



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.460/2022</u>	
<u>PETITIONER</u>	Kiran Arun Gote Age 26, An Adult, Indian Inhabitant, Resident at – Jeur, Post – Wakhari, Tal. Malegaon, Dist. Nashik Maharashtra – 423 106.
<u>...Versus...</u>	
<u>RESPONDENTS</u>	1. The Union of India The Ministry of Home Affairs through the Directorate General, C.R.PF. (recruitment Branch), East Block-07, Level-4, Sector-01, R.K. Puram, New Delhi – 110066. 2. The Staff Selection Commissioner New Delhi through its Secretary, Lodhi Road, New Delhi. 3. Regional Director (Western Region) Staff Selection Commission Pratishtha Bhawan (Old CGO Building), 1st Floor, South Wing, 101, Maharshi Karve Road, Mumbai -400020 India. 4. The Deputy Inspector General of Police, Group Centre, CRPF, Nagpur, Maharashtra – 440019.
Mr. N.S. Khubalkar, Advocate for petitioner Mr. V.A. Bramhe, Advocate for respondents	

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

DATE : 11/09/2023

ORAL JUDGMENT: (PER : AVINASH G. GHAROTE, J.)

1. Heard Mr. N.S. Khubalkar, learned counsel for the petitioner and Mr. V.A. Bramhe, learned counsel for the respondents. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

2. The petition challenges the communication dated 08/05/2021 (pg.72) by which the petitioner has been discharged from the employment of the respondents by cancelling the appointment order dated 13/02/2021, by which the petitioner was appointed as a Constable (General Duty) with the Central Armed Police Forces (CAPF). It is contended that the petitioner had cleared the medical examination and by the order dated 13/02/2021 (pg.69) he was asked to join duty, which he accordingly joined on 16/03/2021. Thereafter, since there was some doubt about the eyesight of the petitioner, a detailed medical examination was conducted in which it was found that the petitioner was colour-blind (pg.99), on the basis of which, it was opined that the petitioner was

unfit. A review medical board thereafter was constituted (pg.101), which again on 08/05/2021 rendered an opinion that the petitioner was unfit on account of colour blindness. The petitioner thereafter by the impugned order dated 08/05/2021 (pg.102) was discharged from services by cancellation of his appointment order, which has been challenged in this petition. This Court by the order dated 30/03/2023 had requested the Directorate General of BSF to constitute a medical board to examine the petitioner, which was agreed to and the medical examination was to be done consistent with the guidelines dated 18/05/2012 on visual standards for recruitment/retention in respect of Central Armed Police Forces (CAPF) and Assam Rifles (ARF Personal), in pursuance to which order, the Board was constituted and found the medical status of the petitioner to be unfit on the ground that the colour perception of the petitioner was of Grade-IV, whereas the acceptable colour perception was of Grade-III (pg.119). By an order dated 19/08/2023, the learned counsel for the petitioner was directed to make a statement as to whether there was a method of determining colour blindness defect was congenital or subsequently acquired. Upon the learned counsel for the respondents, answering in the affirmative, such a test

was directed to be conducted by the order dated 30/08/2023, in pursuance to which, a report has been filed on record dated 04/09/2023 along with the pursis dated 05/09/2023, which renders a finding that the petitioner had colour blindness in both eyes, which is symmetrical and not associated with any abnormality of retina or optic nerve and the colour blindness therefore was congenital.

3. Mr. Khubalkar, learned counsel for the petitioner submits that since the petitioner was initially found fit and had joined his duties on 16/03/2021, and the validity of the medical examination was extended by another year (pg.78-A), there was no necessity of any further examination and the petitioner's right to continue with the employment had fructified and thus could not have been taken away. He further relies upon Rule 16 (a) of the Central Reserve Police Force Rules, 1955 (for short, "CRPF Rules, 1955") to contend that before discharge one month's notice by the appointing authority was necessary, which having not being given, the same would therefore fall foul of the statutory provisions and the discharge could not be sustained. Relying upon *Mintu Mondal Vs. Union of India and Ors.* 2017 SCC OnLine Cl 8839 and *Sudesh Kumar Vs. Union of India (UOI) and Ors.* MANU/DE/1009/2011, it

was contended that a similar course of action could have been adopted.

4. Mr. Bramhe, learned counsel for the respondents supports the order of cancellation of the appointment by contending that since the defect was congenital in nature, the withdrawal of the appointment was justified. He further relies upon clause 3 (s) of the offer of appointment dated 13/02/2021 (pg.69) to indicate that the joining of the petitioner was subject to the petitioner being declared medically fit by the CRPF medical officer. He further submits that considering the nature of the services, colour blindness of the petitioner, was a defect of such a nature which would not render him fit for the purpose of the duties for which he was claimed to have been selected.

5. A perusal of the offer of appointment dated 13/02/2021 (pg.69) would indicate that the petitioner was provisionally selected for appointment as constable (General Duty) in CRPF, which post was purely temporary, but was likely to continue. Clause 3 (s) of the offer of appointment being material is quoted as under:

“3. (a)...

(s) The findings/opinion of the recruitment medical board is valid for one year from the date of fitness to join the service. If you join the service after validity period of recruitment medical, you will be examined by CRPF medical officer for any disease/deformity that might have arisen after the recruitment medical. You will be permitted to join duty only after declaring medically fit by the CRPF Medical officer. If you accept the offer of appointment on the terms and conditions mentioned above, you should report for duty to The DIGP, GROUP CENTER, CRPF, HINGNA ROAD, NAGPUR, MAHARASHTRA – 440019 on or before 17/03/2021 (F.N.) Repeat in the forenoon of 17/03/2021 (F.N.) with original copies of the following documents :-

(i) to (x).... documents listed.”

6. The offer of appointment, was therefore, dependent upon the petitioner being declared medically fit by the CRPF medical officer and not otherwise. It is not disputed that the petitioner upon examination by the medical officer as indicated above, was found to be medically unfit on account of he being colour blind. The contention therefore, that though the petitioner was initially found fit and had joined his duties on 16/03/2021, there was no necessity of any further examination, is clearly incorrect, in view of the specific requirement in that regard as incorporated in Clause 3 (s) of the offer of appointment. It therefore cannot be said that merely because petitioner was permitted to join on 16/03/2021, a right had accrued in his favour, for the reason that such a right was clearly

subject to his being found to be medically fit. Even the exercise of medical examination conducted in pursuance to the orders of this Court, indicate that the colour blindness with the petitioner is congenital and considering the nature of the post, to which the petitioner claimed appointment, it has been held by the respondents that he was unfit. What can be the criteria for appointment to a post, which can any time, see combat considering the nature of the post, would be solely within the domain of the employer and the Courts cannot interfere to suggest what can be the criteria, as that is not the domain of the courts. In view of the above position, therefore, in our considered opinion, no right had accrued in favour of the petitioner.

7. The further contention that the provisions of Rule 16 (1) of the CRPF Rules, 1955 has been violated inasmuch as one month's notice has not been given as the petitioner has been discharged, also is misconceived. It is material to note that the petitioner has not been discharged. By the impugned order (pg.72), the offer of appointment has been withdrawn/cancelled for the reasons stated above and therefore, Rule 16 (1) of the CRPF Rules, 1955 would clearly not be attracted.

8. ***Sudesh Kumar*** (supra) was a case in which the petitioner was appointed as a constable on 19/04/2003 and continued in employment for number of years when in pursuance to an advertisement dated 19/03/2007 he sought career progression and offered his candidature for being appointed as a sub-inspector. Though he cleared the examination, however, in the medical examination conducted thereafter at CISF hospital, New Delhi, he was found to be unfit on account of defective colour vision. It is in this context that applying the principle of promissory estoppel and legitimate expectation, it was held that the termination was bad, as in spite of his condition he was continued for a number of years. Though reliance is placed upon ***Sudesh Kumar*** (supra) the said judgment is based upon the policies prior to 2013 and therefore, are of no assistance, in view of the subsequent policy of 18/05/2012, and is a case of promotion and not recruitment.

9. It is material to note that the policy circular dated 18/05/2012 was also challenged in ***Sh. P. Suresh Kumar Vs. Union of India and others [WP (C) 356/2013]*** and other connected petitions decided on 28/02/2013 by the learned Division Bench of the Delhi High Court. Since all the petitioners in this petition had

been appointed earlier in point of time, it was held that though they had not challenged the earlier circulars, however, what has been held in that regard in ***Sudesh Kumar*** (supra) would be equally applicable to these petitioners who would also be entitled to the benefit of the judgment in ***Sudesh Kumar***. The policy circular dated 18/05/2012 or the fresh set of instructions as issued on 27/02/2013 have not been set aside. What is also material to note is that in ***Sh. P. Suresh Kumar*** and connected matters (supra), all the petitioners had claimed entitlement to promotions and were thus persons who had put in substantial number of service and therefore, it was not a case of recruitment.

10. Though reliance has been placed upon ***Mintu Mondal*** (supra) we are not inclined to take a similar view, for the reason that though it relies upon the Policy Guidelines of 27/02/2013, which the Policy stood amended on 20/10/2014, and the petitioner stood appointed on 08/04/2013, it does not consider the language of Clause (ii) to (iv), and the effect which they have in the matter of recruitment to posts, which has a propensity to see combat. For the sake of ready reference, these clauses in the policy of 27/02/2013, as produced in para 18 D of ***Mintu Mondal*** (supra) are reproduced

as under :

“(ii) 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. The Doctor who declared him fit will be proceeded against in Departmental Proceedings for major penalty. The person who was wrongly recruited will not be allowed to continue to take advantage of this wrong act, and the Govt. cannot be bound by the wrong act of any of its functionaries.

(iii) It is however, clarified that the present directions will only apply prospectively. Those personnel recruited earlier and thereafter found to be colour blind will not be boarded out on account of colour blindness. But, it is reiterated that, any person recruited herein after, if found colour blind even after recruitment shall promptly be boarded out of service. Keeping in view the directions of the Hon’ble High Court and in the public interest, the services of the colour blind personnel recruited prior to 18.05.2012, would be utilized for the jobs where public safety issues are not involved. Some of the posts/cadres identified for such personnel by CAPFs are enlisted in the Annexure-I.

(iv) As the Colour Blindness is a congenital disease, to obviate the induction of colour blind personnel in CAPFs & Assam Rifles by error or by manipulation in any of the future recruitments, an undertaking shall be taken from all the selected candidates at the time of joining that if at any stage of their service career, if they are found to be colour blind, they will be boarded out as per the SHAPE Policy in vogue.

This issues with the approval of Union Home Secretary.”

The clarificatory circular dated 28/05/2013 reads as under :-

“Government of India
Ministry of Home Affairs
Pers-II Desk

Subject : New Policy Guidelines on recruitment/retention in respect of Central Armed Police Forces (CAPFs) and Assam Rifles (ARs) personnel having defective vision including colour blindness regarding.

Reference BSF's UO No.29/40(WO)/2013-stt/10399 dated 18.04.2013 on the above mentioned subject seeking clarification whether the personnel recruited between the date 18.5.2012 to 27.2.2013 and at later stage detected to be suffering from colour blindness are also to be boarded out or will be retained in service.

2. The matter has been considered in this Ministry. It is clarified that, personnel recruited earlier to 27.2.2013 would not be boarded out. But any person recruited thereafter (i.e., after 27.2.2013) if found colour blind even after recruitment, shall promptly boarded out of service.

(R.P. Sati)

Under Secretary to the Govt. of India

23092343

DG,BSF: {Shri Dharmendra Pareek (DIG (Estt))}

MHA UO No.[-45024/1/2013-Pers-II dated 28th May 2013."

Mintu Mondal (supra) proceeds upon a premise that as the petitioner therein was recruited in April 2013, he stood governed by that policy, as amended by the policy dated 20/10/2014, which incorporated the recommendations at paragraphs 5 and 6 of the policy of 18/05/2012 (as reproduced in para 16 of that judgment) which created 5 standards and permitted categories/standards CP III and CP IV to be employed in various non-combat categories and thus directs the petitioner therein to be considered for being recruited in one of those non-combat categories. It is however, material to note

that the policy of 27/02/2013 has not been set aside. The policy of 27/02/2013 categorically holds that in any future recruitments a person who has defective vision or is colour blind will not be recruited in the future, which still holds good. Any clarification or amendment to the policy of 27/02/2013 would not come in the way of this prohibition incorporated therein, as the amendment dated 20/10/2014, does not say so, as indicated in ***Mintu Mondal*** (supra). A perusal of paragraphs 5 and 6 of the amendment dated 20/10/2014 as quoted in para 16 of ***Mintu Mondal*** (supra) would indicate that the same relates to the tests for determining vision and colour blindness and standards/categories CP I to CP V. It does not say that in future, recruitment of colour blind persons is permissible, rather it preserves inviolate the prohibition not to recruit colour blind persons in the future. We, therefore, do not see any reason to take a similar view.

11. ***Mintu Mondal*** (supra) was carried to the learned Division Bench in ***Appeal No.FMA 1798/2018 (Union of India and others Vs. Mintu Mondal)***, which came to be dismissed on 30/06/2022 on the ground that the new policy guidelines dated 27/02/2013 as well as the clarificatory circular dated 28/05/2013

would be operative prospectively and the case of the petitioner therein was covered by the clarificatory circular dated 28/05/2013, as the petitioners therein stood recruited on 20/07/2012. The present matter would be covered by the Policy Guidelines of 27/02/2013, as quoted above, which of course are applicable prospectively and would be applicable to the case of the petitioner.

12. As indicated above, this Court has also ensured that the medical condition of the petitioner is thoroughly examined, which has confirmed the findings as recorded by the Medical Board. In our considered opinion, when it comes to recruitment of personnel, in whatever capacity for the armed forces or any of the forces, in which there is possibility of armed conflict, on the fitness and alertness of a person, would depend the survival of his colleagues in combat. This would be so even in respect of persons who would not be actually engaged in the combat but in non-combat activities as now-a-days the identification of ammunition/instructions etc. is almost always colour coded and therefore employment of a colour blind person, even in a non-combatant arena cannot with any degree of certainty be said to be a safe zone.

13. In the circumstances, we are not inclined to accept the challenge raised. The writ petition is, therefore, dismissed. Rule stands discharged. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)

Wadkar