

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C)No.13980/2009

Date of Decision : 22nd September, 2010

%

ASI RAJ KUMAR SINGH Petitioner
Through Mr. H.P. Chakravorti, Adv.

versus

UNION OF INDIA & ANR Respondents
Through Mr. L.K. Garg, Adv. for R-1 & 2

CORAM :-

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

- | | | |
|----|---|----|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

GITA MITTAL, J. (Oral)

1. By way of this writ petition, the petitioner has made a challenge to the failure of the respondents to promote him to the post of Sub Inspector from the post of Assistant Sub Inspector in the Central Industrial Security Force ('CISF' hereinafter) despite having been found him fit for promotion by the Departmental Promotion Committee in the years 2008 and 2009.

2. The challenge is premised on primarily two grounds by the petitioner. The first ground of challenge is premised on the petitioner's contention that the respondents are illegally denying him the benefit of promotion on the ground that he is medically unfit. The submission is that the criteria of fitness for

appointment to the post of Assistant Sub Inspector and Sub Inspector are same and no anomaly has been found with the petitioner's fitness for the reason that he continues to perform the duties of Assistant Sub Inspector. The second ground of challenge is premised on the petitioner's certification as being not medically fit and criteria categorized as being in shape-I in a medical examination conducted on 2nd December, 2008 by a private doctor. It was submitted that in this background, the finding of the petitioner's unfitness in the year 2008 and the denial of promotion by the respondents is wholly misconceived and erroneous. The challenge to the denial of promotion in the year 2009 rests on the submission that the disciplinary action taken against and punishment imposed on the petitioner arbitrary and illegal

3. The respondents have challenged the petitioner's contentions by way of reply which is supported by oral submissions made in court.

4. We have heard counsel for the parties and have perused the record placed before us.

5. So far as the promotions in the year 2008 is concerned, it has been pointed out that in compliance of the CISF letter dated 25th January, 2008, a DPC for promotion to the rank of Assistant Sub Inspector/Executive in respect of the affected personnel was conducted on 29th March, 2008 and the proceedings were submitted to the CISF Headquarters on 31st March, 2008.

6. Learned counsel for the petitioner has placed a copy of the service order No.I/120/2008 dated 6th June, 2008 which circulated the list of Assistant Sub Inspector /Executive which had been found fit by the Departmental Promotion Committee held in the year 2008 and stood promoted to the rank of Sub Inspector /Executive.

7. The candidature of the petitioner was also considered by the Departmental Promotion Committee. However, for the reason that the petitioner stood advised by the medical officer who conducted his medical examination to reduce his weight and bring the same within normal limits within 10 weeks, the medical categorization of the petitioner had not been declared during his medical examination. Consequently the Departmental Promotion Committee declared him as fit in its proceedings subject to his qualifying the promotional cadre course and attaining shape-I as was required in terms of the aforenoticed service order.

8. In view of the requirements of the above service order dated 6th June, 2008, it becomes necessary to notice the medical categorization of the petitioner. Mr. Chakravarty, learned counsel for the petitioner has drawn our attention to the medical examination conducted by the respondents on 8th March, 2007 wherein the petitioner stood categorized as being in shape-I. However, unfortunately for the petitioner, in the medical examination conducted on 20th January, 2008, the medical experts had found the petitioner as being overweight

and had refused to categorize his medical fitness. On the contrary, the format of CISF medical examination dated 20th January, 2008 placed before this court contains a remark by the medical officer that the petitioner should reduce his weight and bring it within normal limits within 10 weeks. A further direction was given to the petitioner to report to the NHCC, Saket for declaration of his fitness.

9. It is an admitted position that the petitioner has failed to get the requisite medical categorization done by the medical facility of the respondents. Reliance before us has been placed on a medical examination of the petitioner purportedly conducted on 2nd December, 2008 at the Unkal Healthcare Private Limited. We find that this private facility has categorized the petitioner as shape-I in the format which has been placed on record.

10. Reliance on this document is contested by the respondents on the ground that the petitioner was required to get his fitness endorsed by the medical facility expert of the respondents and that the certification of the petitioner by the private doctor is of no legal consequence or effect.

11. We find substance in this objection raised by the respondents. There can be no manner of dispute to the fact that the private facility would not have the expertise to evaluate the service personnel on the standards which are laid by the respondents. Undoubtedly, in the face of the specific comments upon the petitioner's medical examination on 8th

January, 2008, he was duty bound to have been examined at the hospital to which he had been diverted by the medical officer maintained by the respondents. This has not been done till date.

12. Learned counsel for the petitioner has placed reliance on the pronouncement of the Apex Court reported at **(2004) 6 SCC 708 Union of India vs. Sanjay Kumar Jain** to contend that the petitioner could not have been found unfit for promotion merely on grounds of physical unfitness. We find that the reliance placed by learned counsel for the petitioner on this pronouncement is completely misdirected. This case related to promotion from a Group C post of the Railways to the Group D post. Para 189(a) of the Indian Railway Establishment Manual clearly laid down that there shall not be discrimination in the matter of promotion merely on grounds of physical disability. The petitioner had been denied promotion on the ground that he was visually handicapped. It was in these facts and in the light of the instructions which governed the matter of promotion in the railways that the court had held that physical disability could be no ground to deny promotion.

13. Our attention has also been drawn by learned counsel for the petitioner to the pronouncement reported at **(2009) 14 SCC 546 Union of India vs. Devender Kumar Pant & Ors.** which also concerned with denial of promotion to a person on account of his disability in the railways. The court had placed reliance on the earlier pronouncements in Sanjay Kumar Jain

(supra) and had held that disability could not be a ground of denial of promotion in the fact situation under consideration.

14. So far as promotion-cum-posting from the rank of Assistant Sub Inspector/Executive to the rank of Sub Inspector /Executive with which the present case is concerned, it is regulated by service order No.1/72/2009 issued by the respondents. It is mandated therein that while promoting the persons whose name featured in the list, the respondents were required to ensure that they inter alia fulfilled the following conditions:-

“2(c) They are in the medical category SHAPE – I before being declared fit for promotion by the DPC.

d) If there is any deterioration in the medical categorization after the DPC and before actual promotion, the promotion will be withheld.”

15. The instant case is not concerned with any aspect of disability but relates only to the finding of petitioner’s unfitness in his medical examination.

16. In view thereof, the petitioner was certainly not in the medical category shape-I and in terms of the service order No.120/2008, he could not have been promoted in the year 2008 despite the DPC finding him fit for promotion.

17. We have noticed the service order no. 1/72/09 heretofore. The respondents have also drawn our attention to the CISF circular no. 29/05 dated 23/08/2005 which is captioned as *“Instructions pertaining to Medical Categorisation/Classification*

by "Shape" System and Medical Boards for Combatised Officers & Personnel Serving with CISF". Para 3, 9 and 13 of this circular squarely apply to the instant case and read as follows:-

"3. Medical Category SHAPE-1 will be an essential eligibility condition for promotion of all combatised personnel in all Groups/Ranks/Cadres in CISF. Therefore, all the combatised personnel and officers with CISF will be subjected to Annual Medical Examination every year as per "SHAPE" system. It will be the responsibility of the Controlling Officer/Unit In-charge to get the AME/Medical Board done in time.

xxx

9. SHAPE-1 medical category will be mandatory for the purpose of promotion in all ranks. In case of those, whose illness is of permanent nature and who are not SHPAE-1, they will be considered for promotion by the DPC, but will be declared 'Unfit' for promotion even if they are otherwise fit for promotion. In the case of those personnel whose illness is of temporary nature, after considering their cases for promotion alongwith others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-1 medical category. As and when they regain SHAPE-1 medical category, they will be promoted as per recommendation of the DPC, but they will not be entitled to back wages. However, they will retain their seniority of that particular panel from which they were promoted. In case of Gazetted Officers, the DPCs will be held according to Government Instructions (MHA/DOP&Trg.) under the aegis of UPSC.

xxx

13. If there is any deterioration in the medical categorisation of an empanelled officer after the DPC and before his actual promotion, the promotion will be withheld."

18. In view of the above instructions which would clearly guide consideration of the case of the petitioner, in the face of the petitioner's unfitness as opined by the medical board, no grievance can be made because of denial of the promotion.

19. A submission has been made on behalf of the petitioner to the effect that the fitness standards for the post of Assistant Sub Inspector and Sub Inspector are the same are concerned and that he has been found fit for discharge of duties as assistant sub-inspector. This prescription would be of no consequence so far as the present case is concerned. The petitioner's fitness when he was appointed/promoted to the post of Assistant Sub-Inspector is not the issue before us. Having been so appointed, certainly his annual fitness is a matter of concern for his continuation in the said position. There is no denial of appointment as Assistant Sub Inspector to the petitioner before this court. The petitioner is aggrieved by the failure of the respondents to promote him to the next higher rank of Sub Inspector. The requirement of medical fitness of the petitioner for such promotion has to be assessed at the time when the selection process for appointment/promotion to the next higher rank is being effected. Therefore, so far as the promotion to the post of Sub Inspector is concerned, the petitioner was required to be in the medical category of shape-I at the time of consideration for promotion. The petitioner failing to meet this criteria can lay no grievance at all to the denial of promotion in 2008.

20. So far as the consideration for promotion in 2009 is concerned, the respondents have disputed the petitioner's entitlement to the post on yet another ground. It is submitted that the petitioner was subjected to disciplinary proceedings

pursuant to a chargesheet dated 23rd January, 2009 issued to him and by an order passed on 23rd February, 2009, the Commandant of the CISF who was the petitioner's disciplinary authority had imposed punishment of Censure upon him. The petitioner's appeal and revision challenging his order were also rejected by way of orders dated 25th March, 2009 and 25th May, 2009.

21. We find that by the memorandum dated 23rd January, 2009, the petitioner was informed of the following charge in respect of which a proposal was made for proceeding under Rule 37 of the CISF Rules, 2001 :-

“

CHARGES

Force No. 884510549 ASI/Ex. Raj Kumar posted in CISF Unit IGI Airport, New Delhi was deployed for discharging duties at NITC Departure gate no. 3 in night shift of 13/14/01.09 between 2000 hrs. to 0700 hrs. Above Member Force was found absent on checking about 2130 Hrs. and 0245 Hrs. by Insp ./Ex.P.Dutta. When above ASI was asked about it and he was told about making entries in beat book, then replied that “ Make such remarks ten times”. The above act of Force No.884510549 ASI /Ex. Raj Kumar indicates his gross misconduct, carelessness towards duties and indiscipline.
Hence Charged”.

22. Rule 37 of the CISF Rules, 2001 enables the respondents to impose minor penalties specified in rule 34 upon an enrolled member after informing him in writing of the imputations of the misconduct or misbehavior on which action is proposed to be taken and giving him reasonable opportunity for making such representation as he wishes to make against the proposal. The

memorandum dated 23rd January, 2009 clearly informed the petitioner that he was required to submit his representation/evidence within ten days of the receipt of the memorandum failing which it could be presumed that he does not wish to give any representation/evidence in his defence and an ex-parte order would result. It is an admitted position that the petitioner submitted a representation dated 28th January, 2009. Perusal of the same would show that the petitioner has admitted that he was not present on duty during the inspection by Inspector P. Dutta as has been alleged in the aforenoticed charge. The petitioner has sought to explain that he was absent for the reason that he had to answer the call of nature and that he had informed his colleagues at the post of this fact at 7 p.m. and on the wireless set at 2.45 a.m.

23. The explanation rendered by the petitioner has been carefully considered by the disciplinary authority in the order dated 23rd February, 2009 which was noticed that Inspector Dutta had found him absent twice in the same duty and had made remarks to this effect on both occasions in the beat book. Furthermore, it has been found that the petitioner has misbehaved with the said Inspector when confronted with his absences.

24. It cannot be disputed that the petitioner was deputed for security concerns at a sensitive place as the International Airport and could not have left the place of assigned duty without making proper record of entry in the beat book which is

maintained for the purpose. The disciplinary authority has found the attitude of the petitioner irresponsible, grossly negligent and undisciplined meriting stern action. However, keeping his service in view, a lenient view was taken and exercising powers conferred under Rule 34 appendix 1 of the CISF Rules, 2001 imposed the penalty of only censure upon the petitioner.

25. The petitioner's appeal assailing the said order was rejected by the appellate authority by an order passed on 25th March, 2009. The appellate authority has also concluded that the pleas taken by the petitioner were only an effort to cover up his mistakes and that the petitioner was careless and irresponsible without any interest in serious discharge of his duties. The revisional authority has similarly recorded detailed reasons in the order dated 25th May, 2009 finding the petitioner's challenge to the previous orders devoid of any merit.

In this background, the revision came to be dismissed by the order dated 25th May, 2009.

26. No other ground of challenge other than to the factual aspects of the allegations made against the petitioner has been urged before us.

27. Learned counsel for the petitioner has only contended that the respondents were bound to conduct detailed disciplinary proceedings and inquiry before imposing the penalty which has not been done in the instant case. We find

that Rule 37 of the CISF Rules, 2001 adequately empowers the respondents to take a view in the matter and grants an option to the disciplinary authority to conduct an inquiry before imposing the minor punishment envisaged under Rule 34 of the said rules or not to do so. No legal infirmity can be found in this background in view of the respondents having taken a decision based on the allegations against the petitioner, available record and consideration of the representation of the petitioner. We find no merit in the challenge made to the proceedings undertaken by the respondents against the petitioner resulting in the imposition of censure.

In this background, the petitioner's challenge also to the denial of promotion by the DPC in the year 2009 premised on the disciplinary action against him also is devoid of any merit.

This writ petition is, accordingly, dismissed.

GITA MITTAL, J

J.R. MIDHA, J

September 22, 2010

mk/kr