

(2001) 02 PAT CK 0095
In the Patna High Court
Case No : C.W.J.C. No. 6112 of 1999

Kulesh Kumar Jha and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 12, 16

Citation : (2001) 2 PLJR 433

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Rajiv Kr. Verma, for the Appellant; J.P. Karn, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer on behalf of the petitioners is to quash the order of termination dated 31.3.1994 issued by the Commandant, 126 Aux. Bn., C.R.P.F., Mokamaghat, contained in Annexure-3 insofar as it relates to the termination of the petitioner and to issue the appropriate writ or order directing the Respondents to absorb them in service and appoint them on the post of Aux. Constable in C.R.P.F. on regular/permanent basis. By the said order (Annexure-3) on the findings of the Medical Officer of the Screening Board that petitioner no. 1 suffered from defective colour vision, hypertension, haemorrhoid and petitioner no. 2 suffered from colour blindness, they were terminated from the service of C.R.P.F. with effect from 31.3.1994. In short, the relevant facts are that pursuant to the advertisement issued by C.R.P.F. in the year 1989, petitioners were appointed as Aux. Constable in 126 Auxiliary Battalion after they were found physically and mentally fit on vigorous recruitment check up and medical test. In pursuant to the advertisement issued, petitioner no. 2 was appointed in the year 1989 and petitioner no. 1 in the year 1991, and they joined the service and posted at different places. However, in January, 1994 I.G., C.R.P.F., Patna (Respondent no. 3) informed the D.I.G., C.R.P.F., Patna (Respondent no. 4) that DD (Estt.) vide his letter no. R111/94-Aux dated

25.1.1994 had intimated that the Government were considering regularisation of Auxiliary Battalion as regular C.R.P.F. Battalions and a Board consisting of different Officers was entrusted to carry out screening of their suitability for their recruitment as regular Constables/Followers. Later the Commandant (Respondent no. 5) was asked to communicate to the Aux. Constable that the process for integrating them into the main stream of force on permanent basis after screening is under process and that the petitioner may be assured about their future prospect. Thereafter the petitioners were called for fresh recruitment test, but instead of it they were subjected to medical fitness test and were declared medically unfit and by the impugned order their services along with 51 others were terminated on the said ground. Petitioners along with others being aggrieved by the said order had filed C.W.J.C. No. 3355 of 1994. It was mainly contended on their behalf that bare reference to the impugned order would indicate that medical check up were done in a very perfunctory manner, as most of the candidates were found to be suffering from colour blindness. This Court vide order dated 26.4.1995 (Annexure-4) doubted the genuineness of the test more so because number of persons were found to be suffering from such disease and directed that it would be appropriate for the Deputy Inspector General of Police, C.R.P.F., Patna to examine their grievance with reference to the relevant materials available or any other matter and if he feels satisfied that there was no proper medical check up of the petitioners, he would certainly make an arrangement for fresh medical check up and other screening test in accordance with law. In pursuance to the said order, petitioners were re-examined before the Review Medical Board. As alleged, only empty formality was made to meet technical compliance of the order of this Court.

2. In identical circumstances, similarly aggrieved persons, namely, Upendra Rai and others moved this Court in C.W.J.C. No. 920 of 1996 in which notice was issued to the Respondents on 20th May, 1997. After issuance of the said notice, petitioners received similar letter dated January, 1998 issued from the Directorate, C.R.P.F., New Delhi inviting applications from them for appointment in the Follower trade of C.R.P.F. Petitioners being unemployed and having no option submitted application for appointment in Follower trade. Moreso with the intention to once again utilise their opportunity to prove their medical fitness and negate the findings of the Medical Board on the basis of which their services as Aux. Constable were terminated. Petitioners received call letter dated 23.5.1998 (Annexure-8 series) requiring them to appear on 12.6.1998 for the purpose of physical work, efficiency and medical test. Petitioners appeared and were found medically fit in all respects by the Jamshedpur Medical Board, which examined them on 12.6.1998 and having been declared physically and medically fit by the said Board were appointed in the Follower trade of C.R.P.F. It is alleged that at the time of review Medical Board only empty formality was done to meet a technical compliance of the order passed by this Court. It is alleged that under Rule 12 of the C.R.P.F. Rules, it is mandatory to give Health Certificate by the Medical Department of C.R.P.F. in prescribed form (i) of Appendix-"F" for

recruitment and the same is available with the Respondents showing fitness of the petitioners in three previous medical tests and thus they continued without any break for five years and had become quasi permanent according to Rule 16 after completion of three years of service only.

3. Counter affidavit has been filed on behalf of the Respondents, in which facts are not much disputed. However, in paragraph 16 of the counter affidavit, it is stated that in compliance of the direction of this Court Medical Board was constituted by the I.G., Bihar Centre vide Signal No. JII-31/94-BS Legal dated 1.6.1995 to medically examine the petitioners and others and that the personnel who were found medically and physically fit absorbed in CRPF as Constable/GD/Follower and those who were not found medically fit were discharged from service on 31.3.1994. It is further admitted that applications of 19 Aux. Constables were received in the office of Group Centre, CRPF, Jamshedpur with a direction for their enlistment in CRPF as Followers against the existing vacancy of Bihar Centre subject to fitness in all respect by the Board of Officers. Accordingly, petitioners were asked to appear before the Recruitment Board for test etc. vide letter no. R II-1/98-GC-RC dated 23.5.1998 and they were tested by the Board of Officers constituted for enlistment in CRPF as Followers. It is also admitted that the petitioners having been found medically fit for the post of Follower were issued with the offer of appointment vide letter no. R-II-1/98-GC-RC dated 29.7.1998 with a direction to report Group Centre, CRPF, Muzaffarpur, Bihar, and finally were given appointment in the Follower trade of C.R.P.F. after being declared physically and medically fit for the said post by Jamshedpur Medical Board. It is further stated that enlistment of the petitioners were considered by the Department only on submission of their willingness of their appointment on the post of Follower in C.R.P.F. It is, thus, submitted that the petitioners having accepted their appointment on the post of Follower have no claim for the reliefs as prayed.

4. Learned counsel for the petitioners has submitted that in view of the admission of the Respondents that for appointment to "the post of Follower, petitioners were found physically and medically fit and were thus given appointment go to show that earlier medical test of their was perfunctory and was malafide only to deny them regular appointment as Constable. According to the learned counsel for the petitioners nothing has been shown that for holding of medical test for appointment of Follower and Constable the criteria is different. It is submitted that, in fact, petitioners were subjected to medical test number of times and were found fit only whereafter they were appointed as Constable and continued to work for almost five years and had become quasi permanent after completion of only three years of service under Rule 16 of the C.R.P.F. Rules, 1955.

5. On the other hand, learned Senior Standing Counsel appearing for the Respondents submitted that the writ petition is fit to be dismissed on the sole ground that earlier the petitioners along with others had approached this Court in

C.W.J.C. No. 3355 of 1994 but failed to get redressal of their grievance and this Court simply directed the Deputy Inspector General of Police, C.R.P.F., Patna to examine their grievance afresh and if satisfied that there was no proper medical check up of the petitioners done he would make arrangement for fresh medical check up and other screening test in accordance with law whereupon again they were found medically unfit. Thus, according to the learned Senior Standing Counsel, petitioners are not entitled for any relief from this Court. It has also been submitted by the learned Senior Standing Counsel that the petitioners having accepted the appointment to the post of Follower have no right to agitate before this Court for the reliefs as claimed. According to him, in fact, the enlistment of the petitioners were considered by the department only on submission of their willingness of their appointment as Follower in C.R.P.F., which has nothing to do with their claim for absorption as Constable in C.R.P.F. on regular/permanent basis. Accordingly, it is submitted that the petitioners are not entitled for any reliefs as claimed and the writ petition is fit to be summarily dismissed.

6. This Court is unable to accept the said submission of the learned Senior Standing Counsel. There cannot be any doubt that while absorbing the petitioners in the main stream of the force the authorities are competent to have full screening as prescribed under the Rules for appointment including medical test to be conducted by the Medical Board, but this Court finds that the rejection of their claim for absorption in the main stream of the force as Constable was finally made on remand by this Court only by their appointment as Follower on 29.7.1998 (Annexure-9 series). The said rejection was only on the ground that they were medically unfit which is not tenable, as admittedly they have been found medically fit for appointment in Follower trade of C.R.P.F. and no rule has been brought to the notice of this Court to show that the criteria for medical test for selection as regular constable is different from that of the selection for appointment in the Follower trade of C.R.P.F. Petitioners had no option but to accept the offer made to them for appointment in Follower trade of C.R.P.F. when no result was coming out for their absorption in the main stream of the force as Constable. With due respect, this Court finds that earlier this Court in the order, contained in Annexure-4, rightly on consideration of the fact that bare reference to the impugned order would indicate that most of the persons enlisted therein including the petitioners are suffering from colour blindness or knock knee, found that such type of findings about majority of them interviewed creates doubt about the correctness of the medical examination and remitted the matter back for fresh consideration. From the own admission of the Respondents in the counter affidavit that the petitioners have been found physically and medically fit for appointment in the Follower trade of C.R.P.F. goes to show that earlier findings of the Medical Board was not based on correct assessment specifically when learned Senior Standing Counsel has failed to show that there is any difference in the criteria for conducting of the medical test for appointment in Follower trade of C.R.P.F. and absorption in the main stream of the force as

Constable. It has rightly been submitted by the learned counsel for the petitioners that colour blindness is a genetic defect in human being which cannot get rectified within a couple of years. As the matter on remand by this Court was still pending final consideration and the Medical Board found the petitioners physically and medically fit even before their appointment as Follower in C.R.P.F., this Court does not find any cogent reason to deny their absorption in the main stream of C.R.P.F. as Constable for which purpose the matter was remanded by this Court for holding of fresh medical test. Accordingly, this writ petition is allowed. The respondents are directed to consider the case of the petitioners afresh in the light of the medical test in which they have been found physically and medically fit and in pursuance of which they have been appointed as Follower in C.R.P.F. for their absorption/appointment in the main stream of C.R.P.F. as Constable and issue necessary orders with respect to it and communicate it to the petitioners within two weeks of the receipt/production of a copy of this order. However, in the facts and circumstances aforementioned, this Court considers it expedient to make it clear that the petitioners by virtue of their said appointment in the main stream shall not be entitled for any other benefit for the past period except the benefit of seniority.