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WP.No.12229/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.12229/2016 & WMP.No.10567/2016

N.Chandraswamy

... Petitioner

Versus

- 1 The Union of India
Rep.by its Secretary to Government Ministry
of Home Affairs New Delhi-110 001.
- 2 The Honble Director General
Central Industrial Security Force CGOs
Complex Lodhi Road FHQs New Delhi-110 003.
- 3 The Inspector General
Central Industrial Security Force South
Sector Head Quarters Chennai Port Trust
Campus Near War Memorial Chennai-600 009.
- 4 The Deputy Inspector General
Central Industrial Security Force South
Zone Head Quarters Rajaji Bhawan Besant
Nagar Chennai-600 090.
- 5 The Deputy Commandant
Central Industrial Security Force Unit CPCL
Manali Chennai-600 068.

... Respondents



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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus To call for the records relating to the Impugned Order passed by the 3rd respondent dated 09.03.2016 in his order No.E-31014/SS/DOC/ MACP/REP/2015/2593 communicated by the 5th respondent dated 15/16.03.2016 through his Office Memorandum No.E-42099/CISF/CPCL/DOC/ OM/2016/826 and quash the same and to direct the respondents to promote the petitioner as ASI/Exe with effect from 31.03.2015 and to pay the 3rd MACP Benefits from 11.02.2013 to 01.01.2014 and to pay all monetary benefits.

For Petitioner	:	Mr.A.R.Mujibur Rahman
For Respondents	:	Mr.J.Madhana Gopal Rao Central Govt.Standing counsel

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to an order of the 3rd respondent, Inspector General, Central Industrial Security Force [CISF], Chennai Port Trust Campus, Chennai dated 09.03.2016 which is impugned in the present writ petition and communicated by the 5th respondent on 15/16.03.2016 and to quash the same and to direct the respondents to promote the petitioner as ASI/Exe with effect from 31.03.2015 and to



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pay the 3rd MACP benefits from 11.02.2013 till 01.01.2014 and also all other monetary benefits.

- (2) The petitioner had joined as Constable in Central Industrial Security Force [CISF] on 11.02.1983. He had completed his training for six months at BSF, Bangalore and had been posted to various places in North-East India and in Southern India. He was then promoted as Head Constable on 30.09.2004. He was then sent to the Promotion Cadre Course in the year 2011 for further promotion as Head Constable/GD to ASI/Exe. The course was conducted between 04.07.2011 and 29.07.2011. He qualified in the Promotion Cadre Course. However, the petitioner was not promoted. His junior was promoted. It was stated that in the year 2012, he was declared 'Shape-II' on the ground of diabetes. The petitioner however claims that the medical reports were not communicated to him. It is also stated in the affidavit that the Modified Assured Career Programmed [MACP] Scheme was introduced with effect from 19.05.2009. This was to grant financial upgradation. A Screening Committee has been constituted and they should follow a time schedule and meet thrice in



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the Financial Year .

(3) The petitioner claims that the 4th respondent, the Deputy Inspector General, CISF, at Chennai, had informed him that his APAR was graded as average input during the years 2009, 2010, 2011 and also 2012. He then made a representation for promotion and also for consideration of payment of MACPS benefit. In the Impugned Order, which is dated 09.03.2016, it had been stated that the petitioner was declared 'not yet fit' and therefore, his request for grant of 3rd MACPS was rejected. It was also stated that the upgradation of ACR for the year 2010 was also turned down. In effect, the petitioner was neither promoted nor was he granted the benefit of 3rd MACPS of financial upgradation. Questioning the Impugned Order, the present writ petition has been filed.

(4) In the counter affidavit, it had been stated that the petitioner could not secure requisite bench mark for grant of 3rd MACPS benefit since he failed in the Service requirements. It was found that though he was found fit for grant of 3rd MACPS benefit with effect from 01.01.2014 and was also granted, but, since he suffered from 'Shape-II', which can



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be commonly called as 'colour blindness', he could not be either granter promotion or be granted the financial benefit. It was stated that since he suffered from colour vision defect right from the year 2011 and was placed in low medical category, he was not fit for grant of promotion by the Departmental Promotion Committee. It was however stated that the petitioner was actually in the zone of consideration for promotion from Head Constable [GD] to ASI [Exe], but, only because he was placed in low medical category [Shape-II], for colour vision defect, he was declared as not fit for promotion. It was therefore stated that the writ petition should be dismissed.

- (5) One aspect which is glaring is that no enquiry was conducted and the petitioner was not given any opportunity to defend himself with respect to the allegation that he was not found fit for promotion owing to the defect which he suffered, namely colour blindness/Shape-II. This runs contrary to the very Circular of the respondents dated 29.10.2008 which was in effect when the petitioner's promotion came to be considered. The said Circular is extracted infra in entirety. It must also be stated that this particular Circular was considered by a



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Division Bench of Delhi High Court in a batch of matters, WP [C]

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No.5077/2008 *[Sudesh Kumar Vs. Union of India and Others]*

batch. In a judgment delivered on 22.03.2011, the Division Bench

has extracted the Circular. It is as follows:-

"The policy circular dated 29.10.2008 issued by Ministry of Home Affairs which reads as under:-

"Subject: Colour Blindness:

*Reference this Minisry"s UO
No.145020/52/2001-Pers-II dated 17.05.2002
wherein following has been mentioned.*

"the question of promotion of Force personnel recruited with colour blindness has been examined in this Ministry and it has been decided that his disability, ignored at the time of their recruitment, cannot be held against them now. All such force personnel, recruited with colour blindness are therefore eligible for promotion, despite their being in medical category SHAPE 2 (Permanent) on their turn, if they are otherwise fit for promotion."

2. The above order provides immunity to those force personnel who were recruited till dated i.e. 17.05.2002. However, this order also placed such personnel in Shape 2 (Permanent) meaning thereby that they would be boarded out after 4 years as per provision of SHAPE order and also as per provisions in the present



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health care system, as there is no chance of improvement in colour blindness patients being a congenial disorder.

3. The Central Para Military Forces perform a critical role in maintaining internal security and guarding of National Border. 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 disqualification for selection in service for the CPFs. If any person considering the requirement of the CPFs and in the interest of the person 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 17.05.2002 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 CPFs is not able to find out 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 17.05.2002 such person shall be placed in SHAPE-V and be



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boarded out as per the laid down procedure for disability.

4. CPFs 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.

Sd/-

(Baraun Kumar Sahu) Director (Pers.)"

- (6) A further Circular was also issued which clarified the above Circular dated 29.10.2008. The same was dated 11.03.2011 and it had been issued by the Ministry of Home Affairs and reads as follows:-

"The policy circular dated 11.03.2011 issued by the Ministry of Home Affairs which reads as under:-

"Subject: Colour Blindness:-

In continuation to this Ministry's UO of even number dated 29.10.2008 and in supersession of this Ministry's UO of even number dated 08.03.2011, on the subject cited above, the matter has been reconsidered in this Ministry and after taking into consideration comments of ADG[Med] CPFs, the competent authority has approved the



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following:-

[a]All duties where use of fire arms/identification of various types of coloured signals/identification of criminals in mob/use of specialized equipments are not regularly required and public safety is not involved, may be defined as non-technical duties.

[b]In MHA UO of even number dated 29.10.2008, word 'Non Technical Security Force' implies for 'Non-Technical Security Duties' within the Force and does not mean creation of any separate Non-technical Security Force.

2.It is further clarified that promotion of all such force personnel recruited with colour blindness prior to 17.05.2002 will continue to be governed by this Ministry's UO No.I-45020/52/2001.Pers-II dated 17.05.2002.

3.This issues with the approval of the Secretary [IS].

Sd/----

*[Ajay K.Singh]
Director [Pers.]"*

- (7) It is thus seen that in the Circular first referred above, dated 29.10.2008, it had been stated that all the Force personnel recruited with colour blindness, are eligible for promotion despite their being in medical category Shape-II [permanent], if they are otherwise fit for



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promotion. In the instant case, in the counter affidavit, the respondents have very categorically stated that the petitioner was fit for promotion. It was stated as follows:-

"4....Further, the petitioner had undergone Promotion Cadre Course from HC[GD] to ASI[Exe] at MPRTC Behror w.e.f. 04.07.2011 to 29.07.2011 and was declared qualified vide CISF MPRTC Behror Service Order Part II No.210/2011 dated 02.09.2011. Petitioner was placed under low medical category SHAPE-II for colour vision defect in the year 2011.

.....

6.....Even though the petitioner was in zone of consideration for promotion from HC[GD] to ASI [Exe], since he was placed in Low Medical Category [Shape-II] for Colour vision defect from the year 2011, the Departmental Promotion committee found that the petitioner not fit for promotion and accordingly, he was not promoted to the rank of ASI [Exe]."

- (8) It is thus seen that the petitioner was in the zone of consideration for promotion, but only because he suffered from colour blindness or color vision defect, he was not promoted. This was the specific issue



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which came up for consideration before the Division Bench of Delhi High Court and the Division Bench had stated that the Government should frame a One Time Policy for candidates who are suffering from colour blindness. It was stated that the respondents should obtain better clinical evaluatory advise and seek a specific information from Ophthalmologist with respect to the exact span of disability to ascertain the jobs which can be performed. In the instant case, there are no records to show that any enquiry was conducted. The learned Central Government Standing counsel was also fair enough to state that enquiry was not conducted. It is seen from the Circular that removal of a person from service can be done only after an opportunity is granted to defend his/her case. It was also stated that only those who are in Shape-V, will be boarded out as per the laid down procedure for disability.

- (9) It is specifically contended by the learned counsel for the petitioner that this Division Bench judgment of the Delhi High Court had not been further put to test before the Hon'ble Supreme Court by the respondents. The learned counsel also placed reliance on an order of



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a learned Single Judge of this Court in WP.No.22042/2016 dated 09.01.2023 ***[Patan Sahebjan Vs. The Union of India rep.by its Secretary to Government, Ministry of Home Affairs, New Delhi and Others]***. In that particular case, the financial upgradation was denied to the petitioner therein and it was contended that denial of such financial upgradation benefit, when the petitioner was deprived of adequate promotional avenues, would be extremely disadvantageous to the petitioner therein.

- (10) The learned Single Judge had placed reliance on the judgment of the Hon'ble Supreme Court in ***Union of India and Others Vs. Ex.HC/GD Virender Singh*** in ***SLP [C] No.16442 dated 22.08.2022***. In the said judgment, the Hon'ble Supreme Court had held as follows:-

“11. On the third aspect, we should record the concession rightly made by the Additional Solicitor General during the course of the hearing that the personnel working in the Central Armed Forces would be granted financial benefit under the MACP Scheme on completion of prescribed years of regular service by relaxation in cases where, on account of administrative or other reasons, they could not be sent



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for participation in pre-promotional course. The appellant-Union of India has agreed to accept the directions given by the Delhi High Court in the case of Ram Avtar Sharma v. Director General of Border Security Force in this regard. A liberal, pragmatic and ameliorative approach is required to succour genuine grievances of the personnel doing duty for the nation, owing to which they forgo participation in pre-promotional courses. Accordingly, the third question is answered against the appellant-Union of India.

12. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third



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issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course.....”

(emphasis supplied)

- (11) It is thus seen that the petitioner herein had suffered non-grant of promotion and denial of financial upgradation under the 3rd MACP Scheme. The petitioner had suffered even though no enquiry was conducted. He had not been subjected to any medical test. There are no reports indicating that there an opinion was sought or given that the petitioner can be placed in any other non technical post which was the object of the Circulars issued by the respondents themselves.
- (12) In view of this particular fact, the Impugned Order will necessarily have to be interfered with by this Court.
- (13) The learned counsel for the petitioner and also the learned Central Government Standing counsel for the respondents stated that the



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petitioner had retired from service on attaining the age of superannuation. It is therefore required that paper work has to be done by granting notional promotion to the petitioner herein from the date when he was actually eligible till the date when he retired from service to the post of ASI [Exe] and also grant financial benefit under 3rd MACP Scheme. It is to be again noted that the petitioner was declared fit for promotion, but it was only owing to him suffering from colour blindness that he was denied promotion. Such withholding of promotion is quite contrary to the Circulars extracted above issued by the respondents themselves. Necessary proceedings to be issued within a period of sixteen weeks from the date of receipt of a copy of this order.

- (14) The writ petition stands **allowed** and the Impugned Order dated 09.03.2016 passed by the 3rd respondent and communicated by the 5th respondent on 15/16.03.2016 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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To

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Union of India, Ministry of Home Affairs
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C.V.KARTHIKEYAN, J.,

AP

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