

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.767 of 2022

In
Civil Writ Jurisdiction Case No.15686 of 2017

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Ajay Kumar Rai S/O- Shri Brij Bihari Rai, R/o- Village- Topra, P.O.-
Shrimatpur, P.S.- Pirpaiti, District- Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Bihar Military Police, Patna.
4. The Deputy Inspector General of Police Northern Division, B.M.P.,
Muzaffarpur.
5. The Commandant, Bihar Military Police-11, Jamui.
6. The Central Selection Board Constable Recruitment through its Chairman
Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Appellant : Mr. Rajeev Kumar Singh, Advocate
For the Respondents : Mr. P.K. Verma, AAG-3
Mr. Sanjay Kumar Ghoswary, AC to AAG-3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 11-11-2025

Heard Mr. Rajeev Kumar Singh, learned counsel for the
appellant and Mr. P.K. Verma, learned AAG-3 for the State.

2. The present intra court appeal has been filed against
the order/judgment dated 21.12.2021 passed in C.W.J.C. No.
15686 of 2017 by which the Hon'ble Court has been pleased to



dispose of the writ petition with direction to the authorities for medical examination of the appellant/petitioner.

3. Learned counsel for the appellant submits that the appellant has filed the writ petition bearing C.W.J.C. No. 15686 of 2017 for quashing of Force Order contained in Memo No. 1079 dated 18.05.2017 as well as quashing of Memo No. 758 dated 27.08.2017 by which the appeal against order of dismissal preferred against the appellant/petitioner was rejected.

4. Learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that the petitioner has challenged the aforesaid two orders but without entering into the merit of the case, the learned Single Judge has directed the appellant/petitioner to medical examination in the AIIMS Hospital, Patna in respect to eye medical examination. Learned counsel for the appellant submits that the learned Single Judge has failed to appreciate the fact that when memo of charge dated 15.09.2016 was issued, no presenting officer was appointed and without the presenting officer the entire proceeding has been concluded by the enquiry officer. Apart from the aforesaid, the appellant several times demanded some documents relying upon which charge was framed against him as well as statement of witnesses from the authority concerned to file effective reply of explanation but the

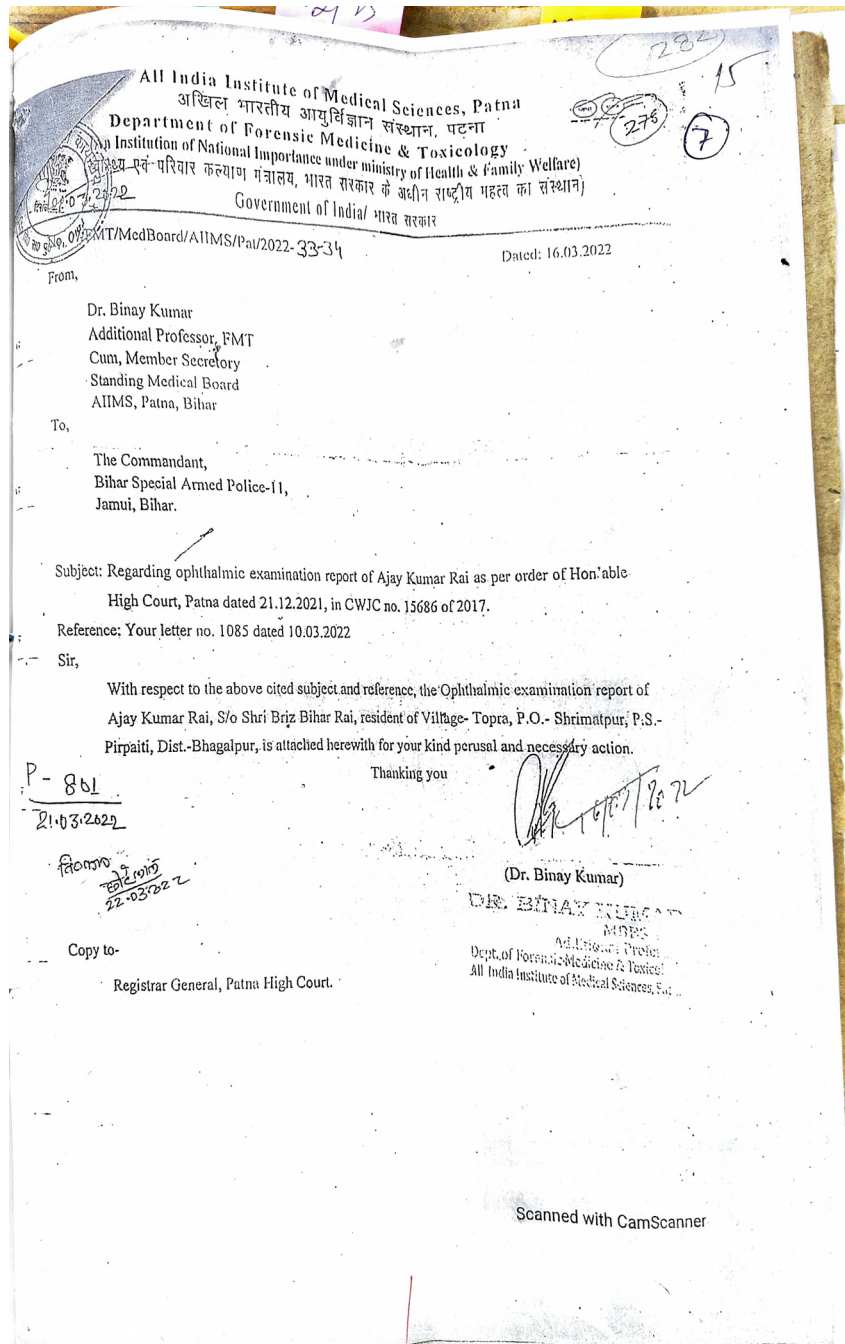


same was never provided to the appellant by the authority concerned.

5. Mr. P.K. Verma, learned AAG-3 for the State submits that from bare perusal of the record of the case, it appears that a Departmental Proceeding No. 08 of 2016 was initiated against the appellant and a copy of the enquiry report was given to the appellant vide Memo No. 1078 dated 18.05.2017 and the appellant was asked for explanation against dismissal vide Memo No. 110/Con dated 29.04.2017. A copy of statement of prosecution witness was also given to the appellant on 24.10.2017 which suggests that all the necessary documents were supplied to the appellant and after due process of law the appellant was dismissed from service. The State Level Higher Authority gave opinion regarding suffering of the appellant from colour blindness disease and there is no room for appointment of colour blindness in police force. Apart from the aforesaid, from perusal of the impugned order it appears that the writ court has directed to conduct medical test of appellant only in respect of eye medical examination and pursuant to the direction dated 21.12.2021 passed in C.W.J.C. No. 15686 of 2017, the appellant has deposited the requisite amount as indicated in the aforesaid order and All India Institute of Medical Sciences, Patna has found that the appellant is



suffering from Red-green colour deficiency in both eyes and on the basis of that the Commandant, Bihar Special Military Police-11, Jamui vide order dated 11.03.2022 has been pleased to declare the appellant ineligible on the ground that the appellant is suffering from colour blindness. The report of the AIIMS, Patna is reproduced hereinbelow :



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All India Institute of Medical Sciences, Patna
 अखिल भारतीय आयुर्विज्ञान संस्थान, पटना
 Institution of National Importance under Ministry of Health & Family Welfare
 स्वास्थ्य एवं परिवार कल्याण मंत्रालय, भारत सरकार के अधीन राष्ट्रीय महत्व का संस्थान
 Government of India/भारत सरकार
 No.07/FMT/Med-Board/AIIMS/Patna/2022
 Dated 09.02.2022

Medical Board opinion in case of Ajay Kumar Rai, S/o Shri Briz Bihar Rai,
R/o Bhagalpur, Bihar

Name: AJAY KUMAR RAI Dated 11.03.2022

Age/Sex: 36 years/ Male

Address: Village: Topra, P.O.- Shrimatpur, Bhagalpur, Bihar

Referred by (Agency/Authority Name): High Court of Judicature, Patna

Purpose of Examination as requested by referring Agency/ Authority: Assessment of colour blindness

Date of commencement of examination: 10/03/2022

Clinical Assessment:

802 • **Chief Complaints:** No presenting complaints.

63-282 • **History of Past illness:-** No associated history of Trauma and systemic illness

• **Family History:-** not significant

282 **Ophthalmic Examination:**

S.N.	Examination	OD	OS
1.	Visual Acuity- unaided	6/6 N6	6/6 N6
2.	AR	+0.25/+0.25@158°	+0.25/-0.25@65°
3.	Colour Vision	Abnormal Red-green colour deficiency	Abnormal Red-green colour deficiency
4.	Contrast Sensitivity	1.35	1.35
5.	IOP	18mm Hg	18mm Hg
6.	Slit Lamp Examination		
i)	Lid	Normal	Normal
ii)	Conjunctiva	Normal	Normal
iii)	Cornea	Clear	Clear
iv)	Anterior Chamber	VH4	VH4
v)	Iris	Normal	Normal

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6. Learned counsel for the appellant has relied upon a judgment in the case of Narendra Kumar Chandla Vs. The State of Haryana & Ors, reported in (1994) 4 SCC 460 in which the Hon'ble Apex Court has held that if the employee is physically incapacitated due to disease, the said employee shall be absorbed in the post carrying pay scale equal to that of his original post.

7. Learned counsel for the appellant has further relied upon a judgment in the case of Kunal Singh Vs. The Union of India & Anr, reported in (2003) 4 SCC 524 with respect to considering the persons with disabilities, the Hon'ble Apex Court has been pleased to hold that the appellant has acquired disability during his service and is found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits.

8. Learned counsel for the respondents has relied upon a judgment in the case of Bhagwat Sharan (Dead Through Legal Representatives) Vs. Purushottam and Others, reported in (2020) 6 SCC 387, referring paragraph nos 26 and 27 which is quoted hereinbelow:

“26. It is also not disputed that the plaintiff and Defendants 1 to 3 herein filed suit for eviction of an occupant in which he claimed that the property had



been bequeathed to him by Hari Ram. According to the defendants, the plaintiff having accepted the will of Hariram and having taken benefit of the same, cannot turn around and urge that the will is not valid and that the entire property is a joint family property. The plaintiff and Defendants 1 to 3 by accepting the bequest under the will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of wills, this doctrine has been held to mean that a person who takes benefit of a portion of the will cannot challenge the remaining portion of the will. In Rajasthan State Industrial Development & Investment Corpn. V. Diamond & Gem Development Corpn, Ltd., this Court made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.



27. *The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise Equity- A Course of Lectures by F.W. Maitland, Cambridge University, 1947, where the learned author succinctly described principle of election in the following terms:*

“The doctrine of election may be thus stated: that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it....”

This view has been accepted to be the correct view in Karam Kapahi V. Lal Chand Public Charitable Trust. The plaintiff having elected to accept the will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say



that the averments made by Hari Ram that the property was his personal property, is incorrect.”

9. From perusal of the aforesaid, it appears that the appellant on one hand has challenged the writ court order and on other hand he has deposited the amount for examination of his eye in the AIIMS, Patna as per direction of writ court and when he has found ineligible due to colour blindness, then he has chosen to challenge/file the present appeal.

10. Learned counsel for the respondents has also relied upon a judgment in the case of Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (International) Company Limited, reported in (2011) 10 SCC 420, referring paragraph no. 31 which is quoted hereinbelow:

“31. The applicants have not pleaded that there has been any kind of misrepresentation or fraud or coercion on the part of the respondents. Nor is it their case that payment was sent by the respondents without any settlement/agreement with the applicants, and was a unilateral act on their part. The applicants reached the final settlement with their eyes open and instructed their banker to accept the money as proposed by the respondents. The proposal itself was



on the basis of Clause 5 of the purchase contract which provided for price adjustment. For a period of three months after acceptance of the money under the full and final settlement, the applicants did not raise any dispute in respect of the agreement of price adjustment. In such a fact situation, the plea that instructions were given by the applicants to the banker erroneously, being an after thought, is not worth acceptance.

11. From perusal of the aforesaid paragraph no. 31 which suggests that the respondents have not played any kind of misrepresentation or fraud on their part.

12. Learned counsel for the respondents submits that the case cited by the counsel for the appellant is not in the present context in fact the appellant was found colour blindness in initial stage of his service.

13. We have heard the parties at length and perused the material on record. We have considered opinion that the appellant has not made out any case in fact the main gist of the case is whether the appellant is fit for the post in question or not and the writ court has rightly directed the appellant to examine before the Medical Board, AIIMS, PATNA and as per medical report of the



AIIMS, Patna, the appellant is suffering from colour blindness and such deficiency is not fit for the Police Force.

14. In view of the aforesaid, we do not find any illegality and infirmity in the order of the writ Court and no case is made out for interference in the matter.

15. It is, accordingly, dismissed.

16. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, ACJ)

I agree.

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(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.11.2025
Transmission Date	N.A.

