

GAHC010244152018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7979/2018

NILOTPAL RABHA AND ANR.
S/O BIJEN RABHA
R/O CHENIGAON
P.O. CHENIGAON, P.S. GORESWAR
DIST. BAKSA (BTAD), ASSAM.

VERSUS

THE UNION OF INDIA AND 2 ORS.
REP. BY THE HOME SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI- 110001.

2:THE DIRECTOR GENERAL OF THE CRPF

AN ORGANISATION UNDER THE MINISTRY OF HOME AFFAIRS
HEADQUARTER AT NEW DELHI.

3:THE COMMANDANT

GRUP CENTRE
SILCHAR

Advocate for the Petitioner : MR. S R RABHA, MR. R BAISHYA

Advocate for the Respondent : SC, C G S C, MR H GUPTA (C.G.C., R1-R3)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (Oral)

Date : 12.08.2024

Heard Mr. S. R. Rabha, learned counsel for the petitioners. Also heard Mr. H. Gupta, learned CGC appearing for the respondents.

2. The petitioners, in the present proceeding have challenged the orders dated 25.05.2018, by which, the petitioners were terminated from their services as Constables, General Duty (GD) in the Central Reserve Police Force (CRPF) by invoking the provisions of Rule 5(1) of "the Central Civil Services (Temporary Service), Rules 1965".

3. The petitioners, herein, in pursuance to a process of recruitment, were selected for appointment as Constable (GD) in the CRPF. The petitioners, at the time of their recruitment were subjected to medical examination and therein, the petitioner no. 1 was found fit in all categories and with regard to the Vision, he was placed at Color Perception-III (CP-III). The petitioner no. 2 was also found to be fit in all respects in such medical examination and with regard to Vision, he came to be placed at category CP-II. The petitioners, thereafter, were sent to Recruit Training Centre, Rajgir, Bihar, on 27.06.2017; for undergoing the basic training. The petitioners while continuing with their trainings, on a suspicion arising with regard to the petitioners suffering from Color Blindness, a board of Medical Officers, consisting of 3(three) Ophthalmologists was so constituted and the petitioners were examined by the said board from 21.08.2017 to 23.08.2017. The board having concluded that the petitioners were suffering from Color

Blindness and they having been so placed in category CP-IV, held them to be unfit for the service. The Principal of the Recruit Training Centre, Rajgir, Bihar, vide communication dated 29.08.2017; returned the petitioners to the Group Centre, CRPF at Silchar. Thereafter, the authorities of the Group Centre, CRPF, Silchar, vide a communication dated 10.10.2017; forwarded the medical board report in respect of the petitioners, herein to the Headquarters for further clarification. The Headquarters, vide the communication dated 21.03.2018, on noticing the deficiencies as noted in respect of the petitioners, herein, proceeded vide communication dated 21.03.2018, to direct the Group Centre, CRPF, Silchar to terminate the services of the petitioners, herein by invoking Rule 5(1) of the "Central Civil Services (Temporary Service), Rules 1965".

4. In terms of the said directives as passed by the Headquarters, as well as basing on the medical report, the Commandant, Group Centre, CRPF, Silchar vide notice of termination of service dated 25.04.2018; intimated the petitioners, herein, that their respective services shall stand terminated w.e.f. the date of expiry of a period of one month from the date on which, the notice was served on them or, as the case may be tendered to them.

5. On conclusion of the period of one month, vide orders dated 25.05.2018, the Commandant, Group Centre, CRPF Centre by invoking the provisions of Rule 5(1) of the said Rules of 1965, proceeded to terminate the services of the petitioners, herein, w.e.f. 25.05.2018.

6. The petitioners, being aggrieved by the said orders dated 25.05.2018, proceeded to prefer individual representations, both dated 25.07.2018; praying for a review of the decision and for their re-allocation against any

other suitable post, including the posts of Trades-men or, any non-combatant role instead of boarding them out from their service in the Force.

7. The said appeals as prepared by the petitioners, were returned vide the communications, both dated 25.05.2018; issued by the Commandant, Group Centre, CRPF, Silchar by observing therein that he was not competent to review the cases of termination of service and accordingly, the appeals as preferred were being returned to the petitioners, herein. The petitioners have not contended to have thereafter preferred appeals before the competent authority.

8. Being aggrieved by the termination as effected in their cases, vide the order dated 25.05.2018; as well as the non-consideration of the appeal so preferred by them against the said orders of termination, the petitioners have approached this Court, by way of instituting the present proceeding.

9. Mr. S. R. Rabha, learned counsel for the petitioner has by reiterating the facts as noticed herein above, submitted that the petitioners at the time of their initial recruitment, were subjected to a detailed medical examination and therein, the petitioners with regard to the Color Blindness were found to be within the permissible parameters for being recruited against the post of Constable (GD). However, subsequently, the petitioners were, during the period of their training, on being subjected to further medical examination, it was detected that they were suffering from Color Blindness and came to be placed in category CP-IV. Mr. S. R. Rabha, submitted that the authorities having already subjected the petitioners to medical examination at the time of their initial recruitment, the subsequent medical examination was not so mandated.

10. Mr. Rabha, learned counsel for the petitioner further submits that the impugned order of termination dated 25.05.2018, was not proceeded by any notice and/or enquiry and accordingly, the petitioners were denied an opportunity to defend their case. Although appeals were filed against the orders of termination dated 25.05.2018, by the petitioners, herein, the respondent authorities have not considered the same. Mr. Rabha, submits that given the nature of the deficiency i.e. Color Blindness, the same would have been so detected at the time of their initial entry. At the time of their initial entry no such deficiency having been noticed and what was detected was found to be within permissible parameters for recruitment, the petitioners ought not to have been terminated from their services on the basis of the subsequent report of the medical board and they atleast ought to have been considered for an alternative employment within the force itself, wherein persons with Color Blindness were permissible to be so engaged. However, the case of the petitioners not being considered for such alternative appointment against the post commensurating to the ailments suffered by them, the respondent authorities had discriminated against the petitioners, herein. Accordingly, in the above premises, Mr. Rabha, submits that the order dated 25.05.2018, mandates interference from this Court.

11. Mr. Rabha, learned counsel for the petitioner, in support of his submissions relies upon a decision of the Delhi High Court in the case of **Sudesh Kumar Vs. Union of India &Ors., [Judgment and Order, dated 23.03.2011]** in **WP(C) No. 5077/2008**, to contend that a person suffering from Color Blindness cannot be boarded out from service and must be permitted to continue in his service with all consequential service benefits. Mr. Rabha, further submits that the said decision of the Delhi High

Court was affirmed by the Hon'ble Supreme Court of India.

12. Mr. H. Gupta, learned CGC appearing for the respondents submits that the petitioners, on being deputed for undergoing the basic training at the Recruit Training Centre, CRPF, Rajgir, a suspicion had arisen of the petitioners being suffering from Color Blindness and accordingly, a board of Medical Officers, consisting of three Ophthalmologists, was so constituted and the petitioners were examined by the said board at the Composite Hospital, CRPF, Ranchi, w.e.f. 21.08.2017 to 23.08.2017.

13. On conclusion of the said examination, the medical board in its report had placed the petitioners in Color Perception-IV category (CP-IV). The petitioners being recruited against the posts of Constable (GD), the guidelines as formulated by the Government of India, Ministry of Home Affairs with regard to the requirement of visual standards for recruitment/retention in respect of Central Armed Police Force (CAPF) and Assam Rifles personnel, vide the notification dated 18.05.2012, having mandated that persons found to suffer with Color Perception Grade-IV, not to be fit for combatant duties; the medical board proceeded to recommend the petitioners, herein, to be unfit on account of the said deficiency for continuance in the force.

14. On the receipt of the opinion of the medical board, the Principal of Recruit Training Centre, CRPF, Rajgir, had returned the petitioners to the Group Centre, CRPF, Silchar, for further action. Mr. Gupta, learned counsel submits that on account of the detection of the petitioners to be suffering from Color Blindness, they were not permitted to take further part in the training programme. Mr. Gupta, has further submitted that after receiving

necessary clarification in the matter from the Headquarters, the Commandant, Group Centre, Silchar, had issued notices of termination from service to the petitioners on 25.04.2018. Thereafter, on completion of a period of one month from the date, the said notices were served upon the petitioners and the impugned orders dated 25.05.2018 came to be issued towards terminating the services of the petitioners, herein.

15. Mr. H. Gupta, learned CGC, submits that the petitioners were given all due opportunities and the steps as taken in their case, after the receipt of the opinion of the said medical board, were so done in terms of the procedure so mandated. Mr. Gupta, further submits that the deficiencies as found in respect of the petitioners, herein, i.e. to be suffering from Color Blindness, is a congenital problem and not one which was acquired by the petitioners after they were recruited as Constable (GD) in the CRPF.

16. Mr. Gupta has submitted that the decision of the Delhi High Court relied upon by the petitioners, would not be applicable to the facts of the present matter, inasmuch as, the steps as taken with regard to the petitioners were so taken in terms of a policy decision of 2012, which was reiterated vide order dated 20.10.2014. The policy decision of 2012 as well as the order dated 20.10.2014, was not under challenge before the Delhi High Court in the case relied upon by the petitioners and also in the present proceedings.

17. Mr. Gupta, further submits that in view of the fact that the petitioners, herein, had not even completed their prescribed basic training and also not possessing requisite qualifications mandated for an alternative appointment and the deficiency as noticed, not being one so acquired in the service, the case of the petitioners for alternative employment in the force would not be

permissible to be so considered. In the above premises, Mr. Gupta, learned CGC submits that the order of termination dated 25.05.2018, requires to be maintained.

18. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

19. The facts pertaining to the services of the petitioners, herein, are not in dispute. It is also not disputed that although the petitioners at the time of undergoing medical examination during their initial recruitment, were found to be physically fit in respect of other parameters, however with regard to vision, they came to be placed at category CP-III and CP-II respectively.

20. The issue in the present proceeding, being with regard to the physical and medical fitness of the petitioners concerned and the same being in relation to the medical examination as made with regard to their eye sight, the other parameters so involved are not being examined. The petitioners, at the time of their initial recruitment were found to be categorized as CP-III and CP-II, on their medical examination and accordingly, they were declared to be fit being within permissible limits of such disability for recruitment. Thereafter, while undergoing basic training, the petitioners were subjected to further medical examination by a medical board constituted to carry out a review medical examination of eye cases. The said medical board, on due consideration of the case of the petitioners, by applying the parameters as prescribed, proceeded to return a finding that the petitioners were suffering from Color Blindness and were placed in category CP-IV. Basing on the conclusions reached in this connection by the said medical board, the board opined that the petitioners were unfit to be retained in the force.

21. The guidelines on visual standards for recruitment/retention in respect of the Central Armed Police Force (CAPF) and Assam Rifles personnel, were so published by the Government of India, Ministry of Home Affairs, vide a communication dated 18.05.2012. In the said guidelines, in addition to the manner and method for carrying out the requisite examination, the color vision standards requisite for recruitment were also prescribed.

22. With regard to a person placed in Color Perception (CP-IV), it was provided that such person shall be permissible for being recruited for various Tradesmen category of jobs in the services. In other words, the recruit placed in CP-IV category would not be eligible for being considered, either for recruitment and/or for retention in combatant posts. It is the guidelines as contained in the said communication dated 18.05.2012, that was holding the field when the petitioners were so recruited.

23. The petitioners, basing on the said medical opinion, further clarified by the Headquarters of the posts, were proceeded to be issued with notices of termination of their services by the Commandant, Group Centre, CRPF, Silchar, vide notification dated 25.04.2018. On completion of the period of one month from the date of issuance of the said notices dated 25.04.2018, the Commandant, Group Centre, CRPF, Silchar, proceeded to issue the order dated 25.05.2018 and by invoking the provisions of Rule 5(1) of the Central Civil Services (Temporary Services), Rules 1965, proceeded to terminate the services of the petitioners w.e.f. 25.05.2018. The provision of the said Rules of 1965 was so invoked as the petitioners were not confirmed in their respective services in the force.

24. The petitioners, being aggrieved had submitted individual appeals in the

matter on 25.07.2018.

25. A perusal of the contentions made in the said appeal would bring to the forefront that the petitioners had not disputed the opinion rendered by the medical board as constituted for re-examination of their respective cases, the petitioners in the said appeal had also not brought on record any other medical report, pertaining to the issue involved i.e. the Color Blindness suffered by them. The petitioners had only in the said appeals after reiterating the facts of their initial recruitment and the initial medical examination undergone by them at that relevant point of time, prayed for their engagement against any trade, for which, Color Blindness is not mandated as an impediment for discharging duties.

26. A perusal of the contentions raised by the petitioners in the individual appeals as filed by them would go to reveal that the petitioners have accepted the opinion as rendered in their cases by the medical board as constituted for their examination at the time they were undergoing basic training.

27. The above conclusions having been drawn, this Court would now consider the decision of the Delhi High Court, relied upon by the learned counsel for the petitioner in the case of **Sudesh Kumar (supra)**.

28. A perusal of the said Judgment and Order, dated 23.03.2011, reveals that in the said case the Delhi High Court had considered the issue of the petitioners, therein, suffering from Color Blindness in the light of the policy decision of the authorities as contained in a circular dated 29.10.2008. Basing on the said circular, the learned Court had recorded its conclusions in the matter. Further, it is seen that the petitioners, therein, were all serving in

the respective forces for considerable period of time.

29. As evident from the affidavits filed by the respondents in the present proceeding, in terms of the decision of the Delhi High Court, the policy guidelines on visual standards for recruitment/retention in Central Armed Police Force (CAPF) and Assam Rifles personnel as notified, vide the notification dated 18.05.2012, more particularly, Paragraphs No. 5 & 6 thereof, were withdrawn by the authorities, vide an order dated 27.02.2013. However, vide an order dated 20.10.2014; on a re-assessment of the matter, the said Paragraphs i.e. the Paragraphs No. 5 & 6 of the guidelines circulated vide the notification dated 18.05.2012, relevant to Color Blindness were re-introduced and the same is contended to be applicable thereafter, including the period during which the petitioners, herein, were so recruited.

30. In view of the order dated 20.04.2014, and the re-introduction vide the same of the Paragraphs No. 5 & 6 of the policy guidelines on visual standards dated 18.05.2012; and there being no challenge in the present proceeding to the order dated 20.10.2014 and also to the policy guidelines on visual standards dated 18.05.2012, the petitioners, herein, cannot be said to be similarly situated like the petitioners before the Delhi High Court in the case of **Sudesh Kumar (supra)** and other analogous matter. Accordingly, the contentions raised by the petitioners in the matter, basing on the decision of the Delhi High Court in the case of **Sudesh Kumar (supra)**, would not merit a consideration by this Court.

31. In view of the said position as emanating from the materials as available record and the petitioner not having prayed for any review to be undertaken with regard to the ailment detected to be suffered by them i.e.

Color Blindness and further, the petitioner having not brought on record any medical opinion from any other medical authority, disputing the opinion of the medical board as constituted for their examination during the time of their undergoing the basic training, this Court in view of the fact that the petitioners, admittedly, on account of the ailments suffered by them were not required to be retained in the services and the placement of the petitioners being in CP-IV category, having rendered them also unfit for recruitment to the service, the impugned orders dated 25.05.2018, would not call for any interference by this Court.

32. Further, the petitioners not having completed their training and also not having been confirmed in their services and no materials having been brought on record to demonstrate that the Color Blindness, as detected in their respective cases, was so suffered by them after their recruitment to the force; the prayers of the petitioners for alternative appointments, wherein, engagement of persons even placed at CP-IV is permissible, cannot be acceded to.

33. In view of the above conclusions reached by this Court, in the matter, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant