

(2022) 02 MP CK 0171
In the Madhya Pradesh High Court
Case No : Writ Appeal No.739 Of 2019

State Of M.P And Others

APPELLANT

Vs

Sunny Karari

RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Madhya Pradesh Vishesh Sashastra Bal Niyam, 1973 — Rule 21, 22, 22(v)
Madhya Pradesh Vishesh Sashastra Bal Adhiniyam, 1968 — Section 27

Citation : (2022) 02 MP CK 0171

Hon'ble Judges : Vivek Rusia, J;Rajendra Kumar Verma, J

Bench : Division Bench

Advocate : Shrey Raj Saxena, L.C.Patne

Final Decision : Dismissed

Judgement

Rajendra Kumar Verma, J

1. This writ appeal is preferred against the order dated 17.01.2019 passed by the learned Single Judge in W.P.No.18177/2017 by which the appellants/State have been directed to issue a consequential appointment order in favour of the respondent and he shall be entitled for all consequential benefits excluding back wages by treating him as an appointee from the date the other persons from the same process of selection have been appointed. The appellants shall also grant notional fixation of salary, seniority and interest.

2. The facts of the case are that the respondent had filed a writ petition being aggrieved by the order dated 13.09.2017 passed by the Additional Director General of Police (Selection/Recruitment), Police Headquarters, Jahangirabad on medical grounds. The contention of the respondent in the writ petition was that an advertisement was issued in the month of April, 2016 inviting applications from eligible candidates for various posts including the post of Constable (Water Carrier) and the respondent did apply for the same. The respondent belongs to Scheduled Tribe category and participated in the examination conducted by the

M.P. Professional Examination Board and qualified for the second stage i.e. physical test which was to be held on 29.09.2016. He was declared physically fit and therefore he was required to undergo medical examination post selection. The respondent appeared before the medical board at District Medical Board on 09.02.2017 and he was not found fit in medical examination by the District Medical Board and the respondent submitted a representation dated 02.03.2017 to Regional Director of Health Services, Indore and requisitioned for medical examination by the Divisional Medical Board. The respondent was directed to appear before the Divisional Medical Board and he was examined at M.Y. Hospital, Indore on 03.04.2017 and even video recording of the medical examination was done and the respondent after examination was not found fit on technical ground. The respondent's contention was that he was fit for the post of Constable (Water Carrier) therefore, in the light of GOP No.137/2012, the appellants were required to issue appointment order in favour of the respondent.

3. In the reply filed by the appellants/State they have not denied the selection of the respondent on the post of Constable (Water Carrier). The appellants have stated that the respondent does not fulfill minimum physical qualification required for the post and as per Clause 2.5 of GOP dated 30.07.2012, "a candidate must possess vision intensity of 6.9 without glass and 6.12 for the second eye without glass and the candidate should also not be colour blind." The appellants have also stated that the respondent has not been found fit by the Divisional Medical Board.

4. Learned counsel for the appellants submits that the impugned order is contrary to the GOP No.137/2012 and also to the medical report given by the Divisional Medical Board, whereby the respondent is declared to be medically unfit for appointment on the post of Constable (Water Carrier) which include the post of Water Carrier also in the Police Department on account of deficiency in vision and on account of colour blindness. It is also submitted that the finding recorded by the Writ Court that the post applied by the respondent is not a technical post and by no stretch of imagination the post of Water Carrier can be said to be technical job. The said finding is contrary to the training syllabus of the Constable(Trade Man) which is filed as Annexure R/2. According to the training syllabus the Constable (Trade Man) which includes the post of Water Carrier is required training of firing and arms training and therefore, GOP No.137/2012 which provides for minimum qualification for vision is required to be followed.

5. Learned counsel for the appellants also submits that there is mention of specific clause in the advertisement regarding minimum physical qualification of the candidate i.e. Clause 1. 12.5 which specifically says that a candidate should be medically fit perfectly for appointment on the post of Constable. It includes the medical fitness on the point of vision also. The Clause 1.23 specifically shows that in the case of any dispute with regard to these rules the GOP No.137/2012 dated 30. 07.2012, an amendment dated 06.01.2016 shall be considered finally.

In GOP No.137/2012 dated 30.07.2012 Clause 2.5 is with regard to vision of the candidate which specifically prescribed that the candidate must possess vision intensity of 6/9 without glasses and must be 6/12 for the second eye without glasses. It is also mentioned that the candidate should be able to differentiate in the main colour by his eyes. As per the report of District Medical Board and Divisional Medical Board, the candidate was not found suitable as his vision was not upto the mark as prescribed under the Rules. It clearly reflects from the report that colour vision of both the eyes of respondent was partial red and green deficiency on ishihara chart therefore, in these circumstances, an opinion was given that the respondent is not fit for technical job.

6. It is further submitted by the learned counsel for the appellants that Special Armed Force is called for emergency duty and to maintain law and order situation, then the duties are assigned to the employee of the cadre of trade constable including (Washerman, Cook, Water Carrier, Tent Carrier, Cobbler, Barber Electrician, Sweeper etc). It is also submitted that at any point of time if the occasion arise, the aforesaid employee including trade constables are required to use weapon(gun) for firing for which clear vision is essential. In the present case, it is very clear from the report itself that the respondent is suffering with deficiency of colours, in these circumstances, the respondent is not fit for the technical job and for the post of Constable (Water Carrier) also.

7. Learned counsel for the respondent submits that the post of Constable (Water Carrier) could not be treated as technical job and that the Medical Board also does not say that the respondent is not fit to work as Constable (Water Carrier) though he has not been selected for technical job. It is also submitted that as per the qualifications prescribed in M.P.Vishesh Sashastra Bal Niyam, 1973 (hereinafter referred to as the 'Rules, 1973') in Rule 22(v) there is no provision regarding colour blindness.

8. Learned counsel for the respondent to support his contention has relied upon the judgments of the Apex Court in the cases of Union of India Vs. Satya Prakash Vasisht reported in 1994 Supp(2) SCC 52 and Mohd. Faisal Vs. Govt of NCT of Delhi and others reported in ILR (2006) II Delhi 694.

9. The only question for decision is whether the colour blindness is a disqualification prescribed for the post of Constable (Water Carrier). In Clause No. 2.(4).1 of GOP No.137/2012 dated 30.07.2012 it is clearly mentioned that for the post of Special Armed forces, Rules 21 and 22 of the Rules, 1973 will apply. The Clause 2.(5) of GOP No.137/2012 in respect of the vision is prescribed as follows:-

"2;5-दृष्टि

उम्मीदवारों को आंखों से संबंधी कोई रोग नहीं होना चाहिये तथा आंखों की दृष्टि तीव्रता बिना चश्मे के 6/12 से कम एवं दूसरी आंख की दृष्टि की तीव्रता बिना चश्मे 6/12 से कम नहीं होना चाहिये। मुख्य रंगोंका भेद करने में उम्मीदवारों को सक्षम होना चाहिये।"

10. Rules 21 and 22 of the Rules, 1973 reads as under:-

"21. Persons to be recruited. - Subject to the orders of the State Government issued from time to time in this behalf, recruitment to all ranks of S.A.F. shall be made from persons who are :-

(a) a citizen of India; or

(b) a subject of Sikkim; or

(c) a subject of Nepal; or

(d) a subject of Bhutan; or

(e) a Tibetan refugee who came over to India before the 1st January, 1962 with the intention of permanently settling in India.

(f) a person of Indian origin who has migrated from Pakistan, Burma, Ceylon and East African countries of Kenya, Uganda and the United Republic of Tanzania (formerly Tanganyika and Zanzibar) with the intention of permanently settling in India :

Provided that a candidate belonging to categories (c), (d), (e) and (f) shall be a person in whose favour a certificate of eligibility has been given by the State Government and if he belongs to category (1) the certificate of eligibility will be issued for a period of one year, after which such a certificate will be retained in service subject to his having acquired Indian Citizenship.

22. Qualifications. - (1) A candidate for direct recruitment in the Special Armed Force must have the following minimum qualifications :-

(i) Height.- 5'6".

5'2" in the case of Gurkhas, Garhwalis, Kumaonis.

5'5" in the case of Marathas and candidates of Scheduled Tribes and Schedule Castes.

(ii) Chest.- 31" unexpanded. 33" when fully expanded.

(iii) Age. - Not less than 18 years and not more than 28 years subject to all the relaxation available, to temporary Government servants, retrenched Government servants, candidates of Scheduled Castes and Scheduled Tribes, ex-servicemen, Gold smiths or any other category of persons as decided by Government from time to time.

(iv) Good moral character, good health and sound mind.

(v) He should not be knock-kneed or footed.

(vi) He should have the following educational qualification, namely :-

(a) Company Commander. - A Graduate of a recognized University or any other

degree recognized by the State Government to be equivalent.

(b) Platoon Commander. - A Graduate of a -recognized University or any other degree recognized by the State Government to be equivalent.

(c) Head Constable. - Higher Secondary.

(d) Constable. - No formal educational qualification is prescribed but the candidate will have to pass a test in Hindi reading, Hindi dictation, physical proficiency test and interview, personality test, each carrying 100 marks, and those who come in the merit list will be selected as laid down in Government of Madhya Pradesh, Home Department Circular No. 4078 GR-185/Bhopal, dated the 15th November, 1972.

[(e) Constable (syce-) pass 5th class Examination. The candidate will have to pass a Physical Proficiency test in interview.]

Reservation of vacancies for the Scheduled Castes, the Scheduled Tribes, ex-servicemen and any other category of persons shall be subject to Government orders issued in this behalf from time to time.

(2) Notwithstanding anything contained in sub-rule (1), the State Government in the matter of enlistment to the rank of Head Constable, and Constable, may sanction enlistment of a candidate even though he may be wanting in any one or more of the qualifications prescribed in the said sub-rule."

11. The medical report of the respondent is as follows:-

"DEPARTMENT OF OPHTHALMOLOGY

M.G.M. MEDICAL COLLEGE, INDORE

No.404/Ophth/2017

Date:22.06.2017

To,

Regional Director

Health Services, Indore Divisional

Indore

Sub: Ocular Examination of Shri Sunny Karari S/o Shri

Peeter Karari Resident of Vijay Nagar, Indore.

Ref: Your office letter no./Med. Board/2017/4118

Indore, Dated 8.05.2017.

Sir, Eye examination of Shri Sunny Karari S/o Shri Peeter Karari has been done in Eye OPD Department of Ophthalmology, MYH, Indore. His findings are as follows:

Vision – Right Eye – 6/9 (P)

Left Eye – 6/6 (P)

Near Vision – Both Eyes – N/6

Color Vision – Both Eyes – Partial Red and Green deficiency in Ishihara Chart

Anterior Segment – Both Eyes – WNL

Alignment of Eye – Exophoria for near and Orthophoria for distance

Fundus – RE – Normal

LE – Lattice degeneration present near equator 6'O clock.

Past History – H/o both eyes Lasik Surgery

Opinion – Patient is not fit for Technical Job.

Prof. & Head

Deptt. Of Ophthalmology

MGM Medical College, Indore”

12. In the medical report, the vision of the right eye is 6/9 and left eye is 6/6 and the respondent is also not colour blind and no abnormality has been noticed in his eye sight. However, one line is mentioned in the medical report that "patient is not fit for technical job". The respondent was selected for the post of Constable (Water Carrier) and not selected either for the post of driver or the post of technician. There is no clear provisions in Rules as well as GOP that job of Water Carrier is technical job. There is no clear opinion regarding colour blindness. The respondent is having as already stated earlier vision of his right eye as 6/9 and left eye as 6/9.

13. The qualifications for the candidate for direct recruitment in the Special Armed Force has been given in Rule 22 of the Rules, 1973. As per Rule 22(v), the candidate should not be knock-kneed or footed. There is no specific provision regarding the eye sight or colour blindness in the Rules, 1973. As per Section 27 of the M.P.Vishesh Sashastra Bal Adhiniyam, 1968 the State Government may make rules not inconsistent with this Act for carrying out the purpose of this Act regarding recruitment, organisation, classification and discipline of members of the subordinate ranks and in exercise of its power, Rules, 1973 has been made by the State Government and the minimum qualification for the candidate for recruitment has been provided in Rule 22 of Rules, 1973.

14. As per the medical report of the MGM College dated 22. 06.2017 patient is not fit for technical job, but there is nothing on record that post of Constable (Water Carrier) for which the respondent was selected was a technical job. There is no medical report that the respondent is unable to differentiate primary/basic colours.

In the considered opinion of this Court, the learned Single Judge was justified in quashing the impugned order passed by appellant no.2. Hence, the order passed by the learned Single Judge does not warrant any interference.

Accordingly, the present Writ Appeal stands dismissed.