

Before M.M. Kumar & Ritu Bahri, JJ.

NEERAJ AND OTHERS,—Petitioners

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 19339 of 2009

26th October, 2010

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.16—Selection to post of Constable—Unfit on account of suffering from colour blindness—Whether entitled to be appointed to post of Constable—Held, no—Rules provide for a strict medical examination—Defect of eye sight—Medical unfitness—Sufficient to disqualify a person for appointment to post of Constable—Petition dismissed.

Held, that it is patent from para 30 of the judgment rendered by the Hon'ble Supreme Court in the case of '**Union of India versus Devendra Kumar Pant and others**' (2009)14 SCC 546 that while interpreting Section 47(2) of the 1995 Act it has been held that if a person is otherwise eligible for promotion he cannot be refused promotion merely or only on the ground that he suffers from a disability. However, the proposition is different if a disability affects discharge of function or performance while working on the promoted post or if possibility would pose a threat to the safety of co-employees, members of the public or employee himself. Accordingly, it has been held that promotion could be denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion merely on account of his disability. The aforesaid interpretation given in a case of promotion would be equally applicable to the case of direct appointment. In the present case, the colour blindness of a Constable selected in IRB would certainly affect performance of his duty. We are in agreement with the view taken by the Tribunal that there is sufficient room in Rule 12.16 of the Rules to disqualify a person suffering from colour blindness for appointment to the post of constable in IRB.

(Para 4)

S.N. Yadav, Advocate, *for the petitioners.*

M. M. KUMAR, J.

(1) The original applicants having lost before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') have approached this Court by filing the instant petition and have challenged order, dated 7th September, 2010 passed by it. The short issue raised in the petition is whether a person suffering from colour blindness could be appointed to the post of a Constable. After their selection for the post of Constables, they were medically examined and found unfit on account of colour blindness. It is undisputed that the petitioners were selected for appointment as Constables in the Indian Reserve Battalion (IRB). They were not elected as constables who were to discharge duties on executive side namely clerical work. The Tribunal rejected their claim by placing reliance on Rule 12.16 of the Punjab Police Rules, 1934 (for brevity 'the Rules') which is duly adopted by the Chandigarh Administration. The Tribunal in paras 11 and 12 held as under :

- “11. As far as the provision in the rules is concerned, we find that there is adequate provision in the rules for the rejection of a candidate suffering from colour blindness, for the post of constable since it has been clearly stated that ‘candidates shall be rejected for any disease or defect which likely to render them unfit for the full duties of a police officer. This provision adequately covers the defect of colour blindness since it would be likely to render him unfit for all the duties to which a constable may be assigned in the Chandigarh Administration.
12. Therefore, in the totality of the facts and circumstances of the case, we are of the view that the action of the respondents in rejecting the candidature of the applicants because of their colour blindness is legal and valid. The OAs except OA No. 226 HR 2009—Jitender Kumar *versus* UOI are therefore dismissed. In the case of Jitender Kumar (*supra*), respondents are directed to consider his case for compassionate appointment on any other suitable post subject to availability of a post and his suitability and other criteria as laid down in the relevant schemes within a period of three months from the date of receipt of a copy of this order.”

(2) We have heard the learned counsel at a considerable length and find that the instant petition is bereft of merit. The controversy has to be examined with reference to Rule 12.16 of the Rules which reads thus :

“12.16 Recruits-Medical examination of.—(1) Every recruit shall, before enrollment, be medically examined and certified physically fit for service by the Civil Surgeon. A certificate, in the prescribed form (10.64) signed by the Civil Surgeon personally, is an essential qualification for enrollment—(vide Fundamental Rule 10).

The examination by the Civil Surgeon will be conducted in accordance with the instructions issued by the medical department and will test the eye sight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease, or any other defect or tendency likely to render him unfit, and his age. The candidate must strip for examination, and a loin covering being allowed except when the examination is being completed, any candidate who refused to do so must be rejected. The conditions of police service makes it necessary that the medical examination of candidates should be strict. Candidates shall be rejected for any disease or defect which is likely to render them unfit for the full duties of a police officer.

(2) xx xx xx ”

(3) A perusal of the aforesaid rules show that Civil Surgeon is under obligation to conduct medical examination of every recruit before his enrollment. He will test the eye sight, speech and hearing of the recruit. If there is a tendency which is likely to render him unfit or any other defect found during medical examination then such a candidate may have to be rejected being medically unfit. The rule further states that the conditions of the police services makes it necessary that the medical examination should be very strict. Once the rules provide, for a strict medical examination then any defect of eye sight affecting the duties have to be recorded. Such a defect of eye sight may have to be considered as medical unfitness. The question has arisen before Hon'ble the Supreme Court in the context of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity 'the 1995 Act').

In respect of colour blindness their Lordships of the Hon'ble Supreme Court has observed in para 30 of the judgment rendered in the case of **Union of India versus Devendra Kumar Pant and others (1)** as under :

“Section 47(2) means that a person who is otherwise eligible for promotion should not be denied promotion merely or only on the ground that he suffers from a disability. Section 47(2) bars disability *per se* being made a disqualification for promotion but the position is different if disability would affect discharge of functions or performance in a higher post or if disability would pose a threat to the safety of co-employees, members of public or employee himself, or to the assets and equipments of employer. If promotion is denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion merely on the ground of his disability, but is denial of promotion by reason of disability *plus* something more, that is, the adverse effect of disability upon employee's performance of higher duties or functions attached to promotional post.”
(emphasis added)

(4) It is patent from the aforesaid para that while interpreting Section 47(2) of the 1995 Act it has been held that if a person is otherwise eligible for promotion he cannot be refused promotion merely or only on the ground that he suffers from a disability. However, the proposition is different if a disability affects discharge of function or performance while working on the promoted post or if possibility would pose a threat to the safety of co-employees, members of the public or employee himself. Accordingly it has been held that promotion could be denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion merely on account of his disability. The aforesaid interpretation given in a case of promotion would be equally applicable to the case of direct appointment. In the present case, the colour blindness of a Constable selected in IRB would certainly affect performance of his duty. We are in agreement with the view taken by the Tribunal that there is sufficient room in Rule 12.16 of the Rules to disqualify a person suffering from colour blindness for appointment to the post of Constable in IRB.

(5) The judgment of Hon'ble the Supreme Court in the case of **UOI versus Satya Parkash Vashishst (2)** has no application to the facts of the present case. There the selection and appointment was sought to be made to the post of Sub Inspector (Executive) Delhi Police. It is well known that executive cadre is different than the general duty cadre or IRB cadre. The member of the executive cadre perform ministerial functions and the colour blindness may not come in the way of performance of their duty. The general duty constable or IRB Constables have to perform variety of functions and colour blindness would certainly affect their performance of duty. Therefore, we do not find any merit in the contention based on the judgment rendered in the case of **Satya Parkash Vashishst** (*supra*).

(6) For the reasons afore-mentioned we are not inclined to admit this petition. Accordingly the same is dismissed.

R.N.R.