

Punjabhai Devrakhibhai Karamata vs Lokrakshak (Constable) Recruitment ... on 18 February, 2019

Author: N.V.Anjaria

Bench: N.V.Anjaria

C/SCA/483/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 483 of 2019

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PUNJABHAI DEVRAKHIBHAI KARAMATA

Versus

LOKRAKSHAK (CONSTABLE) RECRUITMENT BOARD

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Appearance:

MS SHUBHA B TRIPATHI(5597) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 1

MR KM ANTANI, AGP (99) for the RESPONDENT(s) No. 3

WRIT SERVED BY DS(5) for the RESPONDENT(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 18/02/2019

ORAL ORDER

Heard learned advocate Mr.Tejas Shukla for learned advocate Ms.Shubha Tripathi for the petitioner and learned Assistant Government Pleader Mr.K.M. Antani for the respondent - State and its authorities.

2. The petitioner has prayed to set aside order dated 05th August, 2016 passed by the respondent authority and has further prayed to direct the authorities to consider his case treating him fit candidate for the post of Police Constable.

3. It appears that the petitioner participated in the process of recruitment to the post of Police Constable (Armed) pursuant to advertisement dated 19th November, 2014. Having cleared the written test and the examination in the subsequent stages, the petitioner was asked to undergo medical test. He was examined by the Civil Surgeon. In the medical certificate issued, he was treated to be unfit. The impugned order dated 05th August, 2016 passed by the Police Superintendent,

Porbandar, mentioned that the petitioner was made to undergo the medical test at General Hospital as well as before the Board of Referees at Civil Hospital, Ahmedabad. It was stated that vision expert committee opined that the petitioner was unfit for the post.

3.1 When learned advocate for the petitioner produced upon being asked, copy of certificate dated 26th July, 2016 issued by the Board of Referees, M&J Institute of Ophthalmology, Civil Hospital, Ahmedabad which was referred to in the impugned order. The said Certificate No.759 dated 15th July, 2016 issued by the Ahmedabad Medical Board, inter alia stated that petitioner was unfit as Armed Police Constable. Nothing further was stated.

3.2 In view of the vagueness in the opinion of the medical persons regarding the ailment of the petitioner and since it was not certain that whether eye ailment was colour blindness or any other disease, in order to bring the precise fact on record, this Court by order dated 17th January, 2019 passed the order to issue following directions.

"(i) It will be open for the petitioner to approach the Medical Board, Civil Hospital, Ahmedabad alongwith the copy of this order;

(ii) If the petitioner approaches the Civil Surgeon, Civil Hospital, Ahmedabad, the Civil Surgeon shall refer the case of the petitioner to the Board of Referees and get the petitioner examined so as to certify the exact nature of vision ailment with which the petitioner is said to be suffering;

(iii) Learned Assistant Government Pleader is directed to independently forward the copy of this order to the Civil Surgeon, Civil Hospital, Ahmedabad for compliance;

(iv) The above exercise of examining the petitioner medically and issuance of fresh necessary certificate by the Board of Referees to be produced before this court, shall be completed within a period of 15 days from today.

(v) The medical certificate shall be issued after above examination and shall be produced on record of this petition."

3.3 Pursuant to the aforesaid order, petitioner appeared before the Board of Referees, Civil Hospital, Ahmedabad on 30th January, 2019 and was re- examined for his eye ailment. The Board of Referees, M&J Institute of Ophthalmology, Civil Hospital, Ahmedabad, issued certificate dated 31st January, 2019 after such examination which was produced on record by the petitioner along with the further affidavit. The said certificate mentioned that the petitioner was unfit as Police Constable as his colour vision was defective.

3.4 The case of the petitioner is that as per the rules for appointment to the post in question, it is nowhere prescribed that colour blindness/colour defect could be a ground to result into ineligibility. Petitioner relied on decisions in Special Civil Application No.8707 of 2016 as well as in Special Civil Application No.15431 of 2017.

4. In addition to the above decisions of this Court relied on by this Court, parties appearing through their learned advocates are ad idem that the issue involved in this petition is answered and covered in favour of the petitioner by judgment of the Division Bench in Rajdeepsinh Takhatsinh Zala v. State of Gujarat being Letters Patent Appeal No.1136 of 2018 decided on 02nd November, 2018.

5. The Division Bench in Rajdeepsinh Takhatsinh Zala (supra) addressed two questions. Firstly, whether the learned Single Judge was justified in following the decision in Dineshbhai Govindbhai Kathechiya rendered in Special Civil Application No.7638 of 2013. Second attendant question whether the appellants before the Division Bench who suffered from defect of colour vision, that is colour blindness, were entitled to be appointed to the post. The Division Bench noticed the decision in Dineshbhai Govindbhai Kathechiya (supra) to have been properly rendered and rightly relied on by learned Single Judge from whose decision in Special Civil Application No.7595 of 2013, the Letters Patent Appeal in Rajdeepsinh Takhatsinh Zala (supra) arose.

5.1 While advertng to the merits of the issue, the Division Bench in Rajdeepsinh Takhatsinh Zala (supra) discussed the provision of the Rules and highlighted the purport and import thereof as under.

"9.1 Schedule "B" bears the heading "Regulations as to the standard provision" and reads thus:

"SCHEDULE"B"

[See Rules - 7 and 11 (vi) of Appendix-III] Regulation as to the standard provision

1. When a candidate for admission into the Civil Services of Government, appears before the medical authority for visual test, the medical authority shall be guided by the different minimum standards as prescribed in Annexure 'A' to this Schedule. This is the "Sorting Out" stage, where the obviously suited are certified fit without further trouble.

2. The doubtful and unsuitable cases shall be referred to a "Board of Referees", comprising of at least three ophthalmologists who shall get the cases examined on the following points:

(i) Previous record of glasses worn.

(ii) Determination of refractive error under homatropine.

(iii) Fundus changes, particularly in the anterior part of choria-retina.

(iv) Vitreous changes.

(v) Absolute Visual Acuity.

(vi) Radius of curvature of cornea.

(vii) Ascertainment of the nature of his work, particularly in relation to subjective and objective hazards.

And shall assess the visual capacity against the visual task expected in which they shall be guided by certain classic standards according to the work to be assigned to the candidate.

3. The Board shall have the right to order the re- examination of a candidate annually for three years to determine the stability or instability of a refractive error before he is finally confirmed.

4. The "Board of Referees" decision shall be final and irrevocable.

5. When a candidate is referred to a Medical Board, the Board shall be guided by the standards laid down in Annexure 'A' (Preliminary standards) and those who fall short of the standard shall be referred to the "Board of Referees".

6. Rules for the guidance of Board of Referees are as specified in Annexure 'B'.

9.2 Annexure "A" of Appendix-III, to the extent the same is relevant for the present purpose, reads thus:

"ANNEXURE 'A' of APPENDIX III Preliminary Visual Standard for all Services
Group 'A' For posts requiring very high degree of visual acuity with unaided eye
Visual acuity unaided vision is not less than 6/6 in one eye and not less than 6/9 in the other.

Posts for which such a higher standard is required:

Armed and unarmed Police etc. Group 'B' For post requiring a very high degree of vision acuity with glasses and moderate degree without glass Visual acuity 6/24 each eye without glasses. 6/6 each eye with 2.5 D after correction. Normal colour vision as tested with the Ishihara test. No evident signs of infective condition of the external eye e.g. Trachoma. No squint.

Group 'D' For posts which can do with a moderate degree of visual acuity Visual acuity Better eye 6/6 4.0 D worse eye 6/24 with glasses. No infective condition of the external eye. Posts that can do with such a moderate degree of visual acuity Class III posts and all types of desk work e.g. Clerks, Accountants, Organising Officers, Store keepers."

9.3 A perusal of the above rules reveals that insofar as the candidates for the post of Armed and Unarmed Police, who fall under Group "A", are concerned, the requirement is "visual acuity - unaided vision is not less than 6/6 in one eye and not less than 6/9 in the other". For the said group, colour blindness is not shown to be a disqualification. Insofar as Group "B" is concerned, the same specifically provides for "normal colour vision as tested with the Ishihara test". The said

requirement relates to all Class-I and Class-II posts, namely, Medical and Engineering Services, Class II, Superintendents and Sub-Inspectors of Police, with which we are not concerned in the present case. Group "D" relates to the post with a moderate degree of visual acuity, which provides for visual acuity - Better eye 6/6 +/- 4.0 D worse eye 6/24 with glasses. This is the requirement for Class- III posts and all types of desk work, viz., Clerks, Accountants, Organising Officers, and Store-Keepers.

9.4 The post of a Lok Rakshak can either be considered in Group "A" viz. Armed and Unarmed Police or a Class- III post falling in the category of Group "D". In either case, no disqualification is provided for colour blindness. It is evident on reading the rules as a whole that where the rules wanted to provide for normal colour vision, the same is specifically stated in the group as in the case of the Group "B" where the requirement is normal colour vision as tested with the Ishihara test. Clearly therefore, the relevant rules governing appointment to the post of Lok Rakshak do not provide for any specific disqualification for candidates suffering from colour blindness.

5.2 Thereafter the Division Bench referred to the decisions of the Supreme Court and the principle enunciated therein to apply the same to the facts of the case.

"10. In the backdrop of the aforesaid facts as emerging from the record, the legal position is required to be examined. The Supreme Court in *Union of India v. Satya Prakash Vasisht*, 1994 Supp (2) SCC 52, has, after perusing the relevant rules as applicable in the facts of the said case, observed that it was clear that the requirement that the candidate should be free from colour blindness is only for the post of Drivers and traffic staff in sub-clause (ii) and that does not apply to sub-clause (i) relating to Constables, Head Constables and Sub-Inspectors (Executive). The court held that it was obvious that the disqualification of colour blindness has no application to sub-clause (iii). The court observed that there was 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).

11. Moreover, a Division Bench of this court in *Khant Harishchandra Amarsinh v. Superintendent of Police (supra)* has, in a similar set of facts, held that when there was no provision which disqualified or rendered "colour blindness" unfit for the post of Unarmed Police Constable, the termination of the services of the petitioner therein could not be said to be in consonance with the terms of his appointment. The court held that merely because the order of appointment stipulated that the appointment was subject to medical unfitness, does not necessarily ipso facto lead to unerring inference that such an appointment, despite the colour blindness certified by the Medical Board is not legal and proper. The court held that whether a particular type of unfit certificate by the Medical Board would be ground of termination of service or cancellation of the appointment order or not, will have to be adjudicated upon the terms and conditions of the service and the governing rules. It cannot be ipso facto judged that the colour blindness is itself disqualification for any post in question."

5.3 Rajdeepsinh Takhatsinh Zala (supra) held as under.

"12. In the light of the law laid down in the above decisions, it clearly emerges that in case any candidates are sought to be disqualified on the ground that they suffer from colour blindness, there has to be a specific provision in the rules providing for such disqualification. In the facts of the present case, a perusal of the relevant rules clearly indicates that no such disqualification has been provided for the post in question. Under the circumstances, it is not permissible for the respondents to adopt a stand that the appellants herein are not qualified for the post of Lok Rakshak. The learned Single Judge was, therefore, not justified in holding that every kind of deficiency or incapacity is not to be mentioned in the recruitment rules, and therefore, merely because it has not been specifically provided in the rules, it cannot be presumed that the petitioner therein should be treated as medically fit in spite of negative opinion after the examination.

13 This court is of the opinion that the view adopted by the learned Single Judge in Dineshbhai Govindbhai Kathechiya (supra), is in consonance with the settled legal position and the relevant rules and does not find it possible to agree with the view adopted by the learned Single Judge in the present case."

5.4 Dismissing the Letters Patent Appeal by upholding the judgment and order of the learned Single Judge, the Division Bench directed as under.

"15. The respondents are directed to consider the case of the appellants for appointment to the post of Lok Rakshak ignoring their colour blindness, and if nothing adverse is found against them, they shall be appointed on the said post forthwith. Since considerable time has elapsed since the recruitment was made, it is left to the discretion of the respondent authorities to appoint the appellants to any other Class-III post having equal pay if the post of Lok Rakshak is not available. It is also directed that in case the appellants are not assigned active duty of Lok Rakshak, they may be assigned table work as an alternative."

5.5 About the nature of relief to be granted, observations made and directions issued as under.

"16. The question now is of the nature of relief which should be granted to the appellants in view of the fact though the selections took place in the year 2009, they would be appointed only now after a period of more than nine years. In the meanwhile the other selected candidates have been duly appointed and have been working for several years since then. In such a situation the grant of back-wages does not appear to be just and proper. This court is further of the view that though the appellants are entitled to the benefit of service from the date when they should have ordinarily been appointed on being selected yet it would not be appropriate to treat the earlier period prior to the date of their appointment as a period to be reckoned as actual service if a period of actual service is prescribed as a necessary qualification or

promotion. It is also made clear that the promotion already made of persons junior to the appellants in the merit list on account of the late appointment of the appellants shall not be disturbed as a result of the relief granted to the appellants. Subject to these limitations, the entire period commencing from the date when the appellants should have ordinarily been appointed would be treated as a part of their continuous service for all other purposes including the retiral benefits and fixation of their seniority."

6. The above observations and directions in Rajdeepsinh Takhatsinh Zala (supra) would apply to the cases of the present petitioner. Therefore, on the lines of the direction of the Division Bench in Rajdeepsinh Takhatsinh Zala (supra), the present petition is allowed and disposed of by issuing following order and directions.

(i) The respondents are directed to consider the case of the petitioner for appointment to the post of Unarmed Police Constable ignoring his colour vision defect, and if nothing adverse is found against him, he shall be appointed on the post forthwith;

(ii) Since considerable time has elapsed since the recruitment as made, it is left open to the discretion of the respondent authorities to appoint the petitioner to any other Class-III post having equal pay if the post of Lok Rakshak/Unarmed Police Constable is not available;

(iii) It is further directed that if the petitioner is not assigned active duty of the post in question, he may be assigned table work as an alternative;

(iv) The petitioner shall not be entitled to back wages in respect of the intervening period as having not actually worked;

(v) It is made clear that the promotion already granted to the persons junior to the petitioner in the merit-list on account of late appointment of the petitioner shall not be disturbed as a result of the relief being granted to the petitioner by these directions;

(vi) Subject to these limitations however, the entire period commencing from the date when the petitioner ought to have been ordinarily appointed, would be treated as a part of his continuous service for all other service purpose including the retirement benefits and fixation of his seniority;

(vii) All other observations and directions made by the Division Bench in Rajdeepsinh Takhatsinh Zala (supra) shall apply to the present petitioner;

6.1 Necessary orders shall be passed by the respondent authorities within a period of six weeks from the date of receipt of writ of this Court.

7. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

Direct service is permitted.

(N.V.ANJARIA, J) Anup