

Court No. - 39

Case :- SPECIAL APPEAL No. - 353 of 2021

Appellant :- Manish Kumar Singh

Respondent :- Union Of India And 2 Others

Counsel for Appellant :- Shashi Ranjan Srivastava, Mritunjay Mohan Sahai

Counsel for Respondent :- Rajnish Kumar Rai, A.S.G.I., Rajesh Tripathi

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Mritunjay Mohan Sahai, learned counsel for the petitioner-appellant and Sri Rajesh Tripathi, learned counsel for the Railways.

2. The present intra court appeal has arisen from the order of the learned single judge dated 8.10.2021 passed in Writ – A No. 11204 of 2020 (Manish Kumar Singh Vs. Union of India and another). The learned single judge has dismissed the writ petition filed by the petitioner. He has thus refused to interfere with the order dated 20th March, 2021 refusing to treat the petitioner-appellant as medically unfit to discharge his duties on the post of Constable, Railway Protection Force and to be assigned lighter duties.

3. Facts are not in dispute. The petitioner-appellant was appointed on the post of Constable on 25.07.2006. Undisputedly, he was fully medically fit on that date. Later, on 31.01.2009, he suffered an accident wherein, amongst others, he claimed partial loss suffered to his eye sight inasmuch as referring to the report of the Department of Ophthalmology, BRD, Medical College dated 21.02.2009, it has been asserted that the deficiency in colour vision was noted at that stage. Later, he was examined at the All India

Institute of Medical Sciences ('AIIMS' in short) on 16.02.2015. Deficiency of colour perception was noted upon E.G. Lantern test. That deficiency is disclosed to have been reiterated by the AIIMS on 19.10.2015, where 'partial red and green colour deficiency was noted upon Ishihara test. That report is stated to be not disputed or doubted upon the further test performed at Sanjay Gandhi Postgraduate Institute of Medical Sciences ('SGPGI' in short) dated 02.12.2019, wherein "Partially Defective Colour Perception" was noted.

4. In view of such facts, relying on paragraph 512 of Indian Railway Medical Manual, 2000 ('IRMM' in short) read with paragraph 514 and 510 (and para 11), it has been submitted that the learned single judge has erred in not taking note of the essential facts that the Constable falling under B1 Class, was required to be medically fit on colour perception as well. Thus, heavy reliance has been placed on the contents of paragraph 512(2) of the IRMM. Last, referring to Rule 85.4 of the Railway Protection Force Rules, 1987 (hereinafter referred to as 'the Rules'), it has been submitted that the petitioner-appellant had a right to be given alternative job in view of his having failed the vision test.

5. On the otherhand, learned counsel for the respondent- Railway has reiterated the reasoning of the learned single judge. Further, it has been submitted that the petitioner-appellant having been appointed on the post of Constable, he was not required to be medically examined till he attained the age of 45 years. Thus reference has been made to letter dated 21.02.2010 issued by the Chief Medical Officer, taking note of the Railway Board Circular dated 10.11.2004.

6. Referring to the consistent physical fitness of the petitioner-appellant noted in all the medical reports, it has been vehemently urged that the petitioner-appellant was not found suffering from of unfitness on any relevant parameter, as may have warranted assignment of lighter duties.

7. As to the perception of the petitioner-appellant that he would be deprived of promotional opportunity, for reason of partial colour blindness, Sri Tripathi would submit that cause of action has yet not arisen. The petitioner was never ruled out or denied any promotion. Being otherwise medically fit, he remains eligible and bound to perform the duty assigned to him.

8. Having heard, learned counsel for the parties and having perused the record, in the first place it may not be denied that partial colour blindness has been reported by all experts i.e. the Railway Authorities, the Medical College, Gorakhpur the AIIMS and SGPGI. At the same time, it is not denied that the petitioner-appellant was appointed on the post of Constable on 25.07.2006. At present, he would not be 45 years of age. As per his affidavit filed in support of the present appeal, he was about 39 years of age in the year 2021. Thus, according to the policy of the Central Government, under normal circumstances, the railways authorities were not duty bound to consider the case of the medical fitness of the petitioner-appellant before he attained the age of 45 years.

9. In absence of any case of denial of promotion being set up, that cause of action has not arisen to the petitioner-appellant till now. Therefore, the petitioner-appellant may not be right in his contention that partial colour blindness has deprived the petitioner of any promotion, due to him.

10. At present, neither the petitioner-appellant has been denied appointment nor promotion. His functioning on the post of Constable has not been obstructed. To that extent over reliance placed on the contents of paragraph 512(2) of the IRMM is found to be misplaced.

11. Insofar as the petitioner-appellant was appointed on the post of Constable on which his working has not been obstructed for reason of partial colour blindness and further insofar as the respondent employer, of its own chose not to subject the employee serving below the rank of Sub-Inspector to further medical examination up to the stage of their promotion and/or reaching the age of 45 years, the petitioner may not have any real cause of action inasmuch as it is undisputed that he is below the age of 45 years and it is not shown to the Court that any promotional opportunity has been denied to him.

12. In matters of employment, it is not for the Court to enforce eligibility conditions on the employer. It is to be left to the best discretion of the employer to prescribe standards of medical fitness etc. as may best suit the work assigned to different employees.

13. Considering the consistent reports of all Medical Board at different points of time that the petitioner-appellant was otherwise physically and medically fit to discharge his duties on the post of Constable, the respondent employer appears to have allowed him to continue on that post. To that extent we do not find the action taken by the respondent to be arbitrary or unreasonable as may have required intervention by this Court in exercise of judicial review. To that extent the learned single judge has refused to exercise discretionary powers of this Court.

14. Last, an employee who may earn disabilities during employment is required to be protected such that he may not be exposed to unemployment or disadvantageous position. We find no prejudice having been caused to the petitioner-appellant, at this stage inasmuch as it is his own case that he was appointed as Constable and was further allowed to continue on that post, despite his partial colour blindness.

15. Also, no credible material has been shown to us as may lead us to the conclusion that by allowing the petitioner to function on the post of Constable though he may have incurred partial colour blindness, he has been put to any risk to his life or his safety has been compromised.

16. Thus besides the reasoning given by learned single judge contained in paragraph 26 to 28 of the order impugned, for the reasons noted above, we find no good ground to offer any interference in these proceedings.

17. The appeal lacks merits and is **dismissed**.

Order Date :- 6.12.2023

Abhishek Singh

(S. S. Prasad, J.) (S. D. Singh, J.)