

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 29.05.2012

+ W.P.(C) 3196/2012

MS. SREEJA K.

... Petitioners

Versus

UNION OF INDIA AND ANR

...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Saurabh Bhargavan

For the Respondent : Mr Jatan Singh and Mr Tushar Singh

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. This writ petition is directed against the order dated 04.04.2012, passed in Original Application No. 1122/2012 by the Central Administrative Tribunal, Principal Bench, New Delhi. The petitioner was a candidate for the post of Junior Geologist, Group A in the Geological Survey of India. She had appeared in the examination and interview conducted by the U.P.S.C. and had qualified for the post. However, after her medical examination by the Medical Board at Safdarjung Hospital which was conducted on 04.04.2011, she was declared unfit on account of 'High Myopia'. The findings of the Medical Board with regard to acuity of vision were as under:-

Acuity of vision		Naked Eye	With Glasses	Strength of Glasses		
				Sph	cyl	Axis
Distant Vision	RE	6/60	6/9	-6.00	-2.50	75°
	LE	6/9	6/6	-0.50		

2. Thereafter, the petitioner underwent LASIK (laser-assisted in situ keratomileusis) surgery as a result of which, her visual acuity improved. She then requested for a second medical examination which was allowed and she was referred by the respondents to the Medical Board at Ram Manohar Lohia Hospital. She was examined by the said Board on 10.09.2011.

3. Since she had not been informed about the result of the examination, she sought an answer through the Right to Information Act, 2005. The answer given to her was that she had been declared medically unfit on account of her having undergone LASIK Surgery in the right eye. The exact words used in the medical report were as under:-

“unfit on account of LASIK Surgery D/E, for the post.”

The figures in respect of visual acuity were as under:-

“Left Eye	6/6	Plane			
Right Eye	6/6	-0.25 sh.	-0.5 cy	65°”	

4. We find that in the Regulations relating to the physical examination of the candidates pertaining to employment in the Government of India, the candidate’s eye-sight as per Regulation 6 thereof is to be tested in accordance with the rules set out therein. The said Regulation 6, to the extent it is relevant, reads as under:-

“6. The candidate's, eye-sight will be tested in accordance with the following rules. The results of each test will be recorded.

- (i) General:—The candidate's eyes will be submitted to a general examination directed to the detection of any disease or abnormality. The candidate will be rejected if he suffers from any squint or morbid conditions of eyes, eyelids, or contiguous structures of such a sort as to render, or are likely at a future date to render him unfit or service.
- (ii) Visual Acuity:—The examination for determining the acuteness of vision includes two tests, one of the distant, the other for near vision. Each eye will be examined separately.

There shall be no limit for minimum naked eye vision but naked eye vision of the candidates shall however, be recorded by the Medical Board or other medical authority in every case, as it will furnish the basic information with regard to the condition of the eye.

The standards for distant and near vision with or without glasses shall be as follows:

Distant		Near Vision	
Better Eye	Worst Eye	Better Eye	Worse Eye
6/9	6/9	0.6	0.8
or	or		
6/6	6/12		

NOTE:

(1) Total amount of Myopia (including the cylinder) shall not exceed 4.00D. The total amount of Hypermetropia (including the cylinder) shall not exceed - 4.00 D).

(2) Fundus Examination: Wherever possible fundus examination will be carried out at the discretion of the Medical Board and result recorded.

5. It is also to be noted that Regulation 2(b) (1) reads as under:-

“To be passed as fit for appointment a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his appointment.”

6. From the above, it is clear that the requirement for the candidate's eye-sight needs to conform to the standard prescribed in the said Regulation. In the first instance when the test was conducted at Safdurjung Hospital, the petitioner's eye-sight did not fit within the standard prescribed in the said Regulation. However, subsequently, she underwent LASIK Surgery and as a result of which, the eye-sight improved dramatically and fell within the standard prescribed in the said Regulation. This would be apparent from the fact that so far as distance vision is concerned, the visual acuity for the better eye as per the standard prescribed should be either 6/9 in both the eyes or 6/6 in the better eye and 6/12 in the worse eye. In view of the result of the second medical examination, we find that the petitioner has 6/6 vision in both the eyes, after LASIK Surgery. As such, she now conforms to the visual acuity prescribed in the said Regulation. In fact, even the total amount of Myopia, including cylinder, is much less than 4.00D. The extent has been stated in the test results which we have already indicated to be -0.25 sh. and -0.5 cy. Therefore, in so far as the standards prescribed by the Regulation are

concerned, the petitioner has fulfilled those standards after the said LASIK Surgery.

7. We fail to see as to how the Medical Board could then have declared the petitioner unfit. In fact, there are no rules prescribing that the person who has undergone LASIK Surgery would be disqualified or declared unfit for the post of Junior Geologist, in the Geological Survey of India. On the contrary, the learned counsel for the petitioner pointed out a letter dated 02.09.2011, issued by the Director General, Geological Survey of India, to the Secretary, Government of India, Ministry of Mines, New Delhi, indicating that after discussions held amongst the senior officers of Geological Survey of India at Central Headquarters, Kolkata on 18.08.2011, a general consensus was reached to the effect that any candidate having undergone LASIK Surgery cannot be disqualified medically for appointment in Geological Survey of India. However, in the same letter, it was added that if the Ministry of Mines approves, such candidate may be effectively deployed in one of the following offices/projects:-

- 1) Marine Survey/or
- 2) Laboratory related works

8. Therefore, the opinion of the Medical Board of Ram Manohar Lohia Hospital is altogether surprising. In fact, the Medical Board has not given any

reason at all as to why the petitioner was considered to be unfit for the post on account of LASIK Surgery.

9. Mr Jatan Singh, the learned counsel for the respondents, handed over a letter, issued by the Director General, Geological Survey of India to the Deputy Secretary to the Government of India, Ministry of Mines on 26.03.2012, wherein lists of equipments and instruments to be handled by the Geologists during their first 15 years of service, as received from the various divisions of Geological Survey of India, were forwarded for further necessary action. List-I contains set of 7 equipments which are to be operated and utilized by officers in Geochronology & Isotope Geology Division. The footnote at the end of the said list reads as under:-

“These instruments require normal vision, and if any defect in the eyesight of the user, it is to be corrected by suitable procedure.”

This clearly shows that for the operation of the listed instruments, normal vision is required, but if anybody, in the Geological & Isotope Geology Division who has to operate the instruments, has a defect in the eye-sight then that is to be corrected by a suitable procedure. Therefore, the respondents cannot take the ground that because the petitioner had undergone LASIK Surgery and had her vision corrected, she cannot be considered for employment with the Geological Survey of India. They also cannot take the plea that after the correction by following the ‘suitable procedure’ of LASIK Surgery she cannot operate the above instruments mentioned in that list.

10. List-III, appended to the said letter, contains a list of equipments/instruments used/to be utilized by Geologists in the Mineral Physics Division, GSI. The note at the end of the said list reads as under:-

“As above instruments are computer operated, continuous viewing of monitor is to be avoided by the officer who have recently undergone LASIK Surgery”

Here, too, we note that the emphasis is on the word “recently”. It is apparent that there is only a caution with regard to the continuous viewing of the monitor in respect of the officers who have recently undergone LASIK Surgery. It is not a bar against a person who has undergone LASIK Surgery. In any event, so far as the petitioner is concerned, she had undergone LASIK Surgery on 29.06.2011 which cannot now be regarded as being a recent event.

11. There is nothing in the other lists appended to the said letter which would even remotely suggest that a person having undergone LASIK surgery is disabled from using the said instruments. As such, we find that there is nothing either in the rules, regulations or in any other document of the Geological Survey of India which debars the petitioner from functioning as a Junior Geologist in the Geological Survey of India on account of the fact that she had undergone LASIK Surgery. On the contrary, it must be kept in mind that her corrected vision now falls within the parameters and standards prescribed under the said Regulation

itself. That being the case, she cannot be denied employment on the purported ground that she is unfit for the post on account of LASIK surgery.

12. The learned counsel for the respondents has placed reliance on the case of **Deepak Kumar v. Union of India: WP(C) No. 13159/2009** decided on 23.09.2010.

However, on going through the said decision, we find that the same is clearly distinguishable inasmuch as the petitioner in that case had failed to meet the prescribed standards in both the medical examinations conducted to assess his fitness. In the present case, we have already stated that in so far as the second medical examination was concerned, the result of the test indicated that she fell within the parameters prescribed under the said Regulation. The other judgment which was referred to by the learned counsel for the respondents was that of the Supreme Court in the case of **Indian Council of Agricultural Research and Anr. v. Smt. Shashi Gupta: AIR 1994 SC 1241**. However, that case is also distinguishable inasmuch as the respondent before the Supreme Court had been medically examined and was found medically unfit. But, in the present case, despite the test results falling within the prescribed parameters, the second Medical Board held the petitioner to be unfit on account of LASIK surgery when there was no bar against correction of vision through such a procedure in any rule, regulation, bye-law or order. The facts are different from that of the Supreme Court decision

and so also the applicable rules etc. Therefore, the said decision is not at all applicable to the fact of this case and is of no assistance to the respondents.

13. In view of the foregoing, we hold that the order passed by the Tribunal in dismissing the petitioner's Original Application was erroneous. Consequently, the impugned order is set aside. The respondents are directed to consider the petitioner for appointment to the post of Junior Geologist by taking her to be medically fit and the same be done within two weeks.

BADAR DURREZ AHMED, J

V.K.JAIN, J

MAY 29, 2012/bg