

**Before the Court of Commissioner (Disability)-cum-Principal Secretary (SJ&E) to the Government of H.P.**

**No. SJE-B-E(5)-1/2016**

**Case No. 20/2016**

Date of Decision: 15-5-2017

In the matter of:

Ms. Mamta Mishra,  
Excise & Taxation Officer.

Appellant.

Versus

The Principal Secretary (E&T) to the  
Government of Himachal Pradesh, Shimla-02.

Respondent.

**Subject:- Grant of relief under the provision of Persons with Disability Act, 1995.**

Ms. Mamta Mishra, appellant, has filed present petition under Persons with Disabilities Act, 1995 vide her letter dated: 27<sup>th</sup> December, 2016 which is addressed to the undersigned on the subject cited above. The applicant has submitted that she is a patient of Optic Nerve Atrophy and this ailment resulted into total loss of vision. Therefore, she remained absent from her duties since June, 2006 till now. Hence, the appellant had requested for her due promotion and all other consequential benefits under the provisions of Persons with Disabilities Act, 1995.

In this regard, the undersigned vide this Department letter of even no. dated: 30th January, 2017 followed by subsequent reminder on 7th March, 2017 asked the respondent i.e. Pr. Secretary (E&T) to the Government of Himachal Pradesh to offer/send his comments/report in the matter immediately. In reference to the said letters, the respondent vide his letter No. EXN-B(2)-1/2017 dated: 3rd April, 2017 has submitted as under:-

"that the petitioner was absent from her duty w.e.f. 07-06-2006 continuously without prior permission of the competent authority due to her illness. Due to her wilful absence the Disciplinary proceedings were initiated against her under Rule 14 of the CCS (CCA) Rules, 1965 and supplementary enquiry under the CCS leave Rules, 1972. Now the Government has exonerated Ms. Mamta Mishra, ETO from the charges levelled against her and she joined her duty as ETO in the Office of ETC dated: 31-12-2016 after long absence from her duty w.e.f. 07-06-2006 to

(--contd.2--)

30-12-2016. On the direction of the Government, the applicant has been checked up by a Medical Board on 02-03-2017 and accordingly recommendation made by the Medical Board the case of Ms. Mamta Mishra ETO has been taken up with the Department of Personnel for its opinion to decide the same under the provisions of PWD Act, 1995. As soon as advice of the DoP is received further action in the matter will be initiated accordingly. As regard, releasing of salary of the above officer, necessary orders have issued to the AETC, Shimla by the Excise and Taxation Commissioner, H.P. and AETC, Shimla has been paid her salary for the month of Feb., 2017 after her joining and salary for the month March, 2017 has also been made online which will paid in the month of April, 2017. Salary of leave period if any become due and benefit of pay Commission same will be released/decided after sanctioning of the leave which is under active consideration".

I have carefully gone through the entire case. The respondent is requested to give relief to the petitioner with regard to Section 20 of the Rights of Persons with Disabilities Act, 2016 with consultation of Department of Personnel. The new legislation passed by Parliament enshrines in this Section the provisions of non-discrimination in employment. This particular case is even more deserving, as a perfectly normal employee who has worked for 13 years in the Department is suddenly faced with not only a permanently devastating experience on account of this condition of Optic nerve Atrophy but is also faced with uncertainty in so far her job and with it her dignity is concerned.

Thus, the Department is advised to take necessary action to ensure that Section 20 is implemented in letter and spirit. The Department is advised to in consultation with Director SOMSA, to identify the skill sets and work that can be done with person of this affliction and place her accordingly in this Department to optimise on her abilities. Besides, in keeping with section 20(4) the Department is directed to not deny Ms. Mamta Mishra the promotion that is due to her as denial of due promotion would amount to and be construed as reduction in rank for an employee who has acquired a disability during her service.

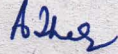


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It was brought to the notice of the Court that the matter is subjudice with Hon'ble H.P. Administrative Tribunal on the same issues. Thus the Department is advised to take pro-active steps in a positive direction to enable proper resolution of the matter.

Now, the present appeal filed by the applicant/petitioner is being disposed of accordingly.

  
(Anuradha Thakur)  
Commissioner (Disability)-cum-Pr. Secretary (SJ&E) to the  
Government of Himachal Pradesh, Shimla-02.

1. The Principal Secretary (E&T) to the  
Government of Himachal Pradesh, Shimla-02.
2. Director, Empowerment of SCs, OBCs, Minorities  
and the Specially Abled, SDA Complex, Kasumpti, Shimla-09.
3. Ms. Mamta Mishra, ETO (Shimla),  
B-6 Parasdass Garden, near CPRI,  
Shimla-171001.