

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

L.P.A. No.716-2016(O&M) in
Civil Writ Petition No.23984-2011
Reserved on : August 22, 2019
Date of decision: January 20, 2020

Raj Kumar Appellant

Versus

Union of India and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr Puneet Tuli, Advocate,
for appellant.

Mr. Arun Gosain, Advocate
for respondent No.1.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 28.04.2015 in CWP No. 23984-2011 titled '**Raj Kumar Versus Union of India and others**' whereby the civil writ petition filed by appellant was dismissed.

2. Appellant applied for the post of Constable (GD) in Border Security Force. He qualified the written test. He appeared for physical efficiency test on 05.03.2011. He was declared medically fit by the Medical Officer in Part-II of the application form. A health certificate was issued by Medical Officer, namely, CMO (SG) 43 Battalion BSF indicating

that he fulfilled the medical standards laid down for BSF and that no disease, constitutional affliction or bodily infirmity was detected and that he was fit for employment in BSF. He was issued letter of appointment dated 28.03.2011 that he had been appointed on provisional basis as Constable (GD). He was asked to proceed to Training Centre, BSF Udhampur. He joined duties on 15.04.2011 and started training with effect from 25.4.2011. When the re-examination of appellant was carried at STC BSF Udhampur in June 2011, he and three others were found to be affected by colour blindness. Through letter dated 29.8.2011 The Presiding Officer, BSF, Fazilka requested The Medical Superintendent, GGS Medical College and Hospital, Faridkot, (Punjab) to carry out the medical examination of appellant. The GGS Medical College and Hospital, Faridkot (Punjab) conducted his medical examination and found that the colour vision of appellant is normal.

3. Order dated 21.11.2011 was passed discharging the appellant from service in exercise of powers under Rule 13 Part-II (Appendix-1, Condition No.2) of BSF Rules, 1969 on the ground of being unfit to undergo Basic Recruit Training. He was discharged from service w.e.f. 26.11.2011. He filed the writ petition assailing that order.

4. In the written statement filed by respondents it was stated that though appellant's medical examination was done at the time of recruitment, but on reporting at Subsidiary Training Centre Udhampur on 15.04.2011, he was further medically examined by the Medical Officer, Subsidiary Training Centre, Hospital Udhampur on 19.05.2011 before

commencement of his Basic Recruit Training. He was found to be suffering from defective colour vision. He was unable to read the Ishihara's plates for colour blindness test. He was referred to Government District Hospital, Udhampur and GMCH Jammu for Ophthalmologist opinion. The Ophthalmologist at Jammu confirmed that he had defective colour vision. Appellant was produced before a duly constituted Medical Board held at FTR HQ BSF Hospital, Jammu from 27 to 29.07.2011 for assessing his suitability for his Basic Recruit Training/Service. The Medical Board confirmed that he was unsuitable/unable to perform Basic Recruit Training.

5. In the written statement it has been further stated that as per Rule 13 Appendix-I, Part-II (Condition of Service No. 2) of BSF Rules 1969 and FHQ BSF (Pers. Dte) Rectt sec) Circular cum SOP regarding relegation and weeding of recruits vide L/No. 29/40 (WO)/99-2002/ Rectt/BSF/1441-1741 dated 28 January 2003, as mentioned in Para 5 (d) of SOP, that in case any permanent ailment, physical deficiency or physical deformity of a recruit is reported which could not be detected at the time of recruitment by a single Medical Officer of the Board, but is detected later on during course/commencement of basic training, it should be examined by the Medical Board to be convened by IG FTR HQ and case subject be referred to FHQ (Pers Dte) for decision in the matter. If the Force HQ finds that individual is suffering from physical deformity and permanent ailment etc., then individual should be weeded out as per Rule 13, Appendix-I, Part-II (Condition of Service No. 2) of BSF Rules 1969 and FHQ BSF (Pers. Dte) Rectt sec). It is further averred that for general duty services, the

colour blindness is a hindrance for performing his duties. Every time the Jawans whether performing their duties at Border or with civil authority have to identify the targets. In case of Colour blindness they may be unable to identify the target and may cause casualties not only to their own persons but also to innocent people. Since 'Colour blindness' is a permanent ailment which has been detected by the Medical Board of Frontier HQ BSF Jammu and further decision in the matter conveyed by the FHQ BSF (Pers. Dte: Esctt Sec) dated 14.11.2011 regarding weeding out of the appellant as per FHQ BSF (Pers. Dte: Esctt Sec) Circular dated 28th January 2003, hence his services were terminated without pensionary benefits w.e.f. 26th November, 2011.

6. Before the learned Single Judge, counsel for the appellant had contended that there was conflict of opinion between the doctors of GGS Medical College, Faridkot and Composite Hospital BSF Jalandhar. In view thereof, to know the true medical condition of appellant, the Medical Superintendent, PGI Chandigarh was requested to get the appellant medically examined from some senior doctors for their opinion as to whether he suffers from colour blindness or not. The report of the PGIMER indicated that appellant has complete inability to identify the colour red. He also has limited ability as regards colour green. The learned Single Judge accepted the said report and dismissed the civil writ petition.

7. In the course of submissions during hearing of the LPA, it was contended on behalf of appellant that as the issue of colour blindness has

arisen after the employment of petitioner with respondents, the respondents ought to have explored the possibility of an alternative assignment for him. It was pointed out that appellant has done Diploma in Diesel Mechanic and was willing to work on technical side for which colour blindness was not a disqualification. Considering the aforesaid submissions of the Counsel for the appellant learned counsel for Union of India was asked to seek instructions.

8. In response affidavit dated 10.11.2017 was filed in which it was stated that the Ministry of Home Affairs, Government of India which was the Administrative Ministry of all the Central Armed Police Forces (CAPFs) had issued circulars/instructions relating to the issue of 'Colour Blindness' being one of the disqualifications for selection in the service for the Central Para Military Forces as there is no chance of improvement in colour blindness patients it being a congenital order. A reference was made to paragraphs 3 and 4 of said circular dated 29.10.2008 which read as under :-

“3. The Central Para Military Forces perform a critical role in maintaining internal security and guarding of national borders. By very nature, the job requirements are 'technical' in nature requiring a high level of physical fitness and abilities. The selection process is also rigorous in nature and every candidate must pass through medical examinations and physical efficiency test. The colour blindness is one of the disqualifications for selection in service for the CPFs. If any person with colour blindness has been selected by chance in the past, considering the requirement of the

CPF's and in the interest of the persons, he or she should be boarded out on account of physical disability. At the same time, if the person has served for a number of years in a Force, it may not be fair to remove him summarily. It has, therefore, been decided that in all such cases which came to light where a person was appointed prior to 17.5.2002 with colour blindness, the concerned Force will try to adjust such a person in non-technical security force where colour blindness may not be a disqualification. However, if the CPF is not able to find a suitable position for the person in the Force, he/she may be removed from service after giving due opportunity to defend his/her case. The cases of colour blindness, if detected in the appointees in the period after 17.5.2002, such person shall be placed in SHAPE-V and be boarded out as per the laid down procedure for disability.

4. CPF's and ADG (Medical) shall also take all measures to see that at the time of the medical examination/PET, the candidates are thoroughly screened for disabilities like colour blindness and in case of detection of such defects at a later date, there should be in-built mechanism to fix responsibility and take exemplary disciplinary action against those found guilty."

9. In the affidavit it was further stated that the Ministry of Home Affairs, Government of India, vide letter dated 18.5.2012 issued 'Policy Guidelines on Visual Standards for recruitment/retention in respect of Central Armed Police Force (CAPF) and Assam Rifles (ARs) Personnel'. As per para 7 of these Guidelines it was proposed that visual standards for

various levels of personnel in CAPF and ARs shall be as per Annexure-I of said Guidelines. 'Table 3' and 'Table 4' of the said Annexure are in respect of 'Direct Entry Subordinate Officers and Other Ranks' and 'Direct Entry Tradesmen/Followers', respectively. As per New Standards mentioned in said 'Table No. 3' and 'Table No. 4' 'CP-III BY ISIHARA' colour vision is required for the recruitment of direct entry Subordinate Officers, Other ranks and Tradesmen/Followers in the CAPFs and ARs.

10. On 2.8.2018, following order was passed :-

“The affidavit dated 10.11.2017 does not appear to be in conformity with the Policy Circular dated 18.5.2012 issued by the Government of India, Ministry of Home Affairs (RA-2). Para 4 (e) of said Circular, in so many words, holds that the person with a colour perception of CP-IV can be employed in various branches including as Electrician etc.

We thus direct the authorities to reconsider the whole matter, take a fresh decision and file compliance affidavit.

List on 24.9.2018.”

In response to this order affidavit dated 09.03.2019 was filed in which it was stated that after passing of the order dated 02.08.2018 by the Court, the matter was examined in detail in consultation with the BSF Headquarter (Personnel Directorate-Estt. Section) and Medical Directorate, New Delhi, being policy matter. It has been observed that Para 4 (e) of Circular dated 18.05.2012, issued by Ministry of Home Affairs, Government of India on the subject 'Policy Guidelines on Visual Standards for Recruitments/Retention in respect of CAPFs and ARs personnel' are only observations/reasoning given by the Board constituted to revise the Policy

on visual standard for recruitment/retention in respect of personnel of CAPFs and ARs by the Ministry of Home Affairs. Para 2 to 6 of said Circular are observations of the Board. In Para 7 of the said Circular, MHA has approved the proposal of Board and decided to implement the new visual standard for various categories of personnel to be recruited as well as serving in CAPFs and ARs as per Annexure-I to the said policy prospectively. The said Circular and Subsequent Circulars issued, if any, are not applicable in Appellant's case as his recruitment had been completed prior to coming into effect of these Circulars. Therefore, benefits as envisaged in post 2012 Circulars cannot be extended to the appellant as he was recruited and medically examined in 2011 and his medical examination would be governed by Policy of 2008. It was further stated that different Recruitment Rules have been prescribed for different posts i.e. Const (GD), Const/Tradesman, HC (Min), Mechanic in MT Fleet etc., as a result of which interchangeability of post for which a candidate had not applied for or considering him for some alternative post/assignment would not be possible. Thus, the feasibility to consider the appellant for alternative assignment assignment/ post is not permissible under the relevant law/policy. Accordingly, it was stated that the contention of the appellant with regard to possibility of an alternate assignment on the ground that he had done Diploma in Diesel Mechanic and that he was willing to work on the technical side cannot be acceded to.

11. It was also pointed out that in the present case services of seven more recruits were terminated on the ground of colour blindness like

that of the appellant.

12. In view of the above stand of the respondents, the appellant having been found to be suffering from colour blindness, the circular dated 18.05.2012 having prospective application to which there is no challenge in the present petition/appeal, and the claim of the appellant for alternative assignment having not been found permissible under the relevant law/policy no relief can be granted to the appellant.
13. Accordingly, this appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 20, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No