

Central Administrative Tribunal
Principal Bench

O.A. No. 45/98

(15)

New Delhi this the 26 th day of April, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Gurudyal, Ex. Constable,
S/o Shri Harphool Singh,
Village & Post Office Mehrawar,
District - Bharatpur (Rajasthan) Applicant.

By Advocate Shri Shyam Babu.

Versus

1. The Commissioner of Police, Delhi
Police Headquarters,
I.P. Estate,
New Delhi.

2. The Deputy Commissioner of Police,
2nd Bn. DAP,
Kingsway Camp,
Delhi. Respondent.

By Advocate Shri Raj Singh.

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Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant, who was working as Constable in Delhi Police since 8.9.1998 is aggrieved by the orders passed by the respondents terminating him from service and rejecting his appeal by orders dated 30.5.1997 and 10.9.1997 respectively.

2. The ground on which the respondents have passed the order of termination of the services of the applicant is that he had been declared medically unfit for police service by the Medical Superintendent-cum-Medical Legal Expert, Delhi by letter dated 22.4.1995 and subsequently by the Deputy Medical Superintendent, Civil Hospital by letter dated 26.3.1997, under Rule 38 of the Central Civil Services (Pension) Rules, 1972. The medical opinion against the

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applicant is that while his distant vision is normal, he is suffering from night blindness which is congenital/hereditary in nature and he is also having colour blindness for red and green. The learned counsel for the applicant has submitted that the opinion given by the Doctor dated 22.4.1995 is in contravention of the Medical Rules applicable to Delhi Police. He submits that it has been clearly prescribed in the Medical Rules that colour blindness/night blindness will not be a disqualification for appointment of Constables in Delhi Police. Such disqualification only applies to the staff working in the Traffic Unit as well as Drivers in Delhi Police. Learned counsel has also relied on the judgement of the Supreme Court in *Jaibeer Singh Vs. Deputy Commissioner of Police* arising out of SLP (Civil) No. 17002 of 1995 decided on 12.1.1996 which followed the earlier decision of the Supreme Court in *Union of India & Ors. Vs. Satya Prakash Vasisth* (1994(2) Supp.SCC 52) (copy placed at Annexure 'G'). He has submitted that the Appendix to Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter referred to as "the Rules") has been interpreted by the Supreme Court in *Jaibeer Singh's* case (*supra*) to mean that the requirement that the candidate should be free from colour blindness is only for the posts of Drivers and traffic staff mentioned in sub-clause (ii) and that does not apply to sub-clause (i) relating to Constables and Sub-Inspectors (Executive). The learned counsel for the applicant has submitted that the applicant is willing to give an undertaking that he would not claim his posting in the Traffic Staff of Delhi Police. He has submitted that there is no question of terminating the services of the applicant on the above, which is not a requirement as prescribed in the Rules for Constables. Shri Shyam Babu, learned counsel, has,

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therefore, submitted that the impugned orders have been passed without application of mind or consideration of the judgement of the Supreme Court, referred to above. He has, therefore, prayed that the impugned orders may be quashed and set aside and the applicant may be reinstated in service with all consequential benefits.

3. The respondents in their reply have submitted that the applicant while posted in West District, DCP/II Bn. DAP, ~~he~~ was selected for Commando course and was medically examined which resulted in the aforesaid medical reports. According to them, because of these medical reports, he is unfit for police service and also for any Commando training as he is having colour blindness for red and green and also suffers from night blindness. They have submitted that Traffic Unit is also a part of Delhi Police and every Constable (Executive) is required to be posted to various District/Units, including Traffic Unit as per standing instructions. However, no relevant standing instructions have been submitted by the respondents to show that the applicant who was appointed as Constable (Executive) has to be posted at some stage to the Traffic Unit for which the Rules prescribe that he should be free from colour blindness. However, they have submitted that as regards his posting as Driver, there are separate recruitment Rules. They have referred to Rule 9 of the Rules under which they have submitted that the vision standard prescribed includes "sound state of health, free from defect/deformity/disease, vision 6/12 without glasses both eyes, free from colour blindness" with the remarks that "no relaxation is permissible". Shri Raj Singh, learned counsel, has submitted that since the applicant has been found medically unfit by the competent

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authorities, in which no relaxation can be given, he has been invalidated from service by the order dated 30.5.1997 which is in accordance with the Rules and legal. They have submitted that the judgement of the Supreme Court in Satya Prakash Vashisht's case (supra) is not applicable to the facts of this case as that judgement is based on Rules which were in existence prior to the present Rules. They have also relied on the judgement of the Tribunal in Ramesh Kumar Vs. Delhi Administration (OA 724/90) where it was held that colour blindness is a disqualification for the recruitment in Delhi Police.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The applicant was enlisted as Constable (Executive) on 8.7.1988. His contention that he has neither been posted in the Traffic Branch nor was working as a Driver has not been controverted by the respondents. However, the respondents have submitted that when he was sent for Commando training, he was declared unfit for police service on the ground that his adaptation to light and darkness is very poor, which defect is congenital and he is also suffering from colour blindness for red and green. The applicant has also submitted that he would give an undertaking that he will never claim his posting in the traffic unit nor was he working as Driver which requires his ability to distinguish colours, especially red and green. Shri Raj Singh, learned counsel, has urged that under Rule 9, the applicant could not have been appointed as a Constable in Delhi Police unless he satisfied the prescribed vision standard, including being free from colour blindness but the fact remains that he was

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so appointed nearly 9 years before the impugned orders were passed. Initially in the reply, the respondents have explained as to how in the first instance the applicant was appointed as a Constable (Executive) on 8.7.1988. In the Appendix to the Rules, under clause (a)(ii) for recruitment of Drivers and Traffic Staff, they have to be free from colour blindness but under sub-clause (i) for Constables/Head Constables and Sub-Inspectors only visual acuity without glasses has been laid down but there is no reference to being free from colour blindness. As mentioned above, the respondents have also failed to produce the relevant Standing Orders on which they have relied upon to show that the applicant has to be posted to the Traffic Unit at any time. From the facts of the case it appears that only after a period of about 9 years when the applicant was selected for Commando training the respondentss became aware that he is suffering from colour blindness and night blindness. It is also not clear from the reply filed by the respondents as to what duties the applicant had been discharging during the intervening period from 1988 to 1995 and thereafter, till the impugned termination order was passed in May, 1997 invalidating him from service under Rule 38 of the CCS (Pension) Rules, 1972.

6. Therefore, from the above facts of the case, it appears that when the respondents appointed the applicant as Constable (Executive), he had passed the medical test for that post in accordance with the provisions of the Appendix read with Rules 9 and 24 of the Rules. The Supreme Court in Satya Prakash Vashist's case (supra) has after dealing with

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the relevant Rules and Appendix held that "there is clearly discernible basis for the disqualification of colour blindness for persons appointed as Drivers and traffic staff, the nature of whose duties are different from that of a Sub-Inspector (Executive)"

7. In the above facts and circumstances of the case, the impugned orders dated 30.5.1997 and 10.9.1997 are quashed and set aside. The respondents shall take the applicant back into service and post him in any suitable post as Constable, taking into account his visual infirmities and keeping also in view the specific undertaking given by the applicant in the O.A. regarding ^{that he will} ~~not~~ claim for posting as Head Constable (Driver) or Staff in the Traffic Unit of Delhi Police. This shall be done within two months from the date of receipt of a copy of this order. In the facts and circumstances of the case, the applicant shall not be entitled to pay and allowances for the intervening period from the date of his termination of service w.e.f. 30.5.1997 ^{However, he} till the date of his reinstatement. ^{He} shall be entitled to other consequential benefits in accordance with the relevant Rules ^{notional by} and instructions, including fixation of pay and counting of this period for seniority and pension ^{purposes}.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

"SRD"

Adige
(S.R. Adige)
Vice Chairman (A)