

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RAJEEV THAKRAL
2017.12.13 10:35

CWP No.25558 of 2017 (O&M)
Date of Decision:06.12.2017

Mahinder Singh... Petitioner

Vs.

Union of India and others... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. S.S. Gurna, Advocate
for the petitioner.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has sought for quashing order dated 20.11.2015 (Annexure P-13) by which petitioner is held to be ineligible to the post of Sub Inspector (Ministerial) on the score that he is suffering from colour blindness due to which he has been categorized as shape-V. Post of Sub-Inspector (Ministerial) is governed by two sets of Rules. One was issued on 14.3.1989 and the other one in the year 2010 called “Central Reserve Police Force Sub Inspector (Ministerial) Inspector (Ministerial) and Subedar Major (Ministerial) Recruitment Rules 2010 (for short “2010 Rules”). One of the method of recruitment is by way of promotion to the post of Sub Inspector (Ministerial) and equivalent post.

Item No.12 reads as under:

In case of recruitment by promotion/deputation/absorption grades in which promotion/deputation/absorption to be made.
12
Assistant Sub-Inspector (Ministerial) with 06 years of regular service in the grade subject to medical category Shape-I. Note: Where juniors who have completed their qualifying eligibility service are being considered for promotion their seniors in the respective grade would also be considered provided they are not short of requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or 02 years which ever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.

Learned counsel for the petitioner relied on Rule 1989 to contend that he was appointed in the year 2003 prior to commencement of 2010 Rules, therefore, for the purpose of promotion to the post of Sub Inspector (Ministerial), his name is to be considered for promotion under 1989 Rules and not 2010 Rules. He relied on Note of 2010 Rules which reads as under:

“Note: Sub-Inspector (Steno) and Assistant Sub-Inspector (Ministerial) appointed directly up to 25th September 2003 will continue to work in the same level and enjoy the scale available in the hierarchy of the stenography and ministerial cadre respectively as per recruitment rules notified vide GSR No.192 dated 14/03/1989. Thus the SI (Steno) and ASI (Ministerial) appointed directly upto 25th September 2003 will continue to appear in the sub-Inspector (Ministerial) departmental examination for filling up to prescribed quota for the post of Sub-Inspector (Ministerial) as per recruitment rules issued vide GSR No.192 dated 14/03/1989.”

Perusal of Note to the 2010 Rules, it is evident that 1989 Rules is not saved in entirety so as to ignore the aforesaid item No.12 of Rules 2010. Note of 2010 Rules is only to the extent of prescribed quota for Sub Inspector (Ministerial) as per the recruitment rules issued on 14.3.1989. In other words 1989 Rules could be adopted by the official respondents for the purpose of promotion only with reference to prescribed quota. In other words, one cannot ignore item No.12 i.e. criteria of recruitment to the post of Sub Inspector (Ministerial). Therefore, when the official respondents have examined petitioner medically and found that he is suffering from colour blindness and has been categorized as shape-V. Hence, the petitioner do not fulfill the requisite criteria of shape-I for the purpose of promotion to the post of Sub Inspector (Ministerial) (vide item No.12 of Rules 2010).

Thus, the petitioner has not made out a case so as to interfere with impugned decision of the official respondents.

It was further contended that in identical matter, official respondents have entertained such of those employees who are suffering from colour blindness and they have been promoted by giving relaxation.

It is to be noted that if the official respondents illegally extended the benefit and it is contrary to 2010 Rules, petitioner is not entitled to seek any shelter under the official respondents' decision to extend benefit to others. In other words, illegality cannot be perpetuated.

Accordingly, petition stands dismissed.

At this stage, learned counsel for the petitioner submitted that brining him under shape-V category by the official respondents is contrary to the facts. Court cannot assess or re-assess and sit over the medical experts examination and opinion whether petitioner is suffering from colour blindness of Shape-I, Shape-II or Shape-V. Hence, the above contention of the petitioner is hereby rejected.

06.12.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**