

(2009) 03 DEL CK 0361

In the Delhi High Court

Case No : Writ Petition (C) No. 158 of 2009

Bir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0361

Hon'ble Judges : S.L. Bhayana, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Manzoor Ali Khan, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—The petitioner, a constable in CRPF, after serving the force for ten years, was invalided out of service in view of his being found medically unfit to continue in service. He was examined by a Medical Board on 13th December, 1994 and declared as completely and permanently incapacitated for further service of any kind owing to defective vision in both eyes. A Review Medical Board was constituted at New Delhi in September, 1995 at the request of the petitioner, which on a fresh examination opined:

1. Vision is unlikely to improve in Right Eye due to macular degeneration.
 2. Board agrees with the finding of previous medical board held on 13.12.94 at GC-I, CRPF, Ajmer.
 3. The individual has not questioned the findings of 1st Medical Board nor any documentary evidence supplied to the board against the findings of previous medical board.
2. In view of aforesaid report of Review Medical Board, the petitioner was invalided out of service w.e.f. 30.11.1995. The decision in this regard was challenged by the petitioner before this Court by way of a WP (C) 1350/1997 in

which by an order dated 23rd March, 2006 the Division Bench of this Court directed yet another Review Medical Board consisting of Chief Medical Officer of the respondent and an Ophthalmologist, being constituted. In addition, an Ophthalmologist from the All India Institute of Medical Sciences was also nominated and associated as a member of such Review Medical Board. The second Review Medical Board so constituted examined the petitioner on 11th May, 2006 and 23rd May, 2006. The board eventually submitted its report reading thus: "Board is of the opinion that Ex-Ct. Bir Singh of GC-II, CRPF, Ajmer is suffering from defective vision both eyes, colour blindness, bilateral cone dystrophy, Rt. eye peripheral ventricular opacity, left eye Pseudophakia. Further, based on the above findings i.e. defective vision, colour blindness and bilateral cone dystrophy being progressive degenerative disorder in nature, he is not fit for any combatant duty in CRPF."

3. The WP (C) 1350/1997 was eventually dismissed vide order dated July 27, 2007 noticing that the contentions raised on behalf of the petitioner in support of his plea for reinstatement in active service on one of the posts of Dak/Office Runner, Telephone Operator, Attendant in Recreation Rooms, Canteens, Co-operatives etc., which according to him were non-combatant ones, carried no substance.

4. The petitioner has now filed instant petition re-agitating the same very issue, already decided in the said writ petition on two grounds:

(a) that he has not been given the benefit of provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and

(b) that the benefit of Standing Order No. 7/99 dated 6th May, 1999 has not been given by rehabilitating him on a non-combatant post of Dak/Office Runner, Telephone Operator, Attendant in Recreation Rooms, Canteens, Flour Mills, Welfare Centre, School Buses etc. as indicated in the said Standing Order.

5. It is gathered that a similar argument in regard to his rehabilitation by posting him on lighter jobs like Dak/Office Runner, etc. was raised on earlier occasion also in the course of hearing in WP (C) 1350/1997, which were appropriately dealt with and rejected. The plea of the petitioner for his rehabilitation on some lighter job was accorded due consideration by the Rehabilitation Board of the CRPF headed by the IGP, Northern Sector, CRPF, but found unacceptable. The report of the Rehabilitation Board reads thus:

No. 861320019 Ct. Bir Singh of GC-II, CRPF, Ajmer appeared before the Departmental Rehabilitation Board on 30.9.2004 and was examined by the board. As per opinion of the medical board consisting of three eye specialists conducted at Base Hospital-One, CRPF, New Delhi on 4.9.04 he is not fit as a combatant in CRPF. Further, he has been categorized as SHAPE-5, E-5(P). As per Standing Order 1/2003 the person who is categorized as SHAPE-5 is permanently unfit for CRPF duties. In the light of opinion of eye specialists the case of the ex-

Ct/Bug. Bir Singh is considered by the Departmental Rehabilitation Board and the Board is of the view that of ex-Ct/Bug Bir Singh of GC-II, CRPF, Ajmer is not fit for any type of job in CRPF.

6. Standing Order No. 1/2003 in vogue at the relevant time, when the Rehabilitation Board considered the case of the petitioner, was kept in view and as the petitioner was categorized SHAPE-5, he was found permanently unfit for CRPF duties. The petitioner could have sought his rehabilitation by posting on some lighter job with reference to a Standing Order, if any, in vogue on the date of his being invalided out of service or on the date the Rehabilitation Board considered his case in this regard. The Standing Order No. 7/1999 could not have been applied retrospectively when the petitioner was invalided out of service in November, 1995 nor it remained in force at the time his case was considered by the Rehabilitation Board. Moreover, the petitioner could have very well referred to this Standing Order in his earlier writ petition which he did not do. Now, he cannot be allowed to renew his plea for rehabilitation by filing yet another writ petition on the strength of aforesaid Standing Order of 1999. Moreover, it is noticed from the judgment dated 27th July, 2007 in WP (C) 1350/1997 that no posts, including those mentioned in the Standing Order No. 7/1999, were non-combatant posts and all the posts available in CRPF being combatised ones, the petitioner could not have been offered posting on any of these posts and his plea in that respect was accordingly turned down.

7. So far as benefit of relevant provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is concerned, apart from the fact that on the date when the case of the petitioner was considered by the Rehabilitation Board the provisions of the said Act did not apply to the CRPF by virtue of exemption in that regard vide notification dated September 13, 2002, the said Act had not yet come into force on the date the petitioner was invalided out of service in November, 1995. In either situation, no benefit under the provisions of the said Act could be claimed by the petitioner.

8. Finding that all relevant pleas pertaining to his rehabilitation on being found medically unfit to continue in service were appropriately dealt with and rejected vide judgment dated 27th July, 2007 in WP (C) 1350/1997 as also the pleas now sought to be raised in the present petition, as noticed above, being misconceived and unavailable to the petitioner to maintain the present petition, the same is liable to be dismissed and it is ordered accordingly. No costs.