

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3800 OF 2016

New Delhi, this the 19th day of December, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER
.....

Pradeep Dagar,
Aged 23 years,
Group 'C', Post Name-Warder,
S/o Shri Ramesh Chand,
R/o House No.48,
Village & Post Office-Issapur,
New Delhi 110073

Applicant

(By Advocate: Mr.Asish Nischal)

Vs.

1. Government of NCT of Delhi,
Through the Chief Secretary,
New Secretariat, I.P.Estates,
New Delhi 110002
2. The Director General of Prisons,
Prisons Headquarter,
Near Lajwanti Garden Chowk,
Central Jail Tihar,
New Delhi 110054
3. Delhi Subordinate Services Selection Board,
Through its Secretary,
FC-18, Karkardooma,
Delhi 110092

Respondents

(By Advocate: Ms.Alka Sharma)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have heard Shri Asish Nischal, the learned counsel appearing for the applicant, and Ms. Alka Sharma, the learned counsel appearing for the respondents.

2. The applicant has filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing/setting aside of the order/Memo dated 31.3.2016 issued by the respondent-Department declaring the applicant as 'Unfit' for appointment to the post of Warder(Male) in Delhi Prisons on account of his suffering from 'Color Blindness' as per the medical report of Medical Board In-charge, DDU Hospital, Hari Nagar, New Delhi, and for issuance of a direction to the respondent-Department to appoint him to the post of Warder (Male) in Delhi Prisons as an OBC candidate on the basis of offer of appointment issued to him by the respondent-Department pursuant to the selection and nomination made by the respondent-Delhi Subordinate Services Selection Board.

3. Resisting the O.A., the respondent-Department has filed counter reply, wherein it has been stated, *inter alia*, that the Recruitment Rules for the Post of Warder, Central Jail, Prisons Department, Government of NCT of Delhi, stipulate that the candidate for appointment to the post of Warder has to be 'free from colour blindness'. The said Recruitment Rules do not permit relaxation of the prescribed physical standard. On medical examination, the Medical Board In-charge having found the applicant as suffering from 'colour blindness', there is no infirmity in the impugned

order/memo issued by the respondent-Department declaring the applicant as 'Unfit' for appointment and, consequently, refusing to appoint him to the post of Warder on the basis of the offer of appointment issued to him. Thus, there is no scope for interference.

4. It has been submitted by Shri Asish Nischal, the learned counsel appearing for the applicant that on the basis of his selection and nomination made by the respondent-DSSSB, the offer of appointment having been issued to the applicant, the respondent-Department ought not to have subsequently declared the applicant as 'Unfit' for appointment to the post of Warder and refused to appoint him to the post of Warder. In support of the case of the applicant, Shri Asish Nischal relied upon the judgment dated 22.7.2013 passed by the Hon'ble High Court of Delhi in W.P. (C) No.4561 of 2013 (**Suresh Ram Vs. Union of India and others**).

4.1 In **Suresh Ram Vs. Union of India and others** (supra), the petitioner was recruited as a Constable/GD on 3rd July, 1991 in the CRPF and was promoted by a signal dated 28th March, 2010 from the rank of Constable/GD to HC/GD. Four others were also so promoted. The petitioner complained that the respondents had effectuated the order of other four personnel similarly situated as the petitioner, who were promoted by the same signal, but promotion was denied to him on the ground that he has been found to be colour blind in the medical examination conducted after he successfully completed the promotional cadre course. Following its earlier judgment dated 22.3.2011 passed in **Sudesh Kumar Vs. Union of India**

and another, W.P. (C) No.5077 of 2008, and the judgment dated 28.2.2013 passed in **P.Suresh Kumar Vs. Union of India and othes**, W.P. (C) No. 356 of 2013, the Hon'ble High Court directed the respondents to issue consequential promotion order promoting the petitioner from the rank of Constable/GD to Head Constable/GD with all consequential benefits including seniority with effect from the date his juniors were promoted.

4.1.1 In **Sudesh Kumar Vs. Union of India and another**(supra), the Hon'ble High Court of Delhi had considered the cases of serving personnel with the Central Para Military Forces whose colour blindness was discovered at the time when they were medically examined for promotional purpose. The petitioners therein were otherwise fit for promotion. Relying on a policy circular dated 29.10.2008 issued by the respondent-Department, which contained the beneficial policy of adjusting the members of the Force who suffer from colour blindness to be made to perform such duties where colour blindness is not a handicap, the Hon'ble High Court held that the aforesaid policy deserved to be construed liberally and would apply to all personnel who were serving with the Central Para Military Forces. The challenge by the respondent-Department to the said decision was rejected by the Hon'ble Supreme Court.

4.1.2 In **P.Suresh Kumar Vs. Union of India and others** (supra), the petitioners were also serving personnel with Central Paramilitary Forces and were otherwise fit for promotion. Subsequent to the decision in **Sudesh Kumar Vs. Union of India and another** (supra), the respondent-

Department issued a policy dated 18.5.2012 regulating the continuance of such colour blind personnel in the Central Para Military Forces as well as the terms and conditions of the serving personnel. On the basis of the said policy dated 18.5.2012, the respondent-Department denied promotion to several personnel including the petitioners in the said case. Relying on **Sudesh Kumar Vs. Union of India and another** (supra) and some other decisions, the Hon'ble High Court quashed the impugned decision of the respondent-Department and directed the respondent-Department to issue consequential orders wherever the promotions have been actually effected with effect from the date the petitioners' juniors were promoted.

5. *Per contra*, it has been submitted by Ms. Alka Sharma, the learned counsel appearing for the respondent-Department that the decisions cited by the applicant, being distinguishable on facts, do not go to support the case of the applicant. In the instant case, the offer of appointment dated 3.2.2016 issued to the applicant was subject to the terms and conditions contained therein. In the offer of appointment, it was clearly stipulated that the applicant's appointment would be subject to his "Medical Fitness from Civil Surgeon, DDU Hospital, New Delhi" and "Successfully clearing the Physical Standard regarding height & Chest measurement as per Recruitment Rules for the post of Warder". When on medical examination the Medical Board In-Charge, DDU Hospital, New Delhi, found the applicant as suffering from 'Colour Blindness' which is prescribed in the Recruitment Rules as a disqualification of any candidate for appointment to

the post of Warder, the respondent-Department rightly declared him as 'Unfit' for appointment to the post of Warder and, accordingly, denied appointment to him, and the offer of appointment cannot be said to have conferred on applicant any right, far less any enforceable right, to claim appointment to the post of Warder without fulfilling the 'physical standard' prescribed in the Recruitment Rules.

5. After having given our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the applicant.

6. In the instant case, the applicant has not challenged the provision of the Recruitment Rules stipulating that the candidate for appointment to the post of Warder has to be 'free from colour blindness'. He has also not disputed the medical report submitted by the Medical Board In-Charge, DDU Hospital, New Delhi, finding the applicant to have suffered from 'colour blindness'. When the applicant has not fulfilled the terms and conditions stipulated in the offer of appointment and has been found to have suffered from 'colour blindness', he cannot be said to have any right, far less any enforceable right, to claim appointment on the basis of the said offer of appointment. The doctrines of legitimate expectation and estoppel are not attracted in the present case. The Tribunal has no competence to issue a direction to the respondent-Department to appoint the applicant on the post of Warder who has not fulfilled the 'physical standard' prescribed in the Recruitment Rules, inasmuch as any such direction would be tantamount to directing the respondent-Department to violate the provisions of the

Recruitment Rules. The Tribunal is required to enforce the rule of law, and not to issue a direction which is contrary to what has been injected by law. As has been rightly contended by Ms. Alka Sharma, the learned counsel appearing for the respondent-Department, the decisions cited by the applicant, do not go to support his claim.

7. In the light of what has been discussed above, we dismiss the O.A. as being devoid of merit. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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