

(2011) 08 JH CK 0079

In the Jharkhand High Court

Case No : Writ Petition (Service) No. 3482 of 2006

Anil Kumar Das, Ravi Shankar and Prayag Das

APPELLANT

Vs

The Union of India (UOI), The Commandants Central Reserve
Police Force

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 14, 21, 311(2)

Citation : (2011) 131 FLR 181 : (2011) 4 JCR 281

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—The instant writ petition is preferred on behalf of the three Petitioners challenging the Orders dated 30th April, 2006 [Annexures-4, 4/1 and 4/2 respectively] terminating them on account of the reason that certain defective vision and colour blindness was detected in a subsequent medical examination and they were medically declared to be unfit.

2. The facts of the case are that in a recruitment drive for appointment on the post of Constables in Central Reserve Police Force, a written test, physical test and a medical test were conducted in Jamshedpur in the State of Jharkhand. All the three Petitioners were declared successful in the written test and found to be up to the mark in the physical test and also medically fit to be appointed. Appointment letters were issued on 11th April, 2003 vide Annexures-1, 1/1 and 1/2 in respect of three Petitioners namely Anil Kumar Das, Ravi Shankar and Prayag Das respectively.

3. The Petitioners joined as Constables and completed their probation period of three years. During this period they were posted at a number of places. There was no complaint whatsoever regarding their functioning and discharge of duty. It is further submitted that on receipt of a complaint by the Superintendent of

Police, Central Bureau of Investigation, raising suspicion regarding medical examination of some of the selected candidates, the Department got the Constables re-examined medically. The Petitioner No. 1 was found deficient in vision and Petitioner Nos. 2 and 3 were found to have some defects termed as "Colour Blindness". This medical examination of eye vision was conducted at Base Hospital-I, New Delhi. Notice for termination was served on the Petitioners and after expiry of one month's period of notice, the Petitioners were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 which is under challenge.

4. Shri Manoj Tandon, appearing on behalf of the Petitioners has advanced a number of arguments. The first submission is that the Petitioners have been subjected to discrimination. In support of this contention, he has placed a letter issued from the office of the Deputy Inspector General of Police, Central Reserve Police Force, Sindri dated 16.02.2006 written to the Commandant 81/94/114/118Bn. The said letter details the date when the Constables were declared medically unfit and also their status as to whether they were confirmed or not.

Learned Counsel has demonstrated that the three Petitioners were appointed on 27th March, 2006 along with one other Abhay Kumar Singh. All the four of them were declared medically unfit on 9th September, 2006 but Constable No. 035172803 Abhay Kumar Singh-I of 94 Bn. was confirmed whereas, the present three Petitioners, identically placed, were not granted the same benefits of confirmation though they had worked and completed period of probation simultaneously. Since Abhay Kumar Singh mentioned aforesaid was a confirmed Constable, he is still continuing in Central Reserve Police Force though he was also declared medically unfit on account of colour blindness whereas, the present Petitioners have been terminated on a one month's notice only because they were not confirmed.

It is emphasized that no reason has been assigned why the Petitioners were not treated identically as Abhay Kumar Singh and different yardsticks were used for the Petitioners while according confirmation and consequent continuation in service. The Petitioners have been blatantly discriminated whereas, with the same disability as declared in the medical examination Abhay Kumar Singh continues to serve in the paramilitary force i.e. C.R.P.F.. This document is the document of the Respondents themselves and the learned Counsel appearing on behalf of the Union of India has not been able to dispute this fact or the document.

5. The next argument is that the Ministry of Home Affairs issued a Circular/ Notification dated 31st July, 2002. The said Circular is quoted as under:

Ministry of Home Affairs (Pers-II) Subject: Prescribed medical category SHAPE-1 for combined personnel of CPHE.

Reference DG, CRPG U.O. No. P-VII/I. Pers. I dated the 19th July, 2002 on the

subject mentioned above wherein they have sought clarification with regard to the promotion of force personnel with colour blindness for the following categories.

- i) In whose cases colour blindness was not a disqualification.
- ii) In whose cases though colour blindness was a disqualification but the same could not be detected at the time of their recruitment;
- iii) In case force personnel with colour blindness could not be promoted, whether they are to be medically invalidated out of service.

2. This has been examined in this Ministry, Attention is invited to this Ministry's U.O. Of even number dated the 17th May, 2002 which does not distinguish between force personnel, in whose cases, colour blindness was a disqualification or otherwise. It simply states that, whosoever, has been selected with colour blindness, whether by ignorance or otherwise, cannot be treated differently after putting so many years of serve. The illness cannot be held against them and, therefore, they will be eligible for promotion, despite their colour blindness, if they are otherwise fit for promotion.

3. This clarifies position regarding categories (ii) and (iii) in para-1 above, such question regarding the category (iii) does not arise at all.

(sd/-) (D.M. Mishra) Director (Pers.) Tele No. 3092956

DG, CRPF (Shri Man Singh Rawat, Addl. DIG)

MHA U.O. No. I - 45020/52/2001-Pers.II dated the 31.7.2002

Copy for information to:

1 DIG: BSF/ CISF/ ITBP/ SSB, New Delhi.

2 Assam Rifles.

The aforesaid Circular deals with the promotion of personnel in Force with "Colour Blindness". On bare perusal of the aforesaid Circular, it evidently grants liberty to the employees of the Paramilitary Force to continue in service despite Colour Blindness, if they are otherwise fit for promotion or continuation in service. This argument has also not been disputed by the counsel appearing on behalf of the Union of India.

6. The next contention of the learned Counsel is that on a complete reading of the counter affidavit, apparently the Petitioner has not been terminated merely because they are temporary employees and could be terminated under the Rules after one month's notice. In fact it alleges a misconduct against the Petitioners regarding which a complaint of Superintendent of Police, Central Bureau of Investigation was received. Consequent thereon the Petitioners were subjected to medical examination. The allegation was found to be substantiated and, therefore, as the vision of the Petitioners was not up to the mark therefore the

Petitioners were terminated. However, the mode of termination adopted was under Central Civil Services (Temporary) Rules. The assertion on behalf of the Petitioners is that since Abhay Kumar Singh mentioned aforesaid, who was appointed on the same day, was confirmed after completing three years, the Petitioners also stood confirmed along with Abhay Kumar Singh and, therefore, the Petitioners could not be terminated under the Central Civil Services (Temporary) Rules and a regular enquiry was liable to be conducted and an opportunity of hearing was to be given to the Petitioners which admittedly has not been done in the instant case.

7. Learned Counsel has also advanced his argument on the question that the Petitioners were liable to continue and promoted in accordance with the provisions of "The Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Protection) Act, 1995". Counsel appearing on behalf of the Union of India has disputed applicability of the aforesaid Act and has placed a Gazette Notification of India dated September 13, 2002 issued from the Ministry of Social, Justice and Empowerment, New Delhi. It is argued that vide SO No. 994E the personnel's belonging to Paramilitary Force such as the Petitioners are exempted from availing the benefits of the Disabilities Act, 1995. Copy of the Gazette Notification has been placed before the Court, which is kept on record. This contention on behalf of the Respondents is correct and the last argument on behalf of the Petitioners stands completely negated on the basis of the aforesaid Gazette notification.

8. Reliance has been placed on two decisions of the Apex Court i.e. Nandkumar Narayanrao Ghodmare Vs. State of Maharashtra and Others, and Narendra Kumar Chandla Vs. State of Haryana and others, . The ratio laid down in the cases decided by the Apex Court was that authorities should make an endeavour to grant benefits of continuing in service in case certain physical disability of a nature is detected and which does not impair the employee in discharge of his duties.

In the case of Nandkumar Narayanrao Ghodmare (Supra), which was a case of Colour Blindness, where the appointee was selected by the Public Service Commission but he was declined appointment on account of the Colour deficiency in his eyes. The Apex Court directed the government of Maharashtra to consider the case of the Petitioner to continue in service since Colour Blindness is not a disability which will render the incumbent non functional. It may be a shortcoming but not such a disability which could entail such a harsh action.

Similar view was expressed in the case of Narendra Kumar Chandla (Supra). For ready reference, para-7 of the said judgment is quoted hereunder:

7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every Endeavour to adjust him in a post in which the employee would be

suitable to discharge the duties. Asking the Appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is a matriculate, he is eligible for the post of L.D.C.. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the Respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing salary in the pay scale of Rs. 1400 - 2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC, we direct the Respondent to appoint him to the post of LDC protecting his scale of pay of Rs. 1400 - 2300 and direct to pay all the arrears of salary.

9. Similarly, the Patna High Court, in the case of Ram Lakhan Yadav v. Union of India reported in as 2001 (3) PLJR 167 was of the view that since allegations were leveled against the employee it amounts to a stigma and not a simplicitor termination. Therefore, an opportunity to show-cause was essentially required as provided under Article 311(2) of the Constitution of India. The Patna High Court was of the opinion that the dismissal was merely a camouflage but it was only because of the allegations which was accepted unilaterally.

10. Another case of the Delhi High Court has been relied upon. In the said case, the Petitioners belonged to the Central Industrial Security Force and were terminated on account of defective colour vision. All the writ petitions were allowed and the personnel of the Central Paramilitary Force were granted the benefits of the Circular which was a Policy Decision to benefit certain employees of the Paramilitary Force who were inducted in service without conducting a proper medical examination and not detecting Colour Blindness.

Thus this decision is also squarely applicable to the facts of the present case.

11. I have viewed the entire arguments advanced on behalf of the Petitioners. The reply of the Respondents in the counter affidavit which is basically an assertion to the effect that since the Petitioners were removed after one month's notice under the Temporary Government Servant Rules, they were not entitled for any opportunity and thus, there can be no question. Besides it is also asserted that re-medical examination of the Petitioners rendered them medically unfit and, therefore, failed to fulfill eligibility criteria and thus, the due procedure of law was followed.

12. The Respondent has completely given a good bye to the fact that the Petitioners have been blatantly discriminated by not confirming them though they have put in more than three years of service, completed the period of probation without any complaint despite impaired colour vision. It is evidently a camouflage to remove the Petitioners because of the complaint received against them regarding their Fitness Certificate.

13. I am of the considered view that it was the CRPF who got them medically

examined and only after the Petitioners were declared to be fit, they were issued a letter of appointment. The Petitioners worked for more than three years at different posting. There was no complaint against their vision but only after receipt of a complaint from the Superintendent of Police, Central Bureau of Investigation, they were medically examined for a second time and the defect in their vision was detected for the first time. Notice was issued to them under Temporary Service Rules whereas another Constable namely Abhay Kumar Singh, who was appointed on the same day, was found to be Colour Blind on the same day but he was treated as a confirmed employee and is still continuing in service. The Respondents have not been able to give any satisfactory reply and, therefore, I am of the definite opinion that this is a case of clear discrimination and violation of Article 14 of the Constitution of India.

14. Before I part, I can also not loose sight of the Circular issued by the Union of India granting benefits to such personnel's who are suffering from Colour Blindness to continue in service as well as to grant promotion. Thus the Petitioners cannot be said to be suffering from such a disability that they will not be able to work. Admittedly, they were working till the order of termination was passed without any complaint and therefore, in my view, they are liable to continue in service.

15. The order of termination dated 30th April, 2006 [Annexures-4, 4/1 and 4/2] are hereby quashed and the Respondents are directed to permit the Petitioners to continue in service with all consequential benefits. However, since they have not worked after they were terminated, in my view, they are not entitled for the complete salary for the said period. The Respondents are however directed to make payment of 50% salary from the date of order of termination after taking into consideration the increments etc. accrued to the Petitioners during the intervening periods. This payment of 50% salary will have no repercussion in computation of the seniority of the Petitioners as well as other accrued benefits relating to their continuation as Constable in the paramilitary force on which they were appointed.

16. In the circumstances, the writ petition is allowed in the aforesaid terms. The Respondents shall issue orders to the Petitioners to join back in service within a period of three weeks. The Petitioners may also approach the Respondents along with the certified copy of this order for implementation of this Judgment.