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

+ **W.P.(C) No.4561/2013**

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Date of decision: 22nd July, 2013

SURESH RAM

..... Petitioner

Through : Mr. Ankur Chhibber, adv.

versus

UNION OF INDIA & OTHERS

..... Respondents

Through : Mr. Ravinder Agarwal,
CGSC.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The instant writ petition has been filed by the petitioner aggrieved by the failure of the respondents to abide by the directions made by this court as back as in the judgment dated 22nd March, 2011 in *WP(C)No.5077/2008, Sudesh Kumar v. Union of India and Another* and connected writ petitions. The court authoritatively decided the issue relating to colour blindness in respect of serving personnel with the Central Para Military Forces whose colour blindness was discovered at the time when they were medically examined for promotional purpose. The court had issued clear directions to the respondents. The respondents were not only refusing promotion but were proceeding to board out such

personnel who were discovered to be suffering from colour blindness.

This court placed reliance on a policy circular dated 29th October, 2008 of the respondents which contained the 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. It was held that this policy deserves to be construed liberally and would apply to all personnel who were serving with the Central Para Military Forces.

The challenge by the respondents was rejected by the Supreme Court.

2. Despite clear directives of the court, the respondents have proceeded arbitrarily in the cases of these petitioners.

3. The petitioners who were before this court in the judgment dated 22nd March, 2011 were otherwise fit for promotion. The respondents however issued a policy dated 18th May, 2012 regulating the continuance of such colour blind personnel in the Central Para Military Forces as well as the terms and condition of said service. Under the shield of this policy, the respondents were denying promotion to the several personnel and proposed to hold the Invalidating Medical Board to board out such personnel. This action of the respondents came to be challenged by way of ***WP(C)No.356/2013, P. Suresh Kumar v. Union of India & Others.*** and connected writ petitions which challenge was also accepted by this court on 28th February, 2013.

4. The following directions of the court in the judgment dated 28th February, 2013 are material for the purposes of the present petition:-

“9. It is, therefore, evident from the above extract that right from 2002 to 2008, the respondents were sensitive and alive to the fact that colour blind personnel recruited prior to 2002 could not be treated differently from their other colleagues who did not suffer from this disability as far as promotion and other conditions of the service were concerned. The doubts expressed from time to time, which were sought to be allayed in the form of Circular dated 29.10.2008 resulted in greater uncertainty and possibly some conflict. All these were given a quietus by the Circular dated 11.3.2011 which reiterated that promotional prospectus of colour blind personnel recruited by any of the forces would not be prejudicially or adversely affected. One would have thought that in such state of affairs and with two adverse judgments by Division Bench, the matter would have ended. This Court is also conscious that the appeals by the respondents through special leave to the Supreme Court against the directions in *Sudesh Kumar's case (supra)* were unsuccessful; the SLPs were dismissed. It meant that not only did the petitioners in *Mohan Lal Sharma and Sudesh Kumar* cases acquire a right in the form of a declaration that they would not be treated differently from their other non-colour blind colleagues, such right also vested and inured in all similarly situated employees and personnel of all the forces. Such being the case, the respondents cannot now argue that in the form of the mere Circular – of 18.5.2012 or in that matter of 27.2.2012, the present petitioners, or those who had not approached the Court, but are found to have the same conditions as the petitioners in *Mohan Lal*

Sharma's case, can be in any manner discriminated against. That some approached the Court whilst the others felt no compulsion to do so, can be no rationale for a valid classification. In fact, the entire class of colour blind personnel under such circumstance is indistinguishable. The respondents cannot treat the equals unequally by separating those who approached the Court and continue to give them promotions and other such benefits while denying the same to those who had not approached the Court and perhaps had no occasion to approach the Court on account of the declaration given. That would be plainly violation of Article 14 of the Constitution of India.

10. As a consequence of the above discussion, it is held that though the respondents have to some extent stated that posts suitable for colour blind personnel have been identified and allocated to accommodate their claims for promotion; it is hereby declared and directed that the effect of the previous judgments of the Court based on the respondents' own thinking contained in the three Circulars dated 17.5.2002, 31.7.2002 and 11.3.2011 would continue to bind the parties. There is, in fact, no denial in the facts situation warranting any different thinking. The petitioners and all others like them would be entitled to full benefits of promotions as is extended to those who do not suffer from colour blindness impugned in the previous directions of this Court in *Mohan Lal Sharma and Sudesh Kumar's case*.

11. In view of the above discussion, all the directions and orders impugned in the present case which denied or deprived the petitioners the chance or right to occupy the promotional posts are hereby quashed. The respondents are directed to issue consequential orders wherever the promotions have been actually effected

with effect from the date the petitioners' juniors were promoted."

5. We may note that in para 10 of the judgment dated 28th February, 2013, this court had specifically directed that not only the petitioners but "*all others like them*" would be entitled to full benefits of promotions as is extended to those who do not suffer from colour blindness in terms of the directions of this Court. Unfortunately, the respondents are miserably failing to abide the specific directives of the court compelling their personnel to repeatedly approach the court.

6. We may note that respondents issued a Circular dated 14th March, 2011 which is to the following effect:-

"Annexure R-1 reads as under:-

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
PERS-II Desk

Subject: **Colour blindness.**

In continuation of this Ministry's UO of even number dated 29.10.2008 and in suppression 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 firearms/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)."

7. The petitioner has placed before this court further directions issued by this court on the 16th of March, 2011 in ***WP(C)No.11855/2009, Mohan Lal Sharma v. Union of India & Others*** issuing directions to the respondents to pass orders with respect to petitioner's promotion to the rank of Sub-Inspector with effect from the date his junior were promoted.

8. Before us, the petitioner was recruited as Constable/GD on 3rd July, 1991 in the CRPF and was promoted by a signal dated 28th March, 2010 from the rank of Constable/GD to HC/GD. Four other were also so promoted. The petitioner complains that the respondents have effectuated the order of other four personnel similarly situated as the petitioner who were promoted by the same signal, the promotion has been denied to the petitioner on the ground that he has been found to be colour blind in the medical

examination conducted after he successfully completed the promotional cadre course.

9. We find substance in the petitioner's contention that given the aforementioned adjudication and the circular issued by the respondents, the petitioner was entitled to be promoted in terms of the signal dated 28th March, 2010 and could not have been denied promotion on the sole ground that he was discovered to be colour blind at that stage. The petitioner has been repeatedly making representations to the respondents over these years but, let alone passing a favourable order, the pleas of the petitioner appears to have been fallen on deaf ears.

10. The petitioner cannot be denied the relief which he had sought in the writ petition.

We accordingly direct as follow:-

- (i) The respondents are directed to issue consequential promotion order promoting the petitioner from the rank of Constable/GD to Head Constable/GD with all consequential benefits including seniority with effect from the date his juniors were promoted.
- (ii) The petitioner shall be entitled to all benefits which were granted to the four other persons (promoted with the petitioner) by the signal dated 28th March, 2010.

- (iii) The petitioner shall be entitled to costs which are quantified at Rs.15,000/-. The same shall be paid along with next month salary to the petitioner.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 22, 2013
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