



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: July 12, 2022
Pronounced on: July 18, 2022

+ W.P.(C) 870/2021

RAMDAYAL

..... Petitioner

Through: Mr. K.K. Sharma and Mr. Harsh,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Vikrant N. Goyal and Mr.
Shikhar Sardana, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. By the instant petition the petitioner is seeking the following reliefs:-

“(a) To issue a writ of mandamus or any such order by quashing the impugned order dated 02.10.2020 as passed by the Respondent No.2 to 4;

(b) To issue a writ of mandamus or any such order by directing the Respondent No.2 to 4 to grant the Promotion to the Petitioner of Assistant Sub Inspector post from the date when his batchmates and similarly placed personnel have been promoted as Assistant Sub Inspector by granting the relaxation to the Petitioner in terms clause 4.17 (b) (iv) of Standing order 04/2008 dated 15.12.2008 and in terms of judgment and order dated 13.12.2018 in the matter titled as Venkatesh Vs.



Union of India and Ors. W.P. (C) No. 11263/2015 as passed by this Hon'ble Court."

2. As per the case of petitioner, he joined CRPF as constable/GD on 15.07.1991 and while undergoing training at RTC Neemuch, the petitioner participated in a hockey tournament organized by the respondent. Unfortunately, while playing in the said tournament he sustained injuries on his left eye by a stick on 23.05.1992. After being treated at CRPF Hospital, Neemuch and Base Hospital, Hyderabad, the petitioner completed remainder of his 36 weeks training at RTC Neemuch. Meanwhile in a Court of Inquiry, the Inquiry Officer concluded that the injury sustained by the petitioner occurred during the course of play and neither anybody could be held responsible for the lapse nor could be blamed. Upon completion of training, the petitioner was declared fit for duty and was given post at 33 Bn. CRPF in February 1993 and where he actively discharged his duties and also participated in various tournaments. The petitioner then qualified for the Section Commander Course at S. No. 28 at Lucknow in the year 2003 and upon promotion as Head Constable on 01.06.2010 was transferred to 215 Bn.

3. Thereafter, even though the petitioner's name was reflected in order No. P.VII-1/2019-117-EC-I dated 30.10.2019, whereby the respondents



declared the list of candidates promoted from the post of Head Constable/GD to the post of Assistant Sub Inspector, he was not released by the respondents since he was declared SHAPE-II (E2) medical category in the Annual Medical Evaluation on 24.04.2019 due to injury sustained on his left eye and since a candidate had to be SHAPE-I medical category for promotion. Strangely, this was despite the fact that the petitioner was performing all his regular duties.

4. Having come to know of the above, the petitioner requested the respondents to release his promotion for the post of Assistant Sub Inspector as the SHAPE-II medical category was due to injury sustained on the left eye on 23.05.1992 during training while he was on 'active duty'. In response, vide order dated 02.10.2020, which is under challenge before this Court by way of the instant petition, the respondents denied him relaxation for promotion to the post of Assistant Sub Inspector on the ground that the petitioner sustained the injury by a hockey stick on 23.05.1992 and as the SHAPE-I medical category is mandatory for promotion and further as the relaxation could only be granted to those who had been injured/wounded during war or while fighting against the enemy/militant/intruders/armed hostiles or insurgents etc.



5. The aforesaid led to filing of the present petition before this Court wherein the petitioner has raised various grounds and the learned counsel for the petitioner has argued, *firstly* that the action of the respondents is illegal and is against Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents and *secondly* that the petitioner sustained the injury on his left eye while playing a match during the hockey tournament organized by the respondents when he was on ‘active duty’ and *thirdly* that the case of the petitioner is squarely covered by the judgement in the case of ***Venkatesh Vs. Union of India and Ors. 2018 SCC OnLine Del 12909*** passed by a co-ordinate bench of this Court, on which the learned counsel for the petitioner places heavy reliance, whereby similarly situated personnel like the petitioner upon grant of similar reliefs were duly promoted.

6. This Court while issuing notice to the respondents called upon them to file their counter affidavit. In the counter affidavit filed by respondents, they have *admitted* that the petitioner sustained injury on his left eye on 23.05.1992 during playing hockey while he was in ‘active duty’ and averred that the respondents announced the list of names vide order dated 30.10.2019 for the candidates who were given promotion from the post of



Head Constable/GD to the post of Assistant Sub Inspector without including the name of the petitioner as he was declared SHAPE-II (E2) medical category in his Annual Medical Examination conducted on 24.04.2019 whereas SHAPE-I medical category is must for promotion.

7. This Court, after perusing all the relevant documents on record and hearing the submissions of learned counsels for both parties, finds that the moot issues before us are: *“Whether the petitioner was on ‘active duty’ at the time of sustaining injury?”* and *“If so, whether he is entitled to the benefit of Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents?”*.

8. As the major dispute(s) in the instant petition revolves around the interpretation of Clause 4.17(b)(iv) of SO No. 4/2008 dated 15.12.2008, the same is reproduced hereunder:

“4.17. Relaxation in SHAPE-1 Medical Category

The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:- a. Official/Personnel wounded/injured during war or while fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:-



- i) Individual low Medical Factors
 - (aa) H2 or E2 opr P2 (Dental) which will be considered at par with SHAPE-1; and;
 - (ab) A2 or P2 or A3
- ii) Combined Low Medical Factors
 - (aa) H2 and E2 combined and
 - (ab) H2 or E2 combined with A2, A3 or P2

b) Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE Categories:-

- i) SIHIA2PIE1 (ii) SIHIAIP2E1 (iii) SIH2A1PIE1
- (iv) SIHIAPIE2 (v) SIH2APIE2”

9. This Court, in view of the various documents on record and the admission made by the respondents in their counter affidavit, has no hesitation in holding that the petitioner *admittedly* already stood categorised under permanent E2 medical category and the petitioner was on ‘active duty’ at the time of sustaining injury on his left eye on 23.05.2022.

10. This Court, from a bare reading of the said Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents, has no hesitation in holding that as apparent therefrom E2 medical category is indeed recognised as one of the medical category for grant of relaxation in the SHAPE-I medical category. In view thereof, the petitioner is entitled to



the benefit of Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents.

11. The aforesaid findings of this Court already stand fortified by the judgment of a co-ordinate bench of this Court in re.: **Venkatesh Vs. Union of India and Ors. (supra)** wherein it has been held as under:-

“12. Therefore, it is seen that in terms of para 4.17 (B) (v), a permanent E2 medical category, which is the categorization as far as the Petitioner is concerned, is recognized as one of those medical categories which would be viewed as a relaxation in the Shape-I medical category. The Further question that arises is whether the Petitioner fulfills the requirement to be considered eligible for such relaxation. In other words is the accident suffered by the Petitioner, as a result of which his medical category is E2, “while on active government duty in India”.

13. Section 2(a) of the CRPF Act defines ‘active duty’ means the duty to restore and preserve order in any local area in the event of any disturbance therein.

14. The stand of the Respondents is that this expression ‘active duty’ has to be read as administrative genres with the circumstances mentioned in para 4.17 B i.e. a duty which could envisage “field firings, accidental firings, explosion of mines or other explosive devices”. In other words, the Respondents want to narrow down the expression “accidents” to only those accidents of the aforementioned kind and not just about any accident.



15. *There is a difficulty in accepting the submission on behalf of the Respondents. A member of the CRPF does not cease to be on active duty only because he is not actually in the line of firing or dealing with mines or other explosive devices. A member of the CRPF continues to remain on duty in whichever post he is - whether it is an anti-insurgency station posting or a peace posting. He is expected to be ready to perform his duty "to restore and preserve order in any local area in the event of any disturbance there". To elaborate even in a peace station when members of the CRPF are engaged in an activity which is formed part of their assigned duties and suffered an accident, that accident cannot be characterized as not big incurred while on 'active duty'. It is the preparedness to participate in all activities to restore and preserve order in any local area that is determinative of whether a person is on 'active duty' or not.*

16. *For instance, if in a peace station as part of a regular drill that the officers have to undertake for maintaining their fitness, an accident takes place which reduces an officer medical category from Shape-I to Shape-II and to be more precise to the E2 permanent medical category. It cannot be said that this is on account of an accident that was not suffered one being on 'active duty'. At any point in time as long as the officer in that station and in that posting, he may be called upon to perform active duties and therefore to restrict the expressions 'accidents' to only those incurred during "field firings, accident firings, explosion of mines" will not do justice to the intention behind providing*



for such relaxation.”

12. In view of the aforesaid findings of this Court and the fortification thereof by a co-ordinate bench of this Court in ***Venkatesh Vs. Union of India and Ors. (supra)***, this court has no hesitation in holding that by virtue of Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents, E2 medical category is recognised as one of the medical category for grant of relaxation in the SHAPE-I medical category and that the petitioner has fulfilled the requirement for being considered eligible for such relaxation at the time of his promotion. As such the petitioner is well and truly entitled to the benefit of Clause 4.17(b)(iv) of the Standing Order 04/2008 dated 15.12.2008 issued by the respondents, more so that as the petitioner sustained injury on his left eye while on ‘active duty’ while playing a hockey match in a tournament organized by the respondents when he was undergoing training with the respondent-CRPF.

13. The instant petition is thus allowed and the impugned order dated 02.10.2020 passed by respondents no.2 to 4 is set aside and further the said respondents no. 2 to 4 are directed to pass appropriate orders for promotion of the petitioner to the post of Assistant Sub Inspector alongwith all statutory and consequential benefits from the date when his batchmates and similarly



placed personnel already stand promoted on the same post of Assistant Sub Inspector by granting the relaxation to the Petitioner in terms Clause 4.17(b)(iv) of Standing order 04/2008 dated 15.12.2008 issued by the respondents within *four weeks* from today.

14. The aforesaid writ petition is accordingly allowed in the above terms.

(SAURABH BANERJEE)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

July 18, 2022
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