
(2015) 02 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) 1315 and 1320/2015

Satvir Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Citation : (2015) 02 DEL CK 0215

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Rekha Palli, Garima Sachdeva and Ankita Patbaik, for the Appellant;
Jyoti Dutt Sharma and Arun Kumar, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J.—The question whether appointment by selection pursuant to a Limited Departmental Competitive Examination is promotion or direct recruitment has been decided by a decision in W.P.(C) No. 2887/2012 Man Singh Vs. UOI and Ors. holding that it is a case of promotion, on the reasoning in paras 17, 18 and 19 as under:-

"17. In support of her first contention, Ms. Rekha Palli, learned counsel for the petitioner has drawn our attention to the stand of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records which have been filed in a pending matter before the Supreme Court of India. The first noting (dated 18th November, 2011) is extracted in extenso hereafter and reads as follows:-

"Department of Personnel and Training Estt (res) Reference notes of Ministry of Home Affairs on pages 2-3/ante.

2. Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by

direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

-sd- (Sharad Kumar Srivastava) Under Secretary (Res)"

(underlining by us)

18. This noting was reiterated by the Ministry of Home Affairs in a noting dated 22nd November, 2011 of Shri R.P. Sati, Under Secretary referring to a writ petition filed in this court. The noting dated 22nd November, 2011 reads as follows:-

"Ministry of Home Affairs Pers - II

Reference note on pre-pages.

2. This is regarding Writ Petition(C) No. 5460/2011 filed by Shri Sundeep Kumar Dubey, Constable (GD) of CRPF in the High Court of Delhi against his non-selection for the post of Sub, Insp(GD) through Limited Department Competitive Examination (LDCE), 2010.

3. The matter was considered in this Ministry (p-2/n) and DoPandT was requested to clarify the position as mentioned in para - 3(p-2/n). In this connection DoPandT vide their UO dated 18.11.2011 (p-4/n) has clarified the following:-

"Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any."

4. We may convey the above mentioned clarification of DoPandT to CRPF.

Sd- (R.P. Sati) Under Secretary 22.11.2011

Director (Pers) /DS(Pers-I) "

(Underlining supplied)

The correctness and authenticity of these notings have not been disputed before us by the respondents.

19. The respondents have urged in the present proceedings that appointments through the LDCE is a mode of fast tracked promotion. In the above notings, the respondents have themselves taken the position that appointment through the LDCE is a mode of promotion. Given the stand of the respondents in the notings

aforesaid and before this Court it is clear that appointment to LDCE is merely an appointment by promotion, albeit fast tracked. It would, therefore, follow that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions."

(emphasis supplied)

2. Thus, as held by this Court in the decision dated July 28, 2014 in W.P.(C) No. 1938/2011 Ajay Panday Vs. UOI and Ors., the applicable medical norms to determine fitness of the two petitioners who seek promotion to the post of Sub-Inspector (Executive) after clearing the Limited Departmental Competitive Examination have to be those as are applicable to promotee officers and not direct recruits.

3. The next question for which we need to note the fact is that the writ petitioners had their visions corrected after undergoing Lasik Surgery, and learned counsel for the respondents who has obtained instructions informs that post surgery both writ petitioners have achieved the prescribed visual standard, but justifies non-grant of promotion on the ground that the norm for a direct recruit is that the standard vision should be without surgical intervention.

4. Similar was the position with Ajay Panday, and deciding the writ petition filed by him, the Division Bench extracted paras 2 and 41 of an earlier decision in W.P. (C) No. 5077/2008 Sudehs Kumar and Ors. Vs. Union of India and Ors. as under:-

"2. Sudesh Kumar, the writ petitioner of WP(C) 5077/2008 joined service as a Constable (General Duty) with the Central Industrial Security Force on 19.4.2003. Indisputably, he was medically examined at the time of his initial entry in the service and was found fit. He was not detected with any colour blindness. At each annual medical examination he was found fully fit. Responding to an advertisement dated 19.3.2007 he sought career progression when he offered his candidature for being appointed as a Sub-Inspector (Executive) through a Limited Departmental Competitive Examination proposed to be conducted by the Department. He successfully cleared the written examination held on 27.5.2007 as also the physical examination conducted on 2.6.2007 as also the interview held on 29.6.2007. Required to undergo another medical examination, he was medically examined at the CISF Hospital, Saket, New Delhi on 5.7.2007 and on 6.7.2007 was communicated a rejection on ground of being "unfit". The medical unfitness detected was: "Defective Colour Vision". He had a right to seek a Review Medical Board and for which he was supposed to file an Appeal annexing therewith an opinion of a competent doctor to the contrary. Since by July 2007, the Unit to which the petitioner was attached was transferred Thalchar (Orissa), he got himself medically examined from an Eye-Specialist at Angul (Orissa) and obtained a certificate as per which it was certified that the he had normal colour vision. He also got himself examined from the District

Hospital, Moradabad where it was certified that his colour vision was normal. Armed with the 2 certificates he preferred an appeal to the Inspector General CISF and grievance raised in the writ petition is that his Appeal was not being disposed of. During arguments of the writ petition filed by him, counsel stated that directions may be issued to CISF to convene a Review Medical Board with a panel of 3 doctors; all of whom should be Ophthalmologist with further direction that latest techniques available to detect colour blindness should be considered by the Board and applied at the medical examination. The response of CISF, as per counter affidavit filed, is that the Appeal filed has been rejected inasmuch as Sudesh Kumar has not complied with the requirements of filing the Appeal. Though not stated with clarity in the counter affidavit filed as to what was not complied with by Sudesh Kumar, during arguments, Dr.Ashwani Bhardwaj Advocate, stated that the requirement to be complied with was to have it recorded in the certificates obtained by Sudesh Kumar from the Civil Hospitals that he had informed the doctors concerned of being detected with colour blindness by the doctors of CISF, and since the certificates did not so record, the Appeal was rejected. It is asserted that this fact was communicated to Sudesh Kumar on 7.9.2007."

xxxx

"41. In this context we seek to highlight a very anomalous situation created by the respondents evidenced by the case of Sudesh Kumar, the writ petitioner of WP(C) No. 5077/2008 who joined service as a Constable (General Duty) under CISF on 19.4.2003 and was not detected with colour blindness then nor at any subsequent medical examination, but is being denied the fruits of promotion as a Sub-Inspector (Executive) notwithstanding he having successfully cleared the written and physical examination as also the interview on the ground that on 5.7.2007 he was detected with a defective colour vision. What is the exact extent of the defective colour vision has not been brought out. But what is unexplainable is that as per CISF he can continue to work as a Constable (General Duty), but not earn a promotion as a Sub- Inspector (Executive). We just do not see any rationale in the action taken. We also find absurdity in the stand taken by the CISF of not convening a Review Medical Board on the ground of the deficiency in the language of the certificates obtained by him from civil hospitals. Law is clear. Unless the language of a document is statutorily prescribed, as long as there is substantial compliance with the substance of an issue, the language of a document is immaterial. We find no justification for CISF not to subject him to a Review Medical Board, but in the final view which we have taken, there may be no requirement of so doing."

to hold in paragraphs 15 to 20 as under:-

"15. We highlight the fact that the same situation as in Sudesh Kumar (supra) prevails in the instant case. A Constable who has undergone a laser surgery and is deemed fit to continue to work as a Constable (and even adjudged to be in Medical Shape-I) cannot be promoted through the LDCE to the post of Sub-

Inspector with the same degree of medical fitness. Eventually, such a Constable having defective vision is also liable to be promoted in due course through the regular promotion channel to the post of Sub Inspector again with the same defect of medical fitness. This, to say the least, appears to us to be arbitrary and discriminatory qua those who are promoted through the LDCE.

16. In the aforesaid backdrop, it is deemed expedient to refer to the instructions issued by the Ministry of Home Affairs, Per- II vide its U.O. No.I-45023/1/2006-Pers-II (Part-III) dated 07.02.2008, which are stated to be uniform guidelines for all CPFs on the parameters to be checked during physical efficiency test and medical examination of qualified candidates CPOs (SI) examination - 2007 onwards conducted by SSC wherein head 17 of the said guidelines/parameters is as under:

The eyes EYE SIGHT

a) Minimum distant vision should be 6/6 each eye or 6/6 in dominant or shooting eye (6/6 right eye in right handed person or 6/6 in Left eye in left handed person) and 6/9 in other eye (6/9 in Left in right handed person or 6/9 in right eye in left handed person) without any type of correction including contact lens or Corneal Laser Surgery. Each eye must have full field of vision as tested by hand movements. Any morbid conditions of the eyes or lids liable to aggravate or recur will be cause of rejection of the candidate.

b) Squint of any degree will be cause for rejection.

In a left handed individual, who shoots from the left shoulder, the visual standards for the two eyes will be reversed.

Normally, a candidate should be able to close each eye separately."

17. The aforesaid guidelines/parameters are heavily relied upon by the Respondents to contend that though eventually the distant vision of the Petitioners was found 6/6 B.E. but they had undergone laser surgery of the eyes, hence were declared unfit by the Review Medical Board as per the aforesaid guidelines.

18. Per contra, learned counsel for the Petitioners urges that the aforesaid guidelines are applicable only in the case of direct recruitment and have no application to those candidates who are selected through the LDCE. In order to buttress her contention, learned counsel for the Petitioners has relied upon the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 as amended by the notification dated 28th June, 2001 bearing G.S.R. 484(E). The relevant portion of the said rules are extracted hereinbelow:

"2. In the Schedule to the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999, against serial number 4 relating to the post of sub-Inspector (Executive), for the existing entry the following entry shall be substituted, namely:-

SCHEDULE

5. Thus, on the reasoning aforesaid Ajay Panday, whose eyesight was found to be within the limit prescribed post Lasik Surgery was held entitled to be given appointment by promotion to the rank of SI (Exe.).

6. Learned counsel for the respondent concedes to the point that the decision dated July 28, 2014 qua Ajay Panday has been implemented and there is complete parity between the petitioners and Ajay Panday because the two writ petitioners and Ajay Panday joined as constables and were successful at the Limited Departmental Competitive Examination for appointment by promotion as Sub-Inspectors. All three have corrected vision after Lasik.

7. Thus, the two captioned writ petitions are allowed and a mandamus is issued in terms of para 21 of the decision in Ajay Panday's case, which reads as under:-

"We note that the learned counsel for the petitioners has fairly conceded that in view of the time lapse since the filing of the writ petition the respondents would be within their rights to require the petitioners to undergo fresh medical examination prior to their appointment. We are not informed as to whether the petitioners still are in the Medical Category of Shape-I and accordingly we direct that the respondents shall constitute a Board for the medical examination of the petitioners afresh within four weeks from today, which shall take into consideration the cumulative facts set out in the present order. In case the petitioners are found medically fit for appointment in terms of the present order, the respondents shall issue the letters of appointment to the petitioners for the post of Sub Inspector as expeditiously as possible and not later than six weeks from their medical examination. In case, however, the petitioners for any reason are found medically unfit for appointment, the findings of the Medical Board shall be forthwith communicated to the petitioners to enable them to take such measures as they may be advised to assail the same in accordance with law. The petitioners shall be entitled to notional promotion with seniority upon their appointment which shall relate back to the date when other personnel who participated in the LDCE selection were appointed. We, however, clarify that there shall be no entitlement to back wages."