

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SATYA PRAKASH VASISHT

DATE OF JUDGMENT 27/10/1993

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
SAHAI, R.M. (J)
SINGH N.P. (J)

CITATION:
1994 SCC Supl. (2) 52

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. In response to an advertisement issued in January 1978 inviting applications from candidates for the post of Sub-Inspector (Executive) in the Delhi Police Service, respondent Satya Prakash Vasisht also applied along with others. In all 98 candidates were found suitable for appointment by the Selection Committee and the respondent was placed at Serial No. 54 in the order of merit amongst the suitable candidates. The selected candidates were called for medical examination and the respondent was medically examined on June 2, 1978. During the medical examination, the respondent was found medically fit in all respects except that he was found to be colour blind. The respondent was not given the appointment on the ground that he was colour blind. The respondent then challenged his non-appointment before the Central Administrative Tribunal. The Tribunal by the impugned order dated January 7, 1987 has allowed the respondent's application. It has been held that colour blindness was not a prescribed disqualification for the post of Sub-Inspector (Executive) and, therefore, the non-appointment of the respondent after he was duly selected was illegal. Accordingly, the Tribunal has directed that the respondent be appointed as Sub-Inspector (Executive) with all consequential benefits including seniority and pay, etc. in accordance with law with reference to the date on which he would ordinarily have been appointed on such selection. This appeal by the Union of India by special leave is against that judgment of the Tribunal.

2. The only question for decision is whether colour blindness was a disqualification prescribed for the post of Sub-Inspector (Executive) according to the rules applicable at the relevant time. Admittedly, the relevant provision in the rules introduced by amendment dated May 8, 1978 was applicable in the present case and the same reads as under "(a) that the vision is up to the following standard:

(i) For Constables, Head Constables and Sub-Inspectors (Executive)

Visual acuity (both eyes).

6/12 without glasses

(ii) For Drivers and traffic staff.

Visual acuity (both eyes).

6/12 without glasses

Shall be free from colour blindness.

(iii) For clerical staff and technical hands.

Distant vision.

Better eye

Near vision.

Worse eye."

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3. The contention of learned counsel for the appellants is that the expression "shall be free from colour blindness" is applicable both to sub-clauses (i) and (ii) of clause (a) and not merely to sub-clause (ii). It is on this basis that the learned counsel for the appellants supported the non-appointment of the respondent on the ground that he was colour blind. We are unable to accept this contention. Reading the above extract as a whole, it is 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). It is obvious that the disqualification of colour blindness has no application to subclause (iii) and this was rightly not disputed by learned counsel for the appellants. In such a situation, the applicability (sic inapplicability) of the disqualification of colour blindness to sub-clause (i) is further supported by the fact that the other expression "visual acuity (both eyes) 6/12 without glasses" is repeated identically in sub-clause (i) also even though it finds place in subclause (ii). If the words "shall be free from colour blindness" appearing in subclause (ii) were applicable also to sub-clause (i), the other expression "visual acuity (both eyes) 6/12 without glasses" would not have been repeated in subclause (i) when it finds place in sub-clause (ii). That apart, 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). The only contention advanced in support of the appellants cannot, therefore, be accepted.

4. The question now is of the nature of relief which should be granted to the respondent in view of the fact that he was actually appointed in February 1988 after refusal of stay in this matter by this Court. The selections were made in 1978 and the other selected candidates had been duly appointed and were working for several years prior to the date of actual appointment of the respondent in 1988. In such a situation, the grant of back wages to the respondent does not appear to be just and proper. Learned counsel for the respondent in all fairness accepted this position. We are also of the opinion that even though the respondent is entitled to the benefit of service for the earlier part commencing from the date on which he should ordinarily have been appointed on being duly selected yet it would not be appropriate to treat the earlier period prior to the date of his actual appointment as a period to be reckoned as 'actual service' if a period of actual service is prescribed as a necessary qualification for promotion. We also make it clear that the promotions already made of persons junior to the respondent in the merit list on account of the late

appointment of the respondent shall not be disturbed as a result of this relief granted to the respondent. Subject to these limitations, the entire earlier period commencing on the date on which the respondent should have been ordinarily appointed would be treated as a part of his continuous service for all other purposes including the retiral benefits and fixation of his seniority.

5. The appeal is dismissed subject to the modification so made. The respondent shall get costs from the appellants quantified at Rs 10,000.

JUDIS