
(2012) 08 DEL CK 0138
In the Delhi High Court
Case No : WP (C) 1494 of 1999

Jitender Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0138

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Ashok K. Sharma, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner was enrolled as a Constable in BSF on January 29, 1997 and before he could be confirmed, during training, it was noticed by the superior officers that the petitioner was unable to distinguish between red and green colour. He was medically examined by a Board of Specialists on August 27, 1987 and was opined to be colour blind. The Commandant issued a show-cause notice on September 01, 1997 requiring petitioner to respond to the proposed action i.e. the action to discharge the petitioner from service before he was confirmed, to which petitioner sent a response. By way of a precautionary measure, the Commandant got the petitioner medically re-examined by a Board of competent doctors on February 09, 1998, who confirmed the earlier opinion of the petitioner being colour blind resulting in the petitioner being discharged from service, before he was confirmed, vide order dated May 16, 1998. It is firstly urged by learned counsel for the petitioner that in view of sub-rule (4) of Rule 25 of the BSF Rules 1969 the petitioner could not be discharged from service unless an officer superior to the Commandant got the matter referred to a Review Medical Board in terms of sub-rule (5) of Rule 25 and passed a further order.

2. Sub-rules (4), (5) and (6) of Rule 25 in question read as under:-

(4) The subedar, the Sub-Inspector or, as the case may be, the enrolled person may, within a period of fifteen days from the date of receipt of such communication, make a representation to the officer next superior in command to the one who ordered the retirement.

(5) The said superior officer shall have the case referred to a Review Medical Board which shall be constituted in such manner as may be determined by the Director-General.

(6) The superior officer may, having regard to the finding of the Review Medical Board, pass such order as he may deem fit.

3. Suffice would it be to state that once the Commandant exercises power under sub-rule (3) of Rule 25 to discharge or retire an enrolled Constable of BSF, sub-rule (4) comes into play by giving an opportunity to the person concerned to make a representation within 15 days to the next superior officer.

4. The petitioner never made any such representation and thus the question of the next superior officer deciding anything does not arise.

5. It is then urged that in a judgment delivered on March 22, 2011 disposing of a batch of writ petitions, lead matter being WP(C) No. 5077/2008 Sudesh Kumar v. UOI & Anr., on the subject of colour blindness due to which medical disability Constables and Head Constables in Central Para Military Forces were being discharged from service, a Division Bench of this Court had held the discharge to be invalid.

6. The decision in question was penned by one of us; Pradeep Nandrajog J. It was noted in the batch of writ petitions that the writ petitioners were confirmed constables, head constables etc. and had served for a number of years in various Central Para Military Forces and had become overage to seek public employment. Granting relief, in paragraph 40, it was observed as under:-

40. Now, the policy circular dated 17.5.2002 recognizes the principle of either legitimate expectation or estoppel, as observed by us in para 27 above. It recognizes a wrong done to the members of the force by inducting them in service ignoring the medical disability; the wrong being that had they been told at the time when they sought employment that they were ineligible for appointment in a Central Para-Military Force, these young men could have found alternative employment on jobs where colour blindness was not an issue and not doing so and further throwing them out of jobs at an age when these young men became overage to seek public employment was to deprive them of a fair opportunity to seek public employment. The same principle on which policy circular dated 17.5.2002 was issued would equally apply where the Central Para-Military Forces would continue to be in the wrong due to negligence post 17.5.2002. In this context we find the policy decision dated 29.10.2008 being arbitrary and discriminatory in prescribing 17.5.2002 as the cut-off date as also the clarificatory policy circular dated 11.3.2011.

7. The decision was with reference to a circular dated May 17, 2002 noted in paragraph 40.

8. The facts of the instant case are entirely different. When he was discharged from service the petitioner was not overage to seek public employment elsewhere. The writ petition is accordingly dismissed but without any order as to costs.