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

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Date of Decision: 11.7.2019

% **W.P.(C.) No. 4988/2019**

SHYAM SINGH

..... Petitioner

Through: Mr. Vikash Kumar, Mr. Nikhil Yadav
and Mr. Jitesh Sharma, Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. K.V.Sreemithun, Sr. Panel
Counsel for R-1 with Mr. Amit
Kumar, GP, for R-1, R-2, R-3 and R-
4 with Inspector Firoz Khan.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition seeking a writ of certiorari to quash the termination order dated 29.9.2018 as well as the appellate order dated 2.4.2019 passed by the respondents. By the second order the petitioner's appeal against his termination has been rejected.

2. The petitioner states that he applied for the post of ASI in CISF which was advertised vide the recruitment notice no. F. No.3/1/2016-P&P-II. The petitioner states that he passed the examination in Paper I and Paper-II held on 20.3.2016 and 05.6.2016 respectively. He states that he thereafter

participated in the physical endurance test on 16.7.2016 at Greater Noida and qualified the same and then qualified the mains examination held on 18.12.2016. He was called for the medical examination held from 13.3.2017 to 18.03.2017 at Jalandhar, Punjab and he was found to be fit and eligible for the post of ASI in CISF. He was appointed for the post of ASI/EXE in CISF provisionally and he joined the post on 9.2.2018. He states that his superior officers directed him to go for color vision check-up and under the instruction of Dr. M.N.Sharma, Medical Officer, CISF, the petitioner went to MIOT International wherein he was medically examined for the purpose of color vision check-up. On 13.3.2018 he was found to be fit with normal color vision. He states that the respondents terminated his services without considering his medical examination reports dated 13.3.2017 -18.3.2017 and 13.3.2018, in which the petitioner has been declared fit.

3. The termination order dated 29.9.2018 reads as follows:-

“TERMINATION ORDER

Whereas CISF No. 180406504 (Roll No. 2201057913) ASI/EXE (U/T) Shyam Singh S/o Shri Roshan Lal of 9th Batch has been provisionally appointed for the post of ASI/Exe in CISF on the basis of provisional Offer of Appointment issued vide CISF RTC Arakkonam letter No. E-14099/RTC(A)/CISF/9th(B) ASI/Exe/Trg./2018/1185 dated 08.01.2018, after his selection in CISF through Staff Selection Commission (SSC) examination-2016 and as per provision of appointment order, his is on probation for a period of two years from the date of appointment.

2. Whereas, in accordance with the instructions issued vide CISF HQrs. Letter No. M-20015(18)/CISF/Dir-Med/Colour Vision/2016/966

dated 26.09.2016 that 'colour vision test should be done once at the time of recruitment and later on at the time of basic training', **the medical examination of colour vision test of the ASIs/Exe (9th Batch) was carried out at this RTC Hospital and he had been found to be having "Defective Colour Vision" vide Senior Medical Officer, RTC Arakkonam, Inter Office Note No. E-38099/CISF/Hosp/RtC(A) Colour vision/18-183 dated 16.03.2018. Therefore, he had been further reviewed through medical examination by a Medical board constituted at Composite Hospital CRPF, GC-1, Ajmer, Rajasthan on 09.05.2018, and aforesaid Medical board vide proceeding dated 11-05-2018 had declared ASI/Exe(UT) Shyam Singh "UNFIT" due to defective colour vision CP-IV.**

3. Whereas, by virtue of his being found UNFIT for service due to defective colour vision as stated above, CISF No. 180406504 (roll No. 2201057913) ASI/EXE (U/T) Shyam Singh S/o Shri Roshan Lal of 9th Batch was issued with Show Cause Notice No. E-37035/CISF/RTC/(A)/9th (B) ASI/ Exe/ Termination/Trg/2018/10229 dated 22.09.2018, proposing to terminate his services by giving him an opportunity to submit representation against the proposal with one month. The show cause notice No. (10229) dated 22.09.2018 was acknowledged by ASI/Exe (UT) Shyam Singh on 26.09.18 and he had submitted his representation on 29th Sept 2018 in which he had stated that since he is found medically unfit due to defective colour vision by the board, the authority had taken a suitable action after consider his DME report.

4. Whereas, representation dated 29th Sep. 2018 submitted by aforesaid ASI /Exe (UT) had been

examined: He has not brought forth any reason in his representation as to why his services should not be terminated on the basis of being found unfit by a medical board. Therefore, it has been decided to terminate his services with immediate effect since he is unfit to be retained in CISF due to defective colour vision CP-IV as certified by medical board dated 11.05.2018.

5. NOW, THEREFORE, in pursuance of the Proviso of Rules 25 & 26 of the Central Industrial Security Force Rules-2001, I the undersigned hereby terminate the services of CISF No.180406504 (Roll No. 2201057913) ASI /EXE (UT) Shyam Singh S/o Shri Roshan Lal of 9th Batch with immediate effect.

5. CISF No. 180406504 (Roll No. 2201057913) ASI/EXE(U/T) Shyam Singh S/o Shri Roshan Lal of 9th batch, CISF RTC Arakkonam Shall acknowledge receipt of this order.” (emphasis supplied)

4. The appellate order dated 2.4.2019 reads as under:-

“ORDER

WHEREAS, the services of No. 180406504 Ex-ASI/Exe (UT) Shyam Singh formerly of CISF RTC Arakkonam, *hereinafter referred to as the appellant*, was terminated by Sr. Commandant, CISF RTC Arakkonam vide order No. (0346) dated 29.09.2018 under Rule-25 of CISF Rules 2001.

02. **AND WHEREAS**, aggrieved with the termination order, the *petitioner* has preferred a representation dated 19.02.2019 to AIG, CISF FHQrs., New Delhi which has been re-directed to us by AIG/L&R, CISF FHQrs for disposal of his

representation by IG/SS, as appeal against termination lies to IsG. The ***petitioner*** has put-fourth the following points in the representation and requested for re-instatement into service:-

He has been terminated from service on the basis of the medical examination dated 11.05.18 without considering the medical examination cleared by the ***petitioner*** on previous two occasions i.e, during the course of recruitment which was held on 13.03.17 to 18.03.17 and further at MIOT International Hospital on 13.03.18 during the course of training. The authority did not give any weightage to the said tests conducted by your good office during pre & post recruitment of the ***petitioner***.

03. **AND WHEREAS**, I have meticulously examined the representation filed by the petitioner. As per the guidelines of MHA dated 27.02.13 circulated vide CISF HQ letter No. 1233 dated 18/22.04.2013, *“Any person who has defective vision or is colour blind will not be recruited in future. If any person is wrongly recruited despite having defect in vision or despite being colour blind, he will be promptly removed from service as soon as the defect is noticed.”* Further, MHA letter No. 941 dated 22.09.2016 circulated vide CISF HQ letter No. 966 dated 26.09.16 says *“colour vision test should be done once at the time of recruitment and later on at the time of basic training”*.

04. **AND WHEREAS**, I have verified the case file and found that the petitioner was examined by the Sr. Medical Officer, RTC Arakkonam on 12.03.2018 and found to be having **“Defective Colour Vision”**. On the very next day, a private hospital has examined the petitioner and certified that he is having a **“Normal vision”**. Since the two medical reports are

contradictory to each other, his case was examined by the DIG/Director (Medical) CISF HQrs New Delhi and the *petitioner* was sent for review medical examination at the Composite Hospital CRPF, GC-1 Ajmer, Rajasthan, where he was medically examined on 10.05.2018 by a Board of Officers consisting of three medical officers (Eye Specialists) and the Board declared him “UNFIT” due to defective **colour vision CP-IV** vide their board proceeding dated 11.05.2018. Hence, plea of the petitioner is not tenable; as the appointing authority has rightly terminated the petitioner from service as per rule 25 of CISF Rules 2001.

05. **NOW, THEREFORE,** I do not find any extenuating circumstances to interfere with the order of termination passed by the appointing authority and hereby REJECT the appeal petition dated 19.02.2018 filed against the termination order being devoid of any merit.

06. No. 180406504 Ex.-ASI/Exe (UT) Shyam Singh formerly of CISF RTC Arakkonam shall acknowledge receipt of this order.”

5. From the above, it would be seen that the termination order and the appellate order made reference to medical examination of the petitioner at Composite Hospital, Ajmer, Rajasthan, wherein he was found to be unfit.

6. When the matter came up before this Court, we asked the petitioner whether he was examined by a Senior Medical Officer, RTC Arakkonam on 12.3.2018, and at the Composite Hospital, CRPF, GC-1, Ajmer, Rajasthan, by the Board of Officers on 10.5.2018. The petitioner disputed the said position. He stated that he had not been so examined and found “UNFIT”.

Consequently, the respondents were directed to produce the record in relation to the petitioner's medical examination. Today, learned counsel for the respondents has tendered in Court the certified copies of the medical examination of the petitioner undertaken on 12.3.2018 by the Senior Medical officer at Hospital, Regional Training Centre, Arakkonam. The Out-Patient Slip records that during examination the petitioner was found to have defective color vision. He was referred to Ophthalmologist Government/CGHS Hospital for evaluation of color vision. The appellate order dated 2.4.2019 records that there were two contradictory reports, namely, the report dated 12.3.2019 finding him UNFIT, and other in favour of the petitioner where he was found to be medically fit and, consequently, he was sent for medical examination by the Review Board to the Composite Hospital, CRPF, Ajmer, Rajasthan. The respondents have produced the record relating to the petitioner's medical examination at Composite Hospital, CRPF, Ajmer, Rajasthan. Proceedings of the Board-consisting of three doctors who were specialists have also been produced, which show that the said Board examined six candidates out of whom five were found to be UNFIT- including the petitioner, and only one was found fit. It is not the petitioner's case that the respondents have acted malafidely. No such allegation has been made. He pleaded that since there are two contrary reports, the petitioner may be referred to some other Hospital for re-examination.

7. We are not inclined to adopt that course. As noticed above, the petitioner was found to be unfit on 12.3.2018. Accordingly, another examination was advised from a government/CGHS hospital. He was found

to be fit by the Government/CGHS Hospital on 13.3.2018. Since there were two contradictory reports, he was sent for medical review by the Board to the Composite Hospital, CRPF, Ajmer, Rajasthan. That review has already taken place by competent and qualified specialist doctors, and it is not for this Court to again send the petitioner for another medical examination only to satisfy the petitioner's wish. The respondents are the ultimate authority to conduct the medical examination and it is them, who have to be satisfied with regard to the medical fitness of their personnel.

8. Dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 11, 2019

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