

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2037 of 2019

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Captain Deepak Kumar, aged about 53 years (male) S/o Late Vishwanath
Prasad Verma Resident of M- 3/39 Sri Krishnapuri, P.S.- S.K. Puri, Boring
Road, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Cabinet Secretariat Department, Govt. of Bihar, Patna
2. The Principal Secretary, Cabinet Secretariat Department, Bihar Flying Institute, Directorate of Civil Aviation Government of Bihar, Patna
3. The Director, Civil Aviation, Civil Aerodrome, Patna
4. The Bihar Flying Institute, through the Chief Flying Instructor, (CFI) Civil Aerodrome, Patna
5. Capt. Sheo Prakash son of not known to the petitioner, aged about 58 years male, at present the Chief Flying Instructor (CFI), Bihar Flying Institute, Civil Aerodrome, Patna
6. Capt. Puja Sandwar , female, aged about 50 years, wife of not known to the petitioner at present working as Pilot Instructor, Bihar Flying Institute, Civil Aerodrome Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukul Sinha,, Adv.
For the State	:	Mr.Gyan Prakash Ojha GA-7
For Res No. 6	:	Mr. Baban Kumar, Adv.
For Res. No. 5	:	Mr. Sanjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 25-07-2022

Heard learned counsel for the petitioner, leaned counsel
for the State, learned counsel for the respondent No-5 and
learned counsel for the respondent No. 6.

2. The writ petition has been filed by the petitioner being



aggrieved by the promotion as Flying Instructor granted to Respondent No.6.

3. The petitioner's case is that the Respondent No.6 was not eligible for the promotion. The petitioner, being senior to the Respondent No.6, was possessing requisite qualification for the promotion in-question has been ignored and discriminated against in the matter of promotion. Accordingly, the petitioner has prayed for quashing of the notification dated 31-10-2018, bearing Memo No. 532 issued by the Principal Secretary, Cabinet Secretariat Department, Bihar promoting the Respondent No.6 to the post of Flight/Pilot Instructor.

4. According to the petitioner, he was appointed as Assistant Flying Instructor in 2006. Upon completion of 5 years, being the requisite length of service for promotion, the petitioner became eligible for promotion as Flying / Pilot Instructor. The petitioner had filed CWJC No. 2473 of 2014 claiming the relief that his case be considered for grant of promotion to him. The present Respondent No.6, was a respondent in the writ proceedings arising out of CWJC No. 2473 of 2014, which was disposed of with a direction to the authorities to take up and consider the case of the instant petitioner and others for grant of promotion in accordance with



law.

5. Thereafter, Departmental Promotion Committee (for short 'DPC') examined the claim for promotion in question and on 24-07-2015. DPC was of the opinion that the Air Force Medical Board dated 24-06-2015 had found the petitioner to be colour blind having colour perception- Level-IV (CP-IV). Since the petitioner would also be required to discharge the responsibilities of night time training, it was considered that he would not be in a position to correctly identify the precision Approach Path indicators (PAPI) light signals. The petitioner was, thus, not found worthy of being promoted as Flight/ Pilot Instructor. Insofar as the Respondent No.6 is concerned, though she fulfilled all the requisite qualification, she was lacking the requisite five years service as Assistant Flight Instructor as prescribed in the General Administrative Department Resolution dated 09-06-2011, in view of the fact that she had been appointed on 20-02-2014. The third candidate; who was also considered by the DPC was also found unfit for promotion.

6. It is the petitioner's case that some time later, he was surprised to learn that Respondent No.6 had been promoted by the impugned notification dated 31-10-2018.

7. It is submitted that the promotion has been granted by



a DPC dated 08-10-2018, as per disclosure made in the counter affidavit filed on behalf of the Respondent Nos. 1 to 4. This DPC was not constituted in accordance with the Bihar State Civil Aviation Service Recruitment Rules 1997 (for short ‘ the 1997 Rules’). It is also submitted that the length of service as Asstt. Flight Instructor required for promotion as Flight Instructor is five years. The respondent No.6, who, admittedly, assumed charge on the post of Asstt. Flight Instructor on 20-02-2014, did not fulfill the requisite length of service as Assistant Flight Instructor, and as such, was not ineligible for consideration. The Authorities, however, have promoted the Respondent No.6 and the petitioner, who had overcome his physical disabilities, fulfilled the requisite length of service, and was senior to Respondent No.6, has been ignored.

8. The respondents have filed counter affidavits.

9. The stand taken by the State respondent in their counter affidavit is that the medical guidelines issued by the Director General of Civil Aviation, Government of India (for short ‘DGCA’) has mandatorily laid down that all Flying/ Flight Officers have to undergo and submit a medical report by a competent authority once in a year up to the age of 40 and, thereafter, twice in a year for being eligible to fly aircrafts.



10. The DGCA has also issued a handbook for colour perception. As per the handbook, the colour perception of an individual is assessed by a technique of colour Vision Examination Test. Ishihara Plate Test are used for screening throughout the world, including under the DGCA. This plate does not diagnose type or severity of colour deficiency, but simply identify whether the subject has normal or is having red/green deficiency. Ishihara Plates consist of colour defined number embedded within different colour dots. The plates are so designed that dots are grouped by colour causing a number to emerge from the background which can be correctly recognized by people with normal colour vision. When a person does not have a normal colour vision all the dots appear to be of the same colour. The colour deficient observer would either fail to see the number altogether or make a mistake in recognizing it correctly.

11. 24 to 38 colour plates are used in the Ishihara Plates Test. The first Plate, when it is shown as an introductory example, can be read correctly with those with normal or colour deficient vision. In Plates 2 to 9 a number can be seen by those with normal colour vision, however, a different number is seen by people with red-green colour deficiency. Plates 10 to 17



when shown to the subject is perceived to be displaying a number by those with normal colour vision, but cannot be seen by people with red/green colour deficiency. In Plates 18 to 21, the number cannot be seen by those with normal colour vision, but can be seen by people with red/green colour deficiency. Based on perception of the individual, they are classified as having normal colour perception or defective colour perception. The petitioner's colour perception declared as (CP-IV) is a classification when colour perception is defective and unsafe.

12. In fact, since 2007, the Medical certificates of the petitioner have declared him to be medically unfit on the ground of defective colour perception and suppressing the same, the petitioner has entered into the services. Based on this deficient colour perception the petitioner had earlier been classified as medically unfit and unsafe and denied promotion by the DPC on 24-07-2015, pursuant to the order passed by this Court earlier in CWJC No. 2473 of 2014. The decision of the DPC dated 24-07-2015 was never denied or disputed by the petitioner, let alone, assailed by him. The petitioner, therefore, is conscious of his physical disqualification since long before DPC dated 08-10-2018. He has also not assailed the constitution of the DPC dated 24-07-2015. The petitioner, therefore, is now



stopped from assailing the constitution of the DPC dated 08-10-2018, which is same as DPC dated 24-07-2015.

13. The Respondent Nos. 5 is the Chief Flight Instructor of the Bihar Flying Institute. According to him, the petitioner was declared ineligible for promotion in question on account of the same colour perception, which he has never assailed and the assessment has been accepted by him. The petitioner, therefore, had no *locus* to participate in the promotion process again, or claim the promotion in question and/or challenge the promotion of respondent No.6. He too has reiterated the submission of the State counsel regarding petitioner gaining initial entry in service by suppressing his deficiency (CP-IV). The medical certificates consistently show that the petitioner has been declared to be temporary medical unfit on ground of colour perception (CP-IV), which is a defective and unsafe colour perception. He, therefore, is not qualified for promotion as Flight Instructor.

14. In the counter affidavit filed by respondent no.6, she has relied upon the resolution dated 05-06-2018 issued by the General Administrative Department, which is also relied upon by the State Government in its counter affidavit (Annexure-J) to content that the same provide for relaxation of the requisite length of service. The promotion granted to her cannot



be faulted on the ground of not having the requisite length of service of five years. As per resolution dated 05-06-2018, the prescription of length of service was not fixed, but was subject to relaxation by the competent authority. The proceedings of the DPC which have been placed on record shows that the same has considered her eligibility with reference to the requisite length of service (five years) and she has been found having the same in terms of the resolution dated 05-06-2018. The respondent no.6 has specifically averred that in between 2010-2012, the writ petitioner had been declared medically unfit. The other Assistant Pilot Instructor, namely, Captain Puneet Kumar was not working. The Bihar Flying Institute was thus facing inability to provide regular and adequate training to the almost 80 trainee pilots. The Institute, therefore, gave a proposal to the Departmental Head, namely, Principal Secretary, Cabinet Secretariat, to appoint one Pilot Instructor on contract basis for a period of at least one year. Proposal was approved and forwarded to the Chief Minister with the detailed proposal; and duly approved on 12-07-2012.

15. The post of Pilot Instructor was advertised in the daily newspaper. The respondent no. 6 participated in the selection process being conducted under the Chairmanship of the



Principal Secretary, Cabinet Secretariat Department along with Technical Committee. She was found to be fit and appointed on contract basis for a period of one year, duly approved by the Hon'ble Chief Minister. The appointment letter of Respondent No.6 has also been placed on record as Annexure- R6/5 to the counter affidavit filed on her behalf. The office order appointing the petitioner on contract basis for one year is dated 19-09-2012.

16. Subsequently, the post of Assistant Pilot Instructor was advertised for regular appointment. The respondent no.6 applied, was subjected to the process of selection and having scored the highest marks amongst all the three applicants, she was recommended by the Committee to be appointed on the regular post of Assistant Pilot Instructor. This appointment was also approved by the Hon'ble Chief Minister. Since the respondent no.6 had worked on contract basis as a Pilot Instructor, since 19-09-2012, prior to her appointment on regular basis as Assistant Pilot Instructor on 19-02-2014, the petitioner fulfilled the requisite length of service in terms of the resolution dated 05-06-2018.

17. Upon hearing the submissions of the parties, in the court's opinion, the first issue that emerges is regarding the petitioner's *locus* to assail the promotion granted to Respondent



no.6. The admitted position is that based on Medical Assessment, the petitioner was found to be having colour perception IV (CP-IV) and thus was found unfit in the DPC which was conducted for promotion of Assistant Pilot Instructor to Pilot Instructor on 24-07-2015. Between 24-07-2015 and 08-10-2018, i.e. the date of DPC in which the Respondent No.6 was found fit for promotion, the petitioner's medical deficiency (CP -IV) has remained the same. In view thereof, the petitioner was unfit for being promoted from Assistant Pilot Instructor to Pilot Instructor in view of the 1997 Rules. Being medically unfit the petitioner would be disqualified from consideration for promotion as Pilot Instructor. The composition of DPC, which has considered the promotion from Assistant Pilot Instructor to Pilot Instructor is one and the same in both the DPC's dated 24-07-2015 and 08-10-2018. The petitioner has participated in both the DPC's without any objection. In fact, petitioner's rejection by DPC of the same composition on 24-07-2015 was never questioned by the petitioner on the ground of any infirmity in composition of the DPC.

18. In view of these circumstances, the petitioner cannot be permitted to now assail his assessment of (CP-IV), and /or contend that the DPC's constitution was suffering from



infirmity, moroso, in view of the stand of the State Government in its counter affidavit that DPC of the same composition has been considering the promotion in past also. The petitioner is estopped and lacks any *locus* to assail the promotion granted to the respondent no.6 as he has no competing interest with the respondent no.6. In between rejection of the petitioner's claim for promotion on 24-07-2015 and 08-10-2018, being the date of next DPC, nothing has been placed on record to show that the petitioner was held to be having the requisite colour perception for the service in question, by the competent authority. The DPC of 08-10-2018 (Annexure- I to the counter affidavit filed on behalf of respondent Nos. 1 to 4) has also taken note of the petitioner having colour perception (CP -IV) which is defective and unsafe based on declaration by the DGCA.

19. In his reply to the counter affidavit, the petitioner has referred to one Medical Assessment Report dated 04-07-2018 (Annexure-21). On perusal of the same, however, it is clear that the same is dated 14-01-2019 and not of a date prior to DPC in question, i.e. 08-10-2018. The petitioner's counsel has not been able to show any Medical Assessment of a date in between 24-07-2015 and 08-10-2018 showing that he has been cured of (CP-IV). All the records consistently record (CP-IV), or contain



an advise for review of (CP-IV) by the DGCA. The petitioner being ineligible for the promotion in question cannot be considered to be a person aggrieved by the promotion of respondent no.6, so as to give him an opportunity or *locus* to assail the promotion by invoking writ jurisdiction.

20. As regards, the allegation of deficient length of service of respondent no.6, this Court would refer to the proceedings of the DPC dated 08-10-2018 from which it is apparent that the issue has been considered as per resolution dated 05-06-2018. The fact that respondent no.6 has worked as Pilot Instructor on contract basis pursuant to her selection on 19-09-2012 prior to her regular appointment as Assistant Pilot Instructor on 19-02-2014 is not denied or disputed. Such contractual services rendered on the promotional post of Flight/Pilot Instructor could be added for the purposes of counting the specified minimum length of service, as per Clause (vii) of the resolution dated 05-06-2018, which reads as follows:-

“(vii) सामान्य प्रशासन विभाग, बिहार, पटना के संकल्प संख्या— 13295 दिनांक—28.09.2016 के कंडिका—5(iv) के अनुरूप अगले प्रोन्नत पद पर विधिवत/नियमित प्रोन्नति हेतु निर्धारित न्यूनतम कालावधि में स्थानापन्न/तदर्थ/कार्यकारी प्रोन्नति के रूप में बितायी गयी अवधि को जोड़ा जा सकेगा।”

21. Even if it is to be accepted that the respondent no.6 had worked as Pilot Instructor on contract basis for one year



only, and that is added to her regular service as Assistant Pilot Instructor then, in view of Clause-(vii) of the resolution dated 05-06-2018, it cannot be said that respondent no.6 was not possessing requisite minimum length of service. Admitted date of appointment of respondent No.6 is 20-02-2014 and admitted date of DPC is dated 08-10-2018. From the date of appointment till DPC the admitted length of service of Respondent No.6 is about 4 (four) months short of requisite 5 (five) years length of service. Even if one year of contractual service of respondent No.6 is added to this as per Clause (iii) of Resolution dated 05-06-2018, then there is no doubt whatsoever that she has more than minimum requisite length of service for promotion to the post of Flight/Pilot Instructor.

22. For the reasons indicated above, this Court would find that the petitioner has not been able to make out a case for assailing the promotion granted to respondent no.6.

23. The writ petition is, accordingly, dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	29-06-2022
Uploading Date	17-08-2022
Transmission Date	

