

(2024) 11 J&K CK 0001

High Court Of Jammu And Kashmir And Ladakh At Jammu

Case No: SWP No. 1526 of 2012

Anand

APPELLANT

Vs

Union of India through Home
Secretary, Ministry of Home
Affairs, North Block, Government
of India, New Delhi and Others

RESPONDENT

Date of Decision: Nov. 19, 2024

Acts Referred:

- Border Security Force Act, 1968 - Section 6
- Border Security Force Rules 1969 - Rule 13

Hon'ble Judges: Vinod Chatterji Koul, J

Bench: Single Bench

Advocate: Surinder. Kour, Ramandeep Kour, Vishal Sharma

Final Decision: Dismissed

Judgement

Vinod Chatterji Koul, J

1. As both the writ petitions arise out of a common order No. Estt/STC/Weed Out/Cm/2011/22373-88 dated 21.11.2011 issued by the respondents, by virtue of which both the petitioners have been declared as unfit and, accordingly, discharged from services without any pensionary benefits with effect from 26.11.2011, as such both the petitions are being disposed of by way of this common order.

2. Brief facts, giving rise to instant writ petitions, are that in the year 2011 recruitment was notified for recruiting constables (General Duty) in the Border Security Force (BSF). Petitioners applied for consideration of their candidature. After qualifying all the tests in the selection process, they were declared qualified for the post of Constable (GD) in BSF by the Selection Committee and ultimately medical examination of petitioners was conducted. In April, 2011, appointment orders were issued in favour of the petitioners and they were directed to report to the Commandant STC BSF, Udhampur. Thereafter, petitioners in pursuance of the appointment orders joined before the Commandant (supra) and were deputed to undergo basic training, however, after undergoing 6/7 months training, the respondent No.5- Commandant, (TRG), Office of the Deputy Inspector General STC, BSF, vide impugned order dated 21.11.2011 on the basis of recommendation of duly constituted Medical Board held at Ftr Hospital BSF Jammu, the petitioners were declared unfit to undergo basic recruit training, as such, they were discharged from services on the ground that they were suffering from colour blindness.

3. Mrs. Kour, learned senior counsel appearing for petitioners, contends with vehemence that petitioners were validly selected; they had cleared all medical examinations and the alleged disqualifications, on the basis of which petitioners are non-suited; same at no point of time were made known to petitioners, as such, entire exercise is arbitrary, unreasonable and against the rules of fair play, and coupled with this no notice or opportunity had been provided for and by placing reliance on totally inapplicable provision, impugned order in question has been passed. It is also submitted by her that the petitioners were selected and appointed by a duly constituted Recruitment Committee after being medically examined by the Medical Board and after having been found medically fit, they were sent for undergoing training. It is further stated that at the time of selection/appointment, petitioners were not suffering from any sort of disease of colour blindness, as it was only during the period of training, they were found unfit on the ground that they are suffering from colour blindness.

4. Learned senior counsel for the petitioners submits that the order impugned dated 21.11.2011 has been passed without any reasonable cause and reason, that too, without giving them an opportunity of being heard. It is further stated that the petitioners have conducted the medical examination of the petitioners not once, but thrice, firstly at the time of recruitment, and after selection at the time of appointment as well as when they were deputed for undergoing Basic Recruit Training.

5. Mr. Vishal Sharma, learned DSGI on the other hand would contend that an incumbent who is to be enrolled Constable(General Duty) in BSF has to be physically and medically fit, and once it has been found that petitioners are medically unfit, they cannot be retained as member of the BSF, and rightfully, their services have been disengaged.

6. In the instant writ petitions, petitioners have challenged the impugned order dated 21.11.2011, precisely on the following grounds:-

(a) That impugned order dated 21.11.2011 is against the provisions of BSF Act and Rules, so the same is not sustainable;

(b) That the impugned order is illegal on the ground that the petitioners were selected and appointed by the duly constituted Recruitment Committee and at that time also the petitioners were medically examined by the Medical Board and were found fit and when the petitioner was sent for undergoing training, the petitioner was again medically examined and found fit;

(c) That the Impugned order is also illegal and arbitrary on the ground that the petitioners were not suffering from any sort of disease and they were medically examined by the Board of Doctors at the time of conducting selection process and at the time of joining also;

(d) That the order is also illegal on the ground that the respondents have not followed the provisions of BSF Act and Rules because under Rule 13, there is procedure for enrolment, mode of enrolment and other matters connected there with and under Rule 13(1), upon the appearance before the enrolling officer of any person desirous of being enrolled;

(e) That the order impugned is against the provisions of BSF Act and Rules while under Section 6 of the BSF Act, 1968;

(f) That the order impugned is illegal and arbitrary on the ground that the respondents have not served any notice on the petitioners and neither afforded

any opportunity for making representation;

7. Mrs. S. Kour, learned senior counsel for the petitioners, lastly submits that the impugned order is also illegal on the ground that the respondents have discharged the petitioners from service without giving an opportunity of being heard and the said order is illegal, arbitrary, unjust and unwarranted on the ground that the petitioners are medically fit and are not suffering from any type of disease.

8. Per contra, respondents in their objections filed in opposition to the writ petitions have resisted and controverted the contentions and grounds raised and urged by the petitioners in the writ petitions by submitting that the petitioners were selected for the posts of Ct (GD) in BSF and while issuing appointment orders they were directed to join STC, BSF Udhampur, as such, the petitioners reported at Udhampur on 04.05.2011 for completion of their formalities and to further undergo Basic Recruit Training. In the objections it is averred that as per Rule 13 of BSF Rules 1969, a recruit reporting for basic training is required to be medically examined before commencement of his training and accordingly, the petitioners were medically examined by the Medical Officer, during which it was found that the petitioners were unable to read Ishihara's plates for colour blindness test. They were further referred to Government District Hospital, Udhampur and GMCH Jammu, which also observed and confirmed that they have defective colour vision. Accordingly, their case was taken up with Ftr Hqrs, BSF Jammu for detainment of a Medical Board to assess their suitability for service in BSF.

9. The further stand taken by the respondents in the objections is that the petitioners along with 07 other Rectt/Consts. were produced before a duly constituted Medical Board at Ftr Hospital BSF, Jammu, for assessing their suitability for training and after detailed examination, the medical board confirmed that the petitioners were unable to undergo Basic Recruit Training and thereafter, their case was forwarded to FHQ BSF for examination and to give further decision in the matter. After proper examination of the case, the Medical Board along with case file were returned with a direction to STC BSF to weed out the petitioners from services. The respondents in their objections have further contended that as per recommendation of a duly constituted Medical Board and in accordance with Rule-13, Part-II of Appendix-I of BSF Rules 1969, read with SOP dated 28.01.2003 regarding relegation and weeding out of recruits as the service of the petitioners were terminated without any pensioner benefits with effect from 26.11.2011.

10. Heard learned counsel for the parties and perused the material on record as well as medical record proceedings with regard to the petitioners, on the basis of which impugned order in question has been passed.

11. In support of her contentions, Mrs. Kour, learned senior counsel appearing on behalf of the petitioners, has relied upon the judgments of the Supreme Court in case titled **Mohamed Ibrahim vs. The Chairman and Managing Director and Others**, 2023 AIR (Supreme Court) 5123, **Union of India vs. Satya Prakash Vashishst**, reported in 1994(27) ATC 401.

12. Reliance is also placed on a judgment rendered by the High Court of Delhi in a batch of writ petitions, main case being WP(C) 356/2013, titled **P. Suresh Kumar vs. Union of India and others**, decided on 28.02.2013.

13. The record of the Medical Record Proceedings produced by Mr. Vishal Sharma, learned DSGI, would reveal that in the assessment of Ishihara Colour Vision Test conducted by the Medical Board on 27.07.2011, in respect of the petitioners, the result was Colour Blind.

14. Again on 18.10.2011, the petitioners were once more medically examined for assessing their suitability for their basic recruit training/service by the review medical board; during which both the petitioners were found unfit on account of colour blindness.

15. The judgment of Hon'ble the Supreme Court in the case of Parkash Vashishst's 1994 (supra) relied upon by learned counsel for the petitioners 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. In the said case, it was observed that as the executive cadre was different than the general duty cadre or IRB cadre, the members 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.

16. The Judgment of Hon'ble Apex Court, rendered in Mohamed Ibrahim's case (supra) will also not at all come to rescue of petitioners, as in the said case, the Supreme Court has observed that the AE works at a position of overseeing supervisory work of Junior Engineers. This could involve, at the field stage, satisfaction after visual inspection. Sufficient safeguards can be taken, to ensure that he is accompanied by those without any colour vision deficiencies or impairments. It was further held that there are sufficient possibilities for accommodating Assistant Engineer (Electrical) in a unit or department which may not require utilization of skills that involve intense engagement with colour.

17. The writ petitioners in the instant matter, were appointed provisionally as Constable (General Duty) in the BSF in April, 2011. Before the commencement of their basic recruitment, petitioners were medically examined by the Medical Officer of STC Hospital, Udhampur, on 09.05.2011 and were found to be suffering from defective colour visions. Thereafter, the petitioners were further referred to Govt. District Hospital, Udhampur and GMCH, Jammu for ophthalmologist opinion, and the ophthalmologist observed and confirmed that the petitioners have defective colour vision and, accordingly, their names were struck off the rolls. Both the petitioners have been invalidated by the Medical Board and in lieu of medical examination have duly appended their signatures on the medical report. Petitioners are thus, well aware of the fact that they have been declared unfit. Petitioners have not lodged any malice or bias towards members of the Medical Board, who have examined the petitioners and have declared them as medically unfit.

18. A Constable (General Duty) in the BSF is deployed for different kinds of duties like drivers and traffic duties. They are also deputed to perform the duty of Pilot and Escort. Thus, a Constable with colour blindness could cause danger to the life of public by giving or noticing wrong coloured signal. Therefore, proper colour vision is a prerequisite for such type of duties. In other words, colour vision test is an essential test and a person who is not able to pass this test could not be offered appointment as a Constable in the BSF (Force).

19. In view of the above, the petitioners with defective colour vision cannot be permitted to continue in BSF service, as defective colour vision is disqualification for entry into service. Petitioners have appeared before the Medical Board and have got themselves medically examined, and it is the Medical Board, which has found the petitioners medically unfit. Once Medical Board has taken decision, holding petitioners to be of defective colour vision, then this Court will not sit in appeal over the decision of Medical Board. Once incumbent does not conform to the test prescribed qua medical fitness, he cannot be enlisted as constable in BSF and he cannot be inducted as

member of the (BSF) Force.

20. For all what has been said hereinabove, this Court does not find any reason to exercise its discretion in these cases. The writ petitions are, accordingly, **dismissed**.