

(2019) 07 CAL CK 0009

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 8733 (W) Of 2019

Rohit Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Railway Protection Rules, 1987 — Rule 7, 153

Citation : (2019) 07 CAL CK 0009

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Achin Kumar Majumder, Pratik Majumder, Deepak Kumar Singh, Renuka Patrick

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner challenges the charge sheet dated 5th February 2019 issued against him u/s 9(1) of the Railway Protection Force Act 1957 read with

Rule 153 of the Railway Protection Rules 1987 for imposing minor punishment.

The charge against the petitioner is falsification, infringement of prescribed recruitment rules and advertisement, intentional recourse to unfair means,

and misleading act to suppress the fact of unqualified and ineligible medical condition by resorting to deceitful practice, to train himself or in collusion

with the Railway Medical Authority securing his appointment for the post of constable in RPF/RPSF irrespective of the fact that he was ineligible for

appointment on account of congenital medical condition of colour blindness, and producing medically fit certificate at the time of recruitment.

The petitioner is a constable of the Railway Protection Special Force (RPSF). He was appointed in the year 2010 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 August, 2014 the petitioner was detected with defective colour perception. The petitioner was declared

permanently medically unfit for the duties of his original post. The Senior Medical Officer 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. 49/2014 dated 4th September, 2014 indicated that the petitioner was to be kept on

supernumerary post in the battalion with effect from 26th August 2014 till his permanent absorption in alternative job.

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 with all relevant documents.

By a communication dated 26th July, 2018 the Director/Security (ABE), Railway Board advised the Commanding Officer of the respective battalion

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.

A show cause notice was issued against the petitioner on 17/18th August 2018. The petitioner replied to the said show cause. Thereafter the charge

sheet impugned herein was issued against him.

The petitioner submits that the disciplinary authority is incompetent to initiate any proceeding against the petitioner. He submits that the petitioner was

no longer a constable of the RPSF as 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 August, 2014. He submits that the petitioner will no longer be guided by the Railway

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

Rules 1968.

The petitioner 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.

The petitioner relies upon a Division Bench judgment of this Court in the matter of Tejen Mitra & Ors. vs Union of India & Ors. reported in 2008 (2)

CHN 718 paragraph 22 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 passed 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 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 who are

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 petitioner who was a constable of CRPF to continue in service with all consequential benefits.

The petitioner prays for a direction upon the respondents to forebear from giving any effect to the show cause notice and the charge sheet and for a

further direction upon the respondents for providing alternative appointment to

him.

The learned advocate appearing for the respondents submits that as per Rule 7 of the Railway Protection Force Rules 1987, RPSF is a specially

trained unit of the Railway Protection Force and all members of RPSF are regarded as employees of RPF and guided by the said Rules.

He 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, upon instructions, that the petitioner 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 writ petition is premature and no right of the petitioner has been infringed by initiation of the disciplinary proceeding. The same

does not give right 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. vs

Provash Chandra Mirdha reported in (2012) 11 SCC 565 on the point that a charge sheet 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 2010 after obtaining a fit

certificate issued by the Medical Officer of the respondents. In the year 2014 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 â??Xâ?? 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 2014.

The petitioner has been medically de-categorised and kept in a supernumerary post since 2014. 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 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 in 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 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 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.

No legal right of the petitioner has been infringed by issuance of the said charge sheet. I am not inclined to enter into the merits of the charge sheet impugned in the instant writ petition. The respondents will proceed with the disciplinary proceeding in accordance with law.

WP No. 8733 (W) of 2019 is dismissed.

Urgent Photostat certified copy of this order be given to the parties, if applied for.