
(2019) 07 CAL CK 0008

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 8735 (W) Of 2019

Kisan Tudu

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Citation : (2019) 07 CAL CK 0008

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Achin Kumar Majumder, Pratik Majumder, Partha Ghosh

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner is aggrieved by a show cause notice dated 14th September, 2018 whereby the petitioner has been directed to submit his explanation as

to why action shall not be taken against him for suppression of the fact of congenital deficiency (defective colour vision) during the course of initial

medical examination prior to appointment in the Force by training himself or in collusion with Railway Medical Authority and further why action shall

not be taken against him for falsification and fraudulent act as per extant Rules.

The petitioner is a constable of the Railway Protection Special Force (RPSF). He was appointed in the year 2006 after undergoing medical

examination and a fitness certificate was issued in his favour by the Medical Officer attached to the Medical Department of the Eastern Railway.

On a periodical medical checkup held in October, 2010 the petitioner was detected to have defective colour perception. The petitioner was declared

permanently medically unfit for the duties of his original post. The Senior Medical

Officer on 25th April, 2011 recommended that on medical grounds arrangements should be made to provide him with suitable alternative employment permanently. The Medical Board opined that the petitioner was unfit in the category of Bee/One but fit in category Bee/Two and below.

The Commanding Officer vide a Battalion Order No. 120/2011 dated 25th November, 2011 indicated that in terms of Rule 1304 (IREM Vol-1) the petitioner ceased to perform the duties of his present post of constable/RPFs with effect from 26th April, 2011 i.e from the date of Medical de-

categorisation. The petitioner was to be kept on supernumerary post in the battalion till his permanent absorption in alternative job, or six months,

whichever is earlier, with effect from 26th April, 2011 in the same grade in which he was working on regular basis, before being declared medically

unfit, with financial concurrence of DFM/NFR/NJP and approval of ADRM/NFR/KIR. The petitioner was to continue his lien in service in the

department till his permanent absorption in alternative appointment in railways where he prefers his option. An indication of "supernumerary post" to

be mentioned against his name and designation in the bill.

By a communication dated 2nd June, 2018 the petitioner was informed that a Medical Board was constituted for medical examination of the medical

de- categorised RPSF staff. The petitioner was directed to report to the Medical Director with all relevant documents.

By a communication dated 26th July, 2018 the Director/Security (ABE), Railway Board advised the commanding officers of the respective battalions

to take suitable action against the de-categorised RPSF constables keeping in view the fact that defective colour perception is a congenital medical

condition and the employee did not fulfill the medical condition laid down for recruitment at the time of his initial appointment in RPSF.

The show cause notice impugned in the instant writ petition is the follow up step of the aforesaid advice.

The petitioner submits that the authority issuing the show cause notice is incompetent to issue the same. He submits that the petitioner was no longer a

constable of the RPSF and his status as constable has been taken away on the date he was declared permanently medically unfit and he ceased to

perform his duties as constable on and from 26th April, 2011. He has been kept in a supernumerary post. He was to be permanently absorbed in

alternative appointment. There has been considerable delay in accommodating the petitioner in an alternative appointment as the petitioner was declared fit for performing Bee/Two job.

He submits that the authorities are not entitled to direct the petitioner for re-examination of his eye as he was already declared permanently unfit way

back in 2011 and there is no requirement for a further medical checkup. He submits that the petitioner will no longer be guided by the Railway

Protection Force Act, 1957 and the Rules of 1987. He will be guided by the Railway Servants (Discipline and Appeal) Rules 1968.

The petitioner relies upon a Division Bench judgment passed by this Court in the matter of Tejen Mitra & Ors. vs Union of India & Ors. reported in

2008 (2) CHN 718 wherein the Court held that once a railway servant is declared medically unfit, he has to be given a suitable alternative employment

but before that status is conferred, the person concerned has to be kept on a supernumerary post but he cannot be subjected to a

reexamination. He can be ordered to be examined in accordance with law by the concerned authorities of only those departments in which such

a medically declared unfit person is absorbed in an alternative status in terms of paragraph 1303 of the Railway Establishment Code.

He further relies upon an unreported judgment delivered by the Hon'ble Supreme Court of India on 23rd March, 2017 in the case of Pranay

Kumar Podder vs-State of Tripura & Ors. in Civil Appeal no. 4393 of 2017 arising out of SLP (C) no. 27388 of 2015 wherein the Court held that

total exclusion for admission to medical courses without any stipulation in which they really can practice and render assistance would tantamount to

regressive thinking. The said order was passed in the context of students who were declared ineligible for taking admission to MBBS course at the

stage of counselling on the score that they suffered partial colour blindness.

The petitioner also relies upon an unreported judgment dated 11th August, 2011 passed by a learned Single Judge of the Jharkhand High Court in the

case of Anil Kumar Das & Ors vs- Union of India & Ors. in Writ Petition (Service) No. 3482 of 2006 wherein the Court held that personnel

suffering from colour blindness cannot be said to be suffering from such a disability that they will not be able to work and they are liable to continue in

service. The Court quashed the order of termination and directed the

respondents to permit the petitioners who were constables of CRPF to continue in service with all consequential benefits.

The petitioner prays for setting aside the show cause notice and for a further direction upon the respondents for providing alternative appointment to the petitioner.

The learned advocate appearing for the respondents submits that the petitioner is suffering from defective colour vision which is a congenital disease.

The petitioner acquired the disease at birth and the petitioner was not eligible for appointment as per the recruitment rules.

He submits that the allegation against petitioner is that he obtained the fit certificate in collusion with the Railway Medical Authorities. The Railway

Board has examined the matter and has opined to take action against the erring doctors and others who were involved and responsible for issuing the

fit certificate in favour of the petitioner.

He further submits that the Health Directorate is taking steps for fixing the responsibility and accountability with consequential action by the Vigilance

Directorate of the Railway Board. The action against the doctors is in process.

He submits that the case is premature and no legal right of the petitioner has been infringed by issuance of the show cause notice. The issuance of

show cause notice does not give rise to any cause of action.

The learned advocate prays for dismissal of the writ petition.

The respondents rely upon a judgment delivered by the Honâ??ble Supreme Court in the matter of Secretary, Ministry of Defence & Ors. â??vs-

Provash Chandra Mirdha reported in (2012) 11 SCC 565 on the issue that a show cause notice is normally not liable to be quashed as it does not

affect rights of delinquent employee and does not give rise to any cause of action. Upon hearing the submissions made on behalf of both the parties it

appears that the petitioner was appointed in the year 2006 after obtaining a fit certificate issued by the Medical Officer of the respondents. In the year

2010 at the time of periodical medical examination he was detected with defective colour perception.

In the case of Pranay Kumar Podder (supra) the Honâ??ble Supreme Court takes note of an Article published under the heading â??Colour Vision

Deficiencyâ?? wherein it has been mentioned that colour vision deficiency is

usually a hereditary condition linked with the X chromosome.

The petitioner was colour blind at the time of his birth. Had he been properly examined by the ophthalmologist prior to his appointment he could not

have obtained the fit certificate. The medical deficiency of the petitioner was detected at the time of periodical medical examination in the year 2010.

The petitioner has been medically de-categorised permanently and been kept in a supernumerary post since 2011.

The judgment of Tejen Mitra (supra) relied upon by the petitioner will not be relevant in the instant case as the facts of the said case are different

from the case at hand. In the said case some of the appellants were issued order of absorption on alternative posts after being declared medically

unfit. The said appeal took into consideration the issue of discrimination as a few of the appellants were provided alternative jobs upon their medical

de-categorisation whereas the others were called for reexamination. It is on that score that the Court passed the order.

The case at hand stand on a separate footing as the very reason for de-categorisation of the petitioner was present in the petitioner at the time of his

initial appointment. The deficiency was acquired at birth and not due to age or otherwise in the course of his employment. Action against the doctors

who were responsible for issuing the fit certificate is also under-process.

The decision in the case of Anil Kumar Das (supra) was passed while dealing with the order of termination issued in favour of the petitioners. In the

instant case the petitioner has challenged the show cause notice. As such the judgment relied upon by the petitioner will not be relevant.

The learned advocate appearing for the respondents submits, on instructions, that the petitioner could not be accommodated in an alternative post as

there is hardly any post for colour blind employees in the Railway. The colour blind persons are ineligible for being appointed in the Railways. The

Railway Board has taken a decision for fixing up the accountability and the responsibility of the erring doctors and others who were involved in issuing

the fit certificate in favour of the petitioner at the time of his appointment.

The petitioner has been directed to reply to the show cause. No legal right whatsoever has been infringed by issuance of the said show cause as held

by the Hon'ble Supreme Court in the case of Prabhas Chandra Mirdha (supra). I am not inclined to enter into the merits of the show cause notice

impugned in the instant writ petition. There is no immediate necessity for interference at this stage. The petitioner has already submitted his reply to the show cause. The respondents will consider the reply in accordance with law. WP No. 8735 (W) of 2019 is dismissed. Urgent Photostat certified copy of this order be given to the parties, if applied for.