

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 17th March, 2011
Judgment Delivered on: 22nd March, 2011

+ W.P.(C) 5077/2008

SUDESH KUMAR Petitioner
Through: Mr.Narender Datt Kaushik, Advocate.

Versus

UOI & ANR. Respondents
Through: Dr.Ashwani Bhardwaj, Advocate.

W.P.(C) 11554/2009

BABU LAL SAMATA Petitioner
Through: Mr.S.R.Kalkal, Advocate.

Versus

UOI & ANR. Respondents
Through: Mr.Sachin Datta, CGSC with
Ms.Gayatri Verma, Advocate for
UOI.

W.P.(C) 589/2010

CONSTABLE MANISH JOSHI Petitioner
Through: Mr.Ashish Mohan, Advocate.

Versus

UOI & ANR. Respondents
Through: Mr.Ravinder Agarwal, CGSC with
Mr.Nitish Gupta, Advocate for UOI.

W.P.(C) 1668/2011

JAGVEER SINGH & ORS. Petitioners
Through: Mr.A.K.Mishra, Advocate.

Versus

UOI & ORS. Respondents
Through: Mr.Sunil Kumar, CGSC with
Mr.Alok Kumar Shukla, Advocate
for UOI.

W.P.(C) 1681/2011

PUSHPENDER SINGH Petitioner
Through: Mr.Ankur Chhibber, Advocate.

Versus

UOI & ORS. Respondents
Through: Ms.Barkha Babbar, Advocate for
UOI.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The above captioned petitions pertain to a common issue relating to colour blindness and this is the reason they are being disposed of by a common judgment. The petitioners have served or are serving in different Central Para-Military Forces and each one of them suffer from colour blindness, a stated medical infirmity which is threatening their career.

2. Sudesh Kumar, the writ petitioner of WP(C) 5077/2008 joined service as a Constable (General Duty) with the Central Industrial Security Force on 19.4.2003. Indisputably, he was medically examined at the time of his initial entry in the service and was found fit. He was not detected with any colour blindness. At each annual medical

examination he was found fully fit. Responding to an advertisement dated 19.3.2007 he sought career progression when he offered his candidature for being appointed as a Sub-Inspector (Executive) through a Limited Departmental Competitive Examination proposed to be conducted by the Department. He successfully cleared the written examination held on 27.5.2007 as also the physical examination conducted on 2.6.2007 as also the interview held on 29.6.2007. Required to undergo another medical examination, he was medically examined at the CISF Hospital, Saket, New Delhi on 5.7.2007 and on 6.7.2007 was communicated a rejection on ground of being 'unfit'. The medical unfitness detected was: '*Defective Colour Vision*'. He had a right to seek a Review Medical Board and for which he was supposed to file an Appeal annexing therewith an opinion of a competent doctor to the contrary. Since by July 2007, the Unit to which the petitioner was attached was transferred Thalchar (Orissa), he got himself medically examined from an Eye-Specialist at Angul (Orissa) and obtained a certificate as per which it was certified that he had normal colour vision. He also got himself examined from the District Hospital, Moradabad where it was certified that his colour vision was normal. Armed with the 2 certificates he preferred an appeal to the Inspector General CISF and grievance raised in the writ petition is that his Appeal was not being disposed of. During arguments of the writ petition filed by him, counsel stated that directions may be issued to CISF to convene a Review Medical Board with a panel of 3 doctors; all of whom should be Ophthalmologist with further direction that latest techniques available to detect colour blindness should be considered by the Board and

applied at the medical examination. The response of CISF, as per counter affidavit filed, is that the Appeal filed has been rejected inasmuch as Sudesh Kumar has not complied with the requirements of filing the Appeal. Though not stated with clarity in the counter affidavit filed as to what was not complied with by Sudesh Kumar, during arguments, Dr.Ashwani Bhardwaj Advocate, stated that the requirement to be complied with was to have it recorded in the certificates obtained by Sudesh Kumar from the Civil Hospitals that he had informed the doctors concerned of being detected with colour blindness by the doctors of CISF, and since the certificates did not so record, the Appeal was rejected. It is asserted that this fact was communicated to Sudesh Kumar on 7.9.2007.

3. Babu Lal Samata the writ petitioner of WP(C) No.11554/2009 was enrolled as a Constable (General Duty) with Border Security Force on 1.6.2002 and at the time of joining service he was subjected to a medical examination and was found fully fit. At each annual medical examination he was found fully fit. He discharged his duties, successfully he claims, attached with the 6th Bn. BSF and his grievance commences when during a routine medical examination he was detected as a case of: '*Partial Colour Blindness*'. He submitted a representation against his being placed in low medical category as a result of being detected with partial colour blindness and on 30.8.2006 a Review Medical Board was constituted which gave an opinion that he was suffering from: '*Red-Green Colour Blindness*'. On 31.10.2006 he was communicated that due to the medical infirmity he was unfit for further service in BSF and thus would be retired from the afternoon of 31.10.2006 with 50% disability as recommended

by the Medical Board. He claims 50% extra-ordinary pension alleging that he had incurred the medical disability as a direct result of his service. As per the respondents the medical infirmity is not attributable to service and thus it is stated that he would not be entitled to any pension under the CCS(Extra-Ordinary Pension) Rules 1972. In the additional affidavit filed by the respondents, with reference to Annexure R-13 it is asserted that medical opinion is that the colour blindness from which he suffers is congenital and not attributable to military service. It is asserted in the additional affidavit that at the time of medical examination conducted when petitioner was inducted in service, the column pertaining to 'Colour Vision' was inadvertently left blank. It is asserted that on 1.12.2003, it got detected that he cannot read the numbers or trace the line in the ISHIHARA Colour Vision Test Chart except the first plate. It is further asserted that at the Review Medical Board, he was put through the '*Edridge/Martin Lantern*' Test in which it was detected that he could not identify all colours and was suffering from '*Red-Green*' colour blindness, which was reconfirmed when he was further examined at All India Institute of Medical Sciences and subjected to '*Edridge/Martin Lantern*' Test. On the issue whether or not the disability could be attributed to service, it is asserted that colour blindness could be acquired due to diseases like Alzheimer's disease, Diabetes, Mellitus, Leukaemia, Liver disease, Chronic Alcoholism, Parkinsonism, Retinis pigmentosa etc. It is asserted that it is not the case of the petitioner that he suffered from any such disease and thus it is concluded that the obvious conclusion has to be that the Red-Green Colour Blindness suffered by him is congenital.

4. Constable Manish Joshi, the writ petitioner of WP(C) No.589/2010 was appointed as a Constable (General Duty) under Indo-Tibetan Border Police on 24.12.2005 and at the time of appointment was subjected to a medical examination where no medical disability was detected. At each annual medical examination he was found fully fit. At a routine medical examination conducted on 16.1.2007 he was statedly detected with partial colour blindness i.e. '*Red-Green*' Colour Spectrum Blindness. He accepts his medical infirmity and had no problem, if consistent with the same, he could be accommodated on such duties where the partial colour blindness suffered by him was immaterial but raises a grievance pertaining to the policy notified on 29.10.2008 by the Ministry of Home Affairs in which, with reference to an earlier policy dated 17.5.2002, it was decided that those members of the Central Para-Military Force who were inducted in service prior to 17.5.2002 and for whatever reasons the disability could not be detected then, would be retained in service and would also earn promotions, if otherwise fit, but those who were recruited after 17.5.2002 would be required to be invalidated in service after 4 years. He challenges the policy as discriminatory alleging that there is no rationale to stipulate a cut-off date being 17.5.2002 as done under the policy decision. He also states that the policy decision is violative of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. As per the response filed it has been decided to invalidate from service all persons who suffer from colour blindness, irrespective of the fact whether they joined service before or after 17.5.2002 i.e. the response strikes at the very

foundation of the action predicated on the plea of discrimination, but we note that on 11.3.2011, another policy decision has been notified by the Ministry of Home Affairs reintroducing the cut-off date 17.5.2002 with a direction that such Force Personnel who were recruited with colour blindness prior to 17.5.2002 will continue to receive the benefit of a policy circular dated 17.5.2002 as per which it was notified that such Force Personnel who were inducted in spite of being colour blind would be retained in service but assigned duties not requiring use of firearms, identification of various types of colour signals, identification of criminals in mobs and use of specialized equipment. In other words, the justification given by the respondents for the cut-off date 17.5.2002 is that by said date a decision was taken by way of one-time relaxation for the benefit of all those who were appointed prior to 17.5.2002 and needless to state, the argument advanced was that there has to be a prescribed cut-off date on an issue of the kind and unless it was shown to be patently arbitrary, it would be a matter of policy as to what should the cut-off date be.

5. Ct.Jagveer Singh, Ct.Charan Singh and Ct.Sunil Kumar, the 3 writ petitioner of WP(C) 1668/20011 were recruited as Constables (General Duty) with CRPF on 20.8.2004, 15.5.2004 and 7.7.2004 respectively. They were subjected to a medical examination before appointment and were declared 'Fit'. At each annual medical examination they were found fully fit. Having served for about 6½ years, at a routine medical examination, all of them were detected as cases of partial colour blindness and were given an opportunity to represent against the disability detected. They

admit suffering from colour blindness but state that they cannot be invalidated from service, an action threatened against them, and rely upon the fact that on 16.5.1991 the Director General CRPF had notified a policy decision that colour blindness would be a disqualification for entry into service under CRPF except for hospital staff and ministerial staff. They rely upon a decision of the Calcutta High Court dated 2.11.2000 deciding C.O.15173-74 (W) of 1992 wherein a learned Single Judge held that in view of a clarificatory circular dated 7.11.1997 that all personnel including Constables (General Duty) were entitled to remain in service till they reach the age of superannuation, except for drivers. Though counter affidavit has not been filed in said writ petition, argument advanced during hearing of the writ petition by the respondents was the same as was advanced to defeat the claim of the writ petitioner of WP(C) No.589/2010.

6. Pushpender Singh the writ petitioner of WP(C) No.1681/2011 was appointed as a Constable (General Duty) on 20.11.2004 and at the time of entry was found to be medically fit. He sought conversion from the General Duty Cadre to the Driver Cadre and also successfully underwent a D&M Course at Neemuch. Vide order dated 18.3.2010 cadre change was intimated to him and thus he became a Constable (Driver). At each annual medical examination from the year 2004 till 2009 nothing abnormal was detected and only in the medical examination conducted in April 2010 he was detected as a case of Partial Colour Blindness. On 22.2.2011 a show-cause notice was served upon him requiring him to respond as to why he should not be invalidated from service. He relies upon a policy circular dated 12.6.1997 as per which Constable

(Drivers) detected with colour blindness would be transferred in the General Duty cadre till they superannuated. He also relies upon the policy circular dated 7.11.1997 i.e. the one relied upon by the Calcutta High Court as per which: *'All the personnel GD/Trade/Tech. recruited till issue of this Directorate General Letter No.R.II-31/94-Esstd.II dated 2/12/94 and found suffering from colour blindness may be retained in service till superannuation. They will continue to do their normal duties except driving of vehicles.'* Counter affidavit has not been filed in the said writ petition but the defence taken is the same as in the preceding two writ petitions noted herein above.

7. Before we deal with the various policy circulars pertaining to colour blindness issued from time to time and from there-from discern the policy of the Executive framed from time to time, we think we ought to pen a few words on what colour blindness is about.

8. The English Chemist John Dalton published the first scientific paper on this subject in the year 1798, titled: *'Extraordinary Facts Relating to the Vision of Colours'*. He wrote the article after the realization of his own colour blindness and because of Dalton's work, colour blindness condition is often called Daltonism; but as of now this term is used for only a type of colour blindness called *'Deuteranopia'*.

9. The subject experts are in agreement that colour blindness is a very mild disability, but in certain situations, depending upon a job and especially where the identification of the colours red and green are important, may be a serious disability.

10. To understand the phenomenon of colour blindness, the human eye and especially the human retina needs to be

understood. The average human retina contains 2 kinds of light cells: (i) the rod cells, which are active in low light; and (ii) the cone cells, which are active in normal day light. There are 3 kinds of cone cells, each containing a different pigment which gets activated depending upon the light absorbed by a pigment. The spectral sensitivity of the cones differ to different wavelengths i.e. short wavelength, medium wavelength and long wavelength. The peak sensitivity of the cone cells is to be found in the blue, yellowish-green and yellow region of the spectrum. These receptors are often called 'S' cones, 'M' cones and 'L' cones, representing short, medium and long wavelength. They are also often referred to as blue cones, green cones and red cones. But, this terminology is not very accurate and especially for the reason red receptors have their peak sensitivity in the yellow region. The sensitivity of normal colour vision actually depends on the overlap between the absorption spectra of the 3 systems, red light for example, stimulates the long wavelength cones much more than either of the others and reducing the wavelength causes the other 2 cone systems to be increasingly stimulated, causing a gradual change in hue.

11. It is recognized that colour vision deficiencies are either acquired or inherited. Pertaining to inherited, there are 3 types of congenital colour vision deficiencies: (i) monochromacy also known as total colour blindness caused by cone defect or absence and in this case there is a complete lack of ability to distinguish colours. It occurs due to two or all three cone pigments missing. (ii) Dichromacy which is moderately severe colour vision defect and is the result of one of the three basic cones missing. (iii) Anomalous Trichomacy

which is less severe colour vision defect and is the result of one of the three cone pigments being altered in its spectral sensitivity. The result is not a total loss, but an impairment of the normal 3-dimensional colour vision.

12. Thus, colour blindness or colour vision loss which is congenital i.e. hereditary may be broadly stated to be, total, moderate or partial.

13. Colour Blindness or Colour Vision Loss can also be acquired as noted herein above. These may be due to brain or retinal damage caused by Shaken Baby Syndrome, accidents and trauma which produce swelling of the brain in the occipital lobe or damage to the retina caused by exposure to ultra-violet light. Degenerative diseases of the eye, such as age related macular degeneration or retinal damage caused by diabetes are also the causes of acquired colour vision loss. Exposure to certain kinds of chemicals such as carbon monoxide, carbon disulphide, styrene and lead based chemicals also may result in colour blindness. Consequence of side effects of some medicines such as anti-inflammatory medicines, medicines for rheumatoid arthritis and even chloroquine may cause colour blindness.

14. An interesting facet of colour blindness, has unfortunately escaped the attention of the Central Para-Military Forces and also the Central Government, evidenced by the fact that during arguments Ophthalmologist had assisted learned counsel for the respondents and indeed Dr.Padma Chaudhary, an Ophthalmologist had explained the various nuances pertaining to colour blindness in Court as acknowledged by the respondents in the additional affidavit filed, enclosing therewith the opinion of Dr.Padma Chaudhary,

in WP(C) No.11554/2009. The facet which has escaped the attention of all is a distinctive ability of colour blind people which was first detected during World War-II. This was the ability of these individuals to be better placed than normal individuals, at penetrating certain colour camouflages and especially the colour 'khaki'. Reference may be made to an article published under the title '*Dichromats detect colour-camouflaged objects that are not detected by trichromats*' published by M.J.Morgan, A.Adam and J.D.Mollons who are senior professors in the Department of Pharmacology, University of Edinburgh and the Department of Experimental Psychology, University of Cambridge. In World War-II, colour blind soldiers were used in spy planes to spot camouflage German camps.

15. Neither the respondents nor their doctors and thus nor their counsel was aware of the utility of colour blind persons in respect of colour blindness being used as an asset and not being labelled as a liability.

16. Let us proceed to note the policy circulars issued from time to time and as relied upon in the pleadings of the parties. The first is a policy circular dated 16.5.1991 issued by Director General CRPF which reads as under:-

"To,
The Addl. DG
NW Zone, CRPF
Chandigarh

The Inspector General of Police
Southern/Eastern/Northern & NW Sector,
Central Reserve Police Force,
Hyderabad, Calcutta, New Delhi & Shilong.

Subject- Disqualification for entitlement in CRPF due to colour blindness

Sir,

Kindly refer to this directorate letter of even number dated 04.10.90.

2. The matter regarding retention of force personnel in service, who are suffering from colour blindness as well as making colour blindness as disqualification for entry in to CRPF, has been examined in depth while doing so the view expressed by Addl.DG NW Zone and sector IsCP on the subject have also been considered.

3. I am directed to convey the following decision on the subject cited above:-

i) Colour blindness will be a disqualification for entry in CRPF in respect of the executive, Technical and trade cadres including MT. However, colour blindness will not be a disqualification for the Hospital staff, Ministerial staff and followers.

ii) All Drivers upto the rank of HC (Dvr.) who are reported to be having colour blindness may be transferred to GD line as already communicated vide this Directorate letter of even number dated 04.10.1990.

iii) Those serving GD personnel who are having colour blindness may be allowed to continue in services till they superannuate.

Yours faithfully,
Sd/-16/5/91
(M.M.Sharma)
Asstt.Director, Estt.II"

17. The second is a policy circular dated 12.6.1997 issued by Director General CRPF which reads as under:-

"To,
The Special Director General,
Southern Sector, CRPF, Hyderabad,

The Addl. Director, General,
NWZ, CRPF, Chandigarh
The Inspector General of Police,
BS, CS, ES, NS, WS, RAF, NES, SPL, SEC, M&N,
J&K & Director ISA CRPF Mt. Abu.

Subject: CRITERIA OF EYE SIGHT/VISUAL
STANDARD OF SERVICE PERSONNEL

Sir,

Owing to certain ambiguities in the criteria of eyesight/visual standard of serving personnel, the matter was examined in detail and following instruction are hereby issued supersession of all previous orders on the subject:-

(a) Para 1.15(b) Visual Standard:

Existing para in Recruitment Manual	Amended
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Para 1.15

(b) Visual Standard. The visual standard will be;

(1) See to shoot on driver (First line troops) visual acuity not less than: Each eye 6/12 9 on) Right eye 6/6 Reads 0.6 Reads 0.8 on left eye 6/36 read I or J.6	(i) Should not be less than 6/6 in one eye and 6/9 in other for all ranks 1.0.6/6 for fit eye in Rt handed individual and 6/6 for left eye in left handed individual without glasses.
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Existing para in Recruitment Manual	Amended
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(ii) See for-ordinary purposes in fighting are (Sub shooting standard) but may be called upon to fight under exceptions circumstances.	(ii) Should be free from Colour blindness
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Right eye 6/12 Left eye 6/36

Reads 0.6 or J.2 Reads I or J.6

Existing para in Recruitment Manual	Amended
(iii) See for ordinary purposes (includes Clerks, non-combatants and Followers)	(iii) Near vision should be JI equivalent if some other charts used) unladed both eyes.
Right eye 6/36 Left eye 6/12 or each eye	
Reads 0.6 or J.6 Reads 0.6, 6/24 reads 0.8	
Second para of page-7of Recruitment Manual	
2. Recruits other than clerk recruits required for educational duties and non combatants (enrolled) may not wear spectacles during the visual test. Unaided vision of recruits of clerical and educational duties will not be below 6/6 in each eye and on correction will be the same as for (i) and (ii) above conforming to the visual standard of personnel of that category except that near vision in one eye must be 0.5 or J.1. Each eye must have full field of vision as tested by hand movements. Any morbid conditions of the eyes or lids liable to the risk of aggravation of recurrence, will cause rejection of the recruit.	(a) Recruits (GD) /Tech/Trade/Enrolled Followers and ASI (M) may not be permitted to wear spectacles during the visual test. Unaided vision of recruits (GD)/Tech/ Trademan /Enrolled Followers and ASI (M) will not below 6/6 in one eye and 6/9 in other for all ranks 1.0.6/6 for right eye is right handed individual and 6/6 for left eye in left handed individual without glasses. Each eye must have full field of vision as tested by hand

movements. Any morbid conditions of the eyes or lids liable to the risk of aggravation of recurrence will cause rejection of the recruits. They should be free from Colour Blindness except ABI (M) and followers.

(b) The adjustment/disposal of affected serving persons should be made as under:

(i) All the personnel BD/ Trade/ Tech recruited till issue of this Directorate General letter No.R.II-31/94, Estt-II Dated 2/12/94 may be retained in service till superannuation. They will continue to do their normal duties except driving of vehicles.

(ii) Drivers recruited before 2/12/1994 and found suffering from Colour blindness be transferred to the GD Cadre. They will perform all duties pertaining to the rank in the GD cadre. However, for further promotions,

they will have to acquire the requisite rank qualifications.

(iii) Personnel enlisted after issue of this Directorate General letter No.R.II-31/94, Estt.II, dated 2/12/94 either in MT or GD cadre be discharged from service.

(iv) Cases already decided otherwise on the basis of rules, instructions existing/existed need not be re-opened.

2. Three instructions are issued in suppression of this Directorate General letter No.R.II-31/94-Estt.-II, dated 2/12/94 and will be effective from the date of issue of this letter.

3. This has the approval of DG.”

18. The third is the policy circular dated 17.5.2002 issued by Ministry of Home Affairs which reads as under:-

“Subject:- Introduction of Medical Category Shape-I for the purpose of promotion in CPMFs – Regarding

Reference DG, CRPF, U.O. No.P-VII/I-Pers-I dated the 14th May, 20002 on the subject mentioned above.

This question of promotion of force personnel recruited with colour blindness has been examined in this Ministry and it has been decided that this disability, ignored at the time of their recruitment,

cannot be held against them now. All such force personnel, recruited with colour blindness are therefore eligible for promotion, despite their being in medical category SHAPE 2 (Permanent) on their turn, if they are otherwise fit for promotion.

Sd/-
(S.C.Saksena)
Desk Officer”

19. The fourth is the policy circular dated 31.7.2002 issued by Ministry of Home Affairs which reads as under:-

“Subject:- Prescribed medical category SHAPE-I for combatized personnel of CRPFs.

Reference DG, CRPF, U.O. No.P-VII/I-Pers-I dated the 19th July, 2002 on the subject mentioned above, wherein they have sought clarification with regard to the promotion of force personnel with colour blindness for the following category:-

- i) In whose cases colour blindness was not a disqualification;
- ii) In whose cases though colour blindness was a disqualification but the same could not be detected at the time of their recruitment.
- iii) In case force personnel with colour blindness could not be promoted, whether they are to be medically invalidated out of service.

2. This has been examined in this Ministry. Attention is invited to this Ministry's U.O. of even number dated the 17th May, 2002 which does not distinguish between force personnel, in whose cases, colour blindness was a disqualification or otherwise. It simply states that whosoever has been selected with colour blindness, whether by ignorance or otherwise, cannot be treated differently after putting so many years of service. The illness cannot be held against them and therefore they will be eligible for promotion despite their colour blindness, if they are, otherwise fit for promotion.

3. This clarifies position regarding categories (ii) and (iii) in para-1 above. Such question regarding the category (iii) does not arise at all.

Sd/-
(D.S.Mishra)
Director (Pers.)”

20. The fifth policy circular dated 29.10.2008 issued by Ministry of Home Affairs which reads as under:-

“Subject: Colour Blindness:

Reference this Minisry’s UO
No.145020/52/2001-Pers-II dated 17.05.2002
wherein following has been mentioned.

“the question of promotion of Force personnel recruited with colour blindness has been examined in this Ministry and it has been decided that his disability, ignored at the time of their recruitment, cannot be held against them now. All such force personnel, recruited with colour blindness are therefore eligible for promotion, despite their being in medical category SHAPE 2 (Permanent) on their turn, if they are otherwise fit for promotion.”

2. The above order provides immunity to those force personnel who were recruited till dated i.e. 17.05.2002. However, this order also placed such personnel in Shape 2 (Permanent) meaning thereby that they would be boarded out after 4 years as per provision of SHAPE order and also as per provisions in the present health care system, as there is no chance of improvement in colour blindness patients being a congenial disorder.

3. The Central Para Military Forces perform a critical role in maintaining internal security and guarding of National Border. By very nature the job requirements are technical in nature requiring a high level of physical fitness and abilities. The selection process is also rigorous in nature and every candidate must pass through medical examinations and physical efficiency test. The colour blindness is one of the disqualification for

selection in service for the CPFs. If any person considering the requirement of the CPFs and in the interest of the person he or she should be boarded out on account of physical disability. At the same time, if the person has served for a number of years in a force, it may not be fair to remove him summarily. It has therefore, been decided that in all such cases which came to light where a person was appointed prior to 17.05.2002 with colour blindness, the concerned Force will try to adjust such a person in non technical security force where colour blindness may not be a disqualification. However, if the CPFs is not able to find out a suitable position for the person in the force he/she may be removed from service after giving due opportunity to defend his/her case. The cases of colour blindness if detected in the appointees in the period after 17.05.2002 such person shall be placed in SHAPE-V and be boarded out as per the laid down procedure for disability.

4. CPFs and ADG (Medical) shall also take all measures to see that at the time of the medical examination/PET, the candidates are thoroughly screened for disabilities like colour blindness and in case of detection of such defects at a later date there should be in built mechanism to fix responsibility and take exemplary disciplinary action against those found guilty.

Sd/-
(Baraun Kumar Sahu)
Director (Pers.)"

21. The sixth and the last is the policy circular dated 11.3.2011 issued by Ministry of Home Affairs which reads as under:-

"Subject : Colour blindness:

In continuation to this Ministry's UO of even number dated 29.10.2008 and in supersession of this Ministry's UO of even number dated 08.3.2011, on the subject cited above, the matter

has been reconsidered in this Ministry and after taking into consideration comments of ADG(Med) CPFs, the competent authority has approved the following:-

a) All duties where use of fire arms/identification of various types of coloured signals/identification of criminals in mob/use of specialized equipments are not regularly required and public safety is not involved, may be defined as non-technical duties.

b) In MHA UO of even number dated 29.10.2008, word 'Non-technical Security Force' implies for 'Non-technical Security Duties' within the Force and does not mean creation of any separate Non-technical Security Force.

2. It is further clarified that promotion of all such force personnel recruited with colour blindness prior to 17.5.2002 will continue to be governed by this Ministry's UO No.I-45020/52/2001-Pers-II dated 17.5.2002.

3. This issues with the approval of Secretary (IS).

Sd/-
(Ajay K.Singh)
Director (Pers.)"

22. Relevant would it be to note that the policy circular dated 16.5.1991 and 12.6.1997 have been issued by CRPF and the policy circulars dated 17.5.2002, 31.7.2002, 29.10.2008 and 11.3.2011 have been issued by the Ministry of Home Affairs and are applicable to all Central Para-Military Forces.

23. An analysis of the policy decisions taken from time to time would reveal that as regards CRPF, on 16.5.1991 it was decided that henceforth colour blindness would be a disqualification for entry in CRPF in respect of Executive, Technical and Trade cadres including MT except Hospital and Ministerial works. Those who were appointed as drivers and were detected with colour blindness were to be transferred to General Duty Lines and those serving as General Duty

Personnel were allowed to continue in service in the cadre. It is apparent that the policy would be a one-time measure not to relieve those who were in service and for whatever be the reason, were detected as colour blind, by adjusting them on such work which could be performed with the handicap. But, for the future, a person with colour blindness could not be inducted in CRPF except for hospital and ministerial duties.

24. The second policy circular dated 12.6.1997 lay down visual standards to be achieved as the minimum benchmark for induction in CRPF and pertaining to colour blindness clearly specify that colour blindness would be treated as a disability. It is apparent that the policy circular dated 12.6.1997 was to make necessary amendments in the visual standards prescribed to bring the same in harmony with the circular dated 16.5.1991.

25. But we find that in spite thereof, evidenced from WP(C) No.1668/2011 and WP(C) No.1681/2011, CRPF has been negligent in inducting persons as Constable (General Duty) in CRPF who were colour blind. It is but apparent that CRPF has been negligent. We shall deal with the issue in full detail a little later while analyzing the problem and finding a solution thereto.

26. The policy circular dated 17.5.2002 pertaining to all Central Para-Military Forces is the obvious fallout of CRPF continuing to induct persons with colour blindness, which negligence is also to be found in what CISF, BSF and ITBP were doing. Even these organizations were not careful while effecting the selection and as a result of a negligent medical examination did not detect colour blindness evidenced from the fact that the writ petitioner of WP(C) No.11554/2009 got

employment in BSF in the year 2002, writ petitioner of WP(C) No.589/2010 got employment in ITBP in the year 2005 and the writ petitioner of WP(C) No.5077/2008 got employment in CISF in the year 2003, none of them was detected with colour blindness. None of them suffered any illness or took any medicine which could induce colour blindness; we may hasten to add that all of them were given chloroquine, which we are informed is orally administered in routine to members of the Central Para-Military Forces as they work in hostile environment in tropical and such other climatic conditions when mosquitoes breed in abundance and malaria is at large. But we have no empirical data of how much chloroquine was taken by each one of them, but surely the dosage was minimal, we say so for the reason none of them claims to have suffered from malaria and thus it can safely be inferred that the minimum preventive dosage was administered to them. None of them claimed any kind of exposure to such chemicals which induce colour blindness and thus it can safely be assumed that the colour blindness detected qua them is congenital. But, to be fair to them, we must also note that the Ophthalmologists concerned have thrown no light whether the colour blindness suffered by them was monochromacy or dichromacy or anomalous trichromacy. There is nothing in their medical record to guide whether the impairment was total, severe or partial.

27. The policy circular dated 17.5.2002 is again by way of relaxation inasmuch as it contains the decision that Central Para-Military Force Personnel whose colour blindness was ignored at the time of recruitment would not be treated ineligible for promotion and thus obviously required them to be

retained in service and the reason for the policy is to be found in the policy itself through the medium of the words '*cannot be held against them now*', meaning thereby, it was accepted that the fault was that of the Department. The policy circular recognizes either the principle of the legitimate expectation of these force personnel to serve till they attained the age of superannuation or an estoppel against the Central Para-Military Forces who, by permitting employment to the force personnel concerned, made him alter his position in not seeking employment elsewhere and having become overage for public employment, estoppel would prohibit the Central Para-Military Force to allege or act to the contrary. It would be important to highlight that all such persons were liable to be placed in the medical category Shape-2, which as per the medical policy would mean that if within 4 years, Shape-1 was not regained required the person concerned to be boarded out. But, the policy recognized the fact that congenital colour blindness is incurable and the question of these persons regaining Shape-1 would never arise and thus it was clarified that despite being in medical category Shape-2 (permanently) they would be promoted.

28. The policy circular dated 17.5.2002 does not indicate that it is a one-time measure. Of course, it was expected from the Central Para-Military Forces to be careful and not go about being repeatedly negligent, but unfortunately, evidenced from the fact that in the year 2003, 2004 and 2005 persons with colour blindness continued to be inducted in service is proof of the continued callousness and negligence; breeding litigation.

29. The policy circular dated 31.7.2007 is the next in order and pertains only to CRPF, where we find negligence to be most rampant. It gave a clarification with respect to the policy circular dated 17.5.2002 and highlighted that the mandate of the circular dated 17.5.2002 was to ignore the requirement of the rules to treat colour blindness as a disqualification by not subjecting the said persons who were wrongly inducted to being invalidated from service.

30. The policy circular dated 29.10.2008 is again related to all Central Para-Military Forces and refers once again to the circular dated 17.5.2002. The policy circular dated 29.10.2008, vide para 2 thereof, clarified that the benefit of the circular dated 17.5.2002 was restricted to the force personnel recruited till said date and further required such personnel to be placed in Shape-2 and highlighted that a person in Shape-2 was to be boarded out after 4 years, being the requirement of the rules which required a person in Shape-2 to be boarded out if within 4 years he could not regain Shape-1.

31. What surprises us is the fact that in para 2 of the policy circular dated 29.10.2008 it was mentioned that persons who got the benefit of the policy circular dated 17.5.2002 would be required to be boarded out after 4 years, notwithstanding the fact that the policy circular dated 17.5.2002, clearly notes that notwithstanding these persons being in Shape-2, would not be visited with the consequences thereof and not only would not be boarded out but additionally would earn a promotion.

32. Para 3 of the circular, certainly highlights the critical role of the Central Para-Military Forces and though not

expressly stated, we do understand that in a situation of crowd control or where smoke signals are to be read, a colour blind person may commit a terrible mistake which may prove extremely costly, and since members of these forces carry arms, there would be utmost need to be extra vigilant. But, the paragraph tampers the requirement of the organization and the standard to be attained with the right, equitable or vested, of the members of the force. The use of the expression: *'It may not be fair to remove him'* highlights the beneficial purport of the policy, but unexplainably picks up the cut-off date 17.5.2002 and mandates that persons appointed prior to 17.5.2002 ignoring their colour blindness would be retained and adjusted in non-technical duties and only in extreme cases where the Central Para-Military Force was unable to find any suitable position for a person in the Force, only then should the extreme action of invalidation from service be resorted to. It expressly states that appointees after 17.5.2002 should be invalidated from service as per procedure prescribed for disability.

33. Surprisingly enough, notwithstanding the express mandate of the policy circular dated 29.10.2008 that personnel recruited prior to 17.5.2002 would be retained in service and adjusted against suitable jobs and only if none was available would they be invalidated from service, the Central Para-Military Forces started threatening invalidation from service to even such Force Personnel who were recruited prior to 17.5.2002 and this necessitated the clarificatory policy circular dated 11.3.2011 to be issued which made it plain clear that Force Personnel recruited prior to 17.5.2002 would be treated strictly as per the policy circular dated 17.5.2002.

34. Now, we have highlighted herein above that there are 3 varieties of colour blindness and that a person may be colour blind in the third category of anomalous trichromacy where only one of the three cone pigments is altered in its spectral sensitivity and the result of the impairment is loss of normal 3-dimensional colour vision i.e. the person would see an object as also its colour but only in 2 dimensions and not the third. We have also highlighted herein above that congenital defect in the rod cells which are active in low light would create colour blindness when the light is low and the cone cells which are active in normal day light would result in colour blindness during normal day light. In other words, a colour blind person, depending upon the nature of colour blindness, may be able to see a coloured object, not in its 3-dimensional contours but in a 2-dimensional contour and further one may not be able to spot a colour in broad daylight but spot the same in low light and vice-versa.

35. Let us take the case of a Force Personnel having congenital defects in the cone cells, with the rod cells being perfectly normal. This force personnel, would ex-facie, be fit for active duty from dusk to dawn. Vice-versa, a force personnel having congenital defects in the rod cells would be fit for active duty from dawn to dusk.

36. We wish to highlight that the respondents have not been careful enough and indeed have been negligent not only at stage one when they inducted the petitioners in service by not subjecting them to a proper medical screening and had the respondents been careful, petitioners would have been told of their medical disability and this would have been at an age when all of them could have applied for public employment in

such organizations where colour blindness is not a medical disability. Even at the second stage, by not correctly identifying the nature of the colour blindness suffered by them, the respondents have deprived them of a chance to serve in active duty, to wit, if anyone of them had congenital defects of the cone cells, he could volunteer active service from dusk to dawn. Further, if anyone of them suffered from anomalous trichromacy he could certainly claim a right to actively serve for the reason the impairment would not render him insensitive to colour detection, the minor impairment being the loss of the normal 3-dimensional colour vision.

37. We wish to emphasize that there are 7 S's which help in identification of an object. They are as under:-

- | | | | |
|-------|---|---|------------|
| (i) | S | - | Shape |
| (ii) | S | - | Shine |
| (iii) | S | - | Silhouette |
| (iv) | S | - | Shadow |
| (v) | S | - | Shade |
| (vi) | S | - | Size |
| (vii) | S | - | Sound |

38. It is no doubt true that while prescribing the recruitment rules and standards of proficiency to be achieved, physical and medical standards can be prescribed and thus a feeble attempt made to urge that the respondents could not prescribe the requisite medical standards, is noted and rejected; with the clarification that the feeble argument was advanced just for the sake of advancing an argument.

39. It is true that a policy decision is in the exclusive domain of the State and can be struck down only when the same is ultra vires or unconstitutional i.e. is in violation of Article 14 or 16 of the Constitution of India, pertaining to a

matter of service, no policy decision can be done away with unless so found. We need not list various authorities which hold so as we do not intend to prepare any catalogue and for the additional reason we have written enough in the present opinion. But where a policy is demonstrably not informed by a reason or is ex-facie discriminatory or founded on the mere ipsit-dixit of the Executive thereby offending Article 14 of the Constitution, as opined in the decision reported as 1977 (7) SCC 592 M.P.Oil Extraction vs. State of M.P., a Writ Court would be under an obligation to direct remedial measures to be taken.

40. Now, the policy circular dated 17.5.2002 recognizes the principle of either legitimate expectation or estoppel, as observed by us in para 27 above. It recognizes a wrong done to the members of the force by inducting them in service ignoring the medical disability; the wrong being that had they been told at the time when they sought employment that they were ineligible for appointment in a Central Para-Military Force, these young men could have found alternative employment on jobs where colour blindness was not an issue and not doing so and further throwing them out of jobs at an age when these young men became overage to seek public employment was to deprive them of a fair opportunity to seek public employment. The same principle on which policy circular dated 17.5.2002 was issued would equally apply where the Central Para-Military Forces would continue to be in the wrong due to negligence post 17.5.2002. In this context we find the policy decision dated 29.10.2008 being arbitrary and discriminatory in prescribing 17.5.2002 as the cut-off date as also the clarificatory policy circular dated 11.3.2011.

41. The policy circular dated 29.10.2008, while restricting the benefit thereof to those who were engaged prior to 17.5.2002, a cut-off date which we have opined to be arbitrary, contains a beneficial policy of adjusting the members of the force who suffer from colour blindness, to be made to perform such duties where colour blindness is not a handicap. Being a beneficial policy, it needs to be construed liberally and as long as the language thereof permits, in the widest amplitude. The same guiding beneficial principles, we see no reason, should not apply to all the writ petitioners. In this context we seek to highlight a very anomalous situation created by the respondents evidenced by the case of Sudesh Kumar, the writ petitioner of WP(C) No.5077/2008 who joined service as a Constable (General Duty) under CISF on 19.4.2003 and was not detected with colour blindness then nor at any subsequent medical examination, but is being denied the fruits of promotion as a Sub-Inspector (Executive) notwithstanding he having successfully cleared the written and physical examination as also the interview on the ground that on 5.7.2007 he was detected with a defective colour vision. What is the exact extent of the defective colour vision has not been brought out. But what is unexplainable is that as per CISF he can continue to work as a Constable (General Duty), but not earn a promotion as a Sub-Inspector (Executive). We just do not see any rationale in the action taken. We also find absurdity in the stand taken by the CISF of not convening a Review Medical Board on the ground of the deficiency in the language of the certificates obtained by him from civil hospitals. Law is clear. Unless the language of a document is statutorily prescribed, as long as there is substantial

compliance with the substance of an issue, the language of a document is immaterial. We find no justification for CISF not to subject him to a Review Medical Board, but in the final view which we have taken, there may be no requirement of so doing.

42. Before bringing the curtains formally down, we conclude on the issue by recording a finding that all the writ petitioners would be entitled to the benefit of the policy decision dated 17.5.2002 and we strike down the cut-off date 17.5.2002 prescribed in the policy circular dated 29.10.2008 and as clarified by the policy circular dated 11.3.2011 by directing in harmony with the decision of the Supreme Court in the decision reported as AIR 1983 SC 130 D.S.Nakara vs. UOI that this would mean the benefit of the policy circular to be extended to all force personnel of the Central Para-Military Forces who have been inducted in service at any point of time due to the negligence of the forces in not properly conducting medical examination and not detecting colour blindness in said persons.

43. We express a hope that guided by the utility of colour blind persons in spotting camouflaged camps and spotting khaki colour which is camouflaged in the woods and in the hills as also the medical literature available pertaining to colour blindness that a one-time policy would be framed for futuristic application. It would be, in our opinion, the duty of a State, while framing policy decisions to enrich itself with research in various disciplines of subject of expert knowledge, science and technology. We do not intend to say that policy decisions would be the subject matter of judicial debate on the issue whether, while framing the policy, better options could

be exercised. The reason is obvious. Courts cannot sit as experts. But surely, it would be expected that the literature on the subject as it has grown with the passage of time and is recognized by the peers in the field of expert knowledge, science and technology and the known principles evolved from time to time are kept in view when policies are framed.

44. WP(C) No.5077/2008 is allowed and a mandamus is issued to the respondents to promote Sudesh Kumar as a Sub-Inspector (Executive) with effect from the date person immediately below in the select panel was promoted and we hold that he would be entitled to all consequential benefits save and except actual pay for the post of Sub-Inspector (Executive). Compliance be made within 4 weeks from today.

45. WP(C) Nos.589/2010, 1668/2011 and 1681/2011 stand disposed of prohibiting the respective respondents in the said writ petitions to invalidate the writ petitioners thereof from service on account of colour blindness. They would be permitted to serve till they attain the age of superannuation, subject of course to their being otherwise entitled to do so (ignoring colour blindness). For the benefit of the respondents, we may only observe that qua some of them only partial colour blindness has been detected and the exact contour thereof has not been ascertained. We would expect the respondents to obtain better clinical evaluatory advice qua them and seek specific opinion from Ophthalmologist qua the exact span of disability to ascertain jobs which can be performed by them and needless to state if the colour blindness suffered by them does not impair night vision, why not assign them night duties. We may highlight that we have come across a large number of writ petitions where issues

raised by jawans is of continuously subjecting them to night duties and they allege favouritism qua those who have been assigned more frequent day duties. If we have a reservoir of jawans who have some colour blind disability during normal day time, would it not be advisable to harness the disability as a pool of asset and use these jawans for night duties, for which we would expect these jawans to volunteer to do so; in any case commensurate with the disability of the jawan, there would be rationale in the policy decision taken to assign night duties to these jawans. Similarly, such Force Personnel who may be disabled on account of colour blindness, but would have the added advantage of spotting camouflage, why not utilize them as assets by attaching them with platoons on combing operations so that they would give the extra cutting edge to the platoon by being able to spot camouflaged camps set up by insurgents or terrorists.

46. We do have a little problem as regards Babu Lal Samata, who claims Disability Pension under the CCS (Extraordinary Pension) Rules 1972 on the premise that since no disability was detected when he was inducted as a Constable (General Duty) on 1.6.2002 and none was detected in the annual medical check-up till the one which was held in the year 2006, it would be obvious, so he claims, that he has acquired partial colour blindness as an attribute of his service.

47. Of course, as it stands, the argument is based on logical reasoning, but ignores that the premise of the argument could be faulty. It ignores the possibility of there being casualness in his medical examination and indeed we find good ground to hold that as in the case of other writ petitioners, Babu Lal Samata was inducted into service due to

a callous and a negligent medical examination conducted by the doctors concerned and this callousness and negligence continued when annual medical examination of Babu Lal Samata was conducted in the year 2003, 2004 and 2005. He has pleaded nothing to show that while on duty he was exposed to any kind of chemicals which induced colour blindness. It is not his case that he suffers from diabetes which is attributable to service and that the diabetes has caused colour blindness. It is not his case that while on duty he was posted in an area infested with mosquitoes and due to which he suffered from malaria and was administered chloroquine i.e. it is chloroquine which has triggered of his partial colour blindness and hence the same would be attributable to service. He has not asserted that he suffered any disease, noted in para 3 herein above, while in service, which diseases as noted herein above induce or result in colour blindness. It is plain clear that his partial colour blindness is congenital. His claim for 50% Extraordinary Pension cannot be countenanced but for the reason, he was not the beneficiary of our opinion rendered today, we feel that justice requires a direction to be issued qua him to be re-inducted in service without any back-wages and requiring him to return to BSF such dues which he has received on account of being invalidated from service as a condition precedent for his being re-inducted in service and should he exercise said option to direct that the period post his being invalidated from service till he is re-inducted would be without any pay or allowances but would be treated as period in service for all other purposes. Thus, WP(C) No.11554/2009 stands disposed of issuing a direction that if Babu Lal Samata, would within a

period of 4 weeks from today send a letter exercising option to be re-inducted in service he would enclose therewith a cheque representing the amount which he received on being invalidated from service and within 2 weeks there-from the respondents would re-induct him in service treating the period post invalidation from service till re-induction as period spent on duty, but with no wages.

48. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 22, 2011
dk