Bureau of Investigations, New Delhi.
5. Parliament Library, New Delhi.
6. All Union Territory Administrations.
7. Lok Sabha/ Rajya Sabha Secretariat.
8. All Officers and Sections in the Ministry of Personnel, Public Grievances & Pensions.
9. All Attached and Subordinate Offices of Ministry of Personnel, P.G. & Pensions.
10. NIC, DoP&T with the request to upload this O.M. on Department's web site
(OMs/Orders << Voluntary Retirement).
11. Deputy Director (OL) with the request to make available Hindi Version of the OM.