

(2013) 04 DEL CK 0052

In the Delhi High Court

Case No : Writ Petition (C) No. 2630 of 2013 and CM No. 4985 of 2013

Ram Pyare

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 4 ILR Delhi 2576

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : A.K. Mishra, for the Appellant; Himanshu Bajaj, for the Respondent

Judgement

Gita Mittal, J.—Rule D.B. Mr. Himanshu Bajaj, counsel for the respondents accepts issuance of rule. It is submitted that given the prior adjudication in similar matter, counter affidavit is not necessary. Counsel for the parties are accordingly heard.

2. Petitioner, who is serving as HC (AR/MR), was recruited in 1983 as Constable in CRPF. He contends that he was medically examined several times and was found in the medical category of SHAPE-1. The Petitioner was promoted to the post of HC (AR/MR) in the year 1989.

3. The Petitioner cleared his Promotion Cadre Course (PCC) on 24.02.2012 and subsequently the Respondents issued signal dated 21.01.2013 and recommended the name of the Petitioner for promotion as ASI (AR/MR) along with other eligible batch mates. The petitioner was medically examined by the Respondents on 26.12.2011 and was declared medically unfit for reasons of colour blindness and placed in the category of SHAPE-3. The review medical examination of the petitioner by the board of medical officers confirmed this finding on 14.08.2012 and placed the Petitioner in Colour Perception Category CP III.

4. In the meantime, the respondents appear to have proceeded further in the

matter of promotion and also verified that no preliminary enquiry or disciplinary proceedings are pending or contemplated against the petitioner. Unfortunately, the medical status of the petitioner as being colour blind could not be ignored and has impacted the petitioner's promotion whereby the Respondents cancelled the earlier promotion order vide their signal/order 19.02.2013 and 07.03.2013 which action of the respondents has been challenged by way of present writ petition.

5. Arguing before us, learned counsel for petitioner has contended that the challenge of the petitioner is covered by several judicial pronouncements of this court. In this regard, our attention has been drawn inter alia to the following:-

(i) Judgment dated 23rd April, 2013 passed in Writ Petition (Civil) No. 2667/2012 titled Kunwar Pal Singh Vs Union of India & Ors.

(ii) Judgment dated 22nd March, 2011 passed in Writ Petition (Civil) No. 5077/2008 titled as Sudesh Kumar & Ors. V. Union of India & Anr. and other connected writ petitions.

(iii) Writ petition No. 11855/2009 titled as Mohan Lal Sharma Vs. Union of India decided on 16th March, 2011.

(iv) The recent pronouncement dated 28th February, 2013 in Writ Petition (Civil) No. 356/2011 titled as Sh. P. Suresh Kumar Vs. Union of India.

6. It is contended by the learned counsel for the petitioners that the petitioner is suffering from colour blindness which was undetected at the time of his induction and is therefore entitled to the benefit of the several judicial pronouncements.

7. A reading of these pronouncements would show that the matter of the force personnel who were not discovered as suffering from colour blindness at the time of original induction, but were detected as being colour blind at subsequent stages has agitated the respondents and several measures have been taken pursuant to issuance of circulars from time to time.

The present case is similar to the case of the petitioners in the above writ petitions in as much as despite the medical examination, at the time of his original induction, the colour blindness of the petitioner was also not detected then. The petitioner contends that in these circumstances, he is entitled to the same benefits which have been given to the force personnel whose cases have been considered in the aforementioned judicial pronouncements.

8. There is no real contest to these submissions made on behalf of the petitioner. We find that so far as the issues raised by the petitioner are concerned, the same have been considered in paras 9 to 11 of the pronouncement in Sh. P. Suresh Kumar Vs. Union of India which read as follows:-

9. It is, therefore, evident from the above extract that right from 2002 to 2008, the respondents were sensitive and alive to the fact that colour blind personnel recruited prior to 2002 could not be treated differently from their other

colleagues who did not suffer from this disability as far as promotion and other conditions of the service were concerned. The doubts expressed from time to time, which were sought to be allayed in the form of Circular dated 29.10.2008 resulted in greater uncertainty and possibly some conflict. All these were given a quietus by the Circular dated 11.3.2011 which reiterated that promotional prospectus of colour blind personnel recruited by any of the forces would not be prejudicially or adversely affected. One would have thought that in such state of affairs and with two adverse judgments by Division Bench, the matter would have ended. This Court is also conscious that the appeals by the respondents through special leave to the Supreme Court against the directions in Sudesh Kumar's case (supra) were unsuccessful; the SLPs were dismissed. It meant that not only did the petitioners in Mohal Lal Sharma and Sudesh Kumar cases acquire a right in the form of a declaration that they would not be treated differently from their other non-colour blind colleagues, such right also vested and inured in all similarly situated employees and personnel of all the forces. Such being the case, the respondents cannot now argue that in the form of the mere Circular - of 18.5.2012 or in that matter of 27.2.2012, the present petitioners, or those who had not approached the Court, but are found to have the same conditions as the petitioners in Mohal Lal Sharma's case, can be in any manner discriminated against. That some approached the Court whilst the others felt no compulsion to do so, can be no rationale for a valid classification. In fact, the entire class of colour blind personnel WP (C) 356/2013 with connected matters Page 12 under such circumstance is indistinguishable. The respondents cannot treat the equals unequally by separating those who approached the Court and continue to give them promotions and other such benefits while denying the same to those who had not approached the Court and perhaps had no occasion to approach the Court on account of the declaration given. That would be plainly violation of Article 14 of the Constitution of India.

10. As a consequence of the above discussion, it is held that though the respondents have to some extent stated that posts suitable for colour blind personnel have been identified and allocated to accommodate their claims for promotion; it is hereby declared and directed that the effect of the previous judgments of the Court based on the respondents' own thinking contained in the three Circulars dated 17.5.2002, 31.7.2002 and 11.3.2011 would continue to bind the parties. There is, in fact, no denial in the facts situation warranting any different thinking. The petitioners and all others like them would be entitled to full benefits of promotions as is extended to those who do not suffer from colour blindness impugned in the previous directions of this Court in Mohal Lal Sharma and Sudesh Kumar's case.

11. In view of the above discussion, all the directions and orders impugned in the present case which denied or deprived the petitioners the chance or right to occupy the promotional posts are hereby quashed. The respondents are directed to issue consequential orders wherever the promotions have been actually effected with effect from the date the petitioners' juniors were promoted.

9. These observations apply squarely to the case of the petitioner. Giving the nature of the adjudication by this court in all the aforementioned pronouncements, we are of the view that petitioner is also entitled to the relief's which was given in the case of Suresh Kumar (supra).

In view of the above, we direct as follows:-

(i) The signal dated 19.02.2013 and 07.03.2013, cancelling the promotion of the petitioner is held to be illegal and is hereby set aside and quashed.

(ii) A writ of mandamus is issued hereby directing the respondents to pass appropriate orders promoting the petitioner to the post of ASI (AR/MR) subject to completion of all formalities.

10. Having regard to the passage of time since the last medical board, if it is required, the petitioner may be required to undergo fresh medical examination.

11. The medical examination shall be conducted within a period of four weeks from today. Orders shall be passed immediately thereafter.

12. The petitioner will be entitled to the financial benefits accrued from the date of promotion, however, he will be deemed to have been promoted on the date on which his immediate juniors were promoted and his position shall be maintained at the appropriate place in seniority. This writ petition is allowed in the above terms.