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

+ **W.P.(C) 508/2014**

% **Date of decision: 24th January, 2014**

UNION OF INDIA & ANR.

..... Petitioners

Through: Mr.Rajinder Nischal with Mr.Asish
Nischal, Advocates

versus

SAIKAT ROY

..... Respondent

Through: Mr.Saurabh Bhargavan and
Ms.Surekha Bhargavan, Advocates.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

Caveat No.71/2014

Respondent is represented through counsel.

Caveat accordingly stands discharged.

C.M.No.1008/2014 (for exemption)

Exemption is allowed subject to just exceptions.

Application is disposed.

W.P.(C) 508/2014 & C.M.No.1007/2014 (for stay)

1. The instant petition has been filed by the petitioner assailing the order dated 12th August, 2013 in O.A.No.2078/2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. The

factual matrix of the case is undisputed. The respondent had participated in an examination conducted by the Union Public Service Commission (UPSC) for selection to the post of Junior Geologist Group 'A' in the Geological Survey of India. Having qualifying the said examination, the respondent was directed by the petitioner to appear before the Central Standing Medical Board at Safdarjung Hospital, New Delhi on 20th January, 2011 for a medical examination. The medical board, after examining the respondent declared him 'unfit' on the ground of his having undergone Lasik Surgery.

2. Pursuant thereto the petitioner before us passed an order dated 28th February, 2012 operative part of which is to the following effect:

“2. The Regulations relating to the Physical Examination stipulates that there is no right of appeal determine the fitness for the post of Geologist. However, you can appeal before the Government along with the evidence about the possibility of an error of judgment in the decision of the first Board. Evidence should contain, a note by the medical practitioner concerning to the effect that it has been given in full knowledge of the fact that the candidate had already been rejected as unfit for service by the Medical Board.

3. You are requested to submit the evidence within one month from the date of receipt of this communication. In case you fail to do so, no request for an appeal to a second Medical will be entertained.”

3. The respondent questioned its order by way of O.A.No.2078/2012 submitting that he had undergone the Lasik Surgery for correction of his eye sight which could not be termed as disqualification and consequently be declared unfit for the post in the question.

4. It is not disputed that neither the recruitment rules for the said post nor the advertisement prescribe that Lasik Surgery for correction of eye sight would be treated as disqualification for the post of Junior Geologist, Group 'A'.

5. It appears that this very issue had been considered by the petitioners resulting in an order dated 2nd September, 2011 passed by the Director General of the Geological Survey of India sent to the Secretary, Government of India, Ministry of Mines, New Delhi. This communication referred to the consensus among senior officers of Geological Survey of India who had met at the Central Headquarters, Kolkata on 18th August, 2011 to the effect that any candidate having undergone Lasik Surgery cannot be disqualified medically for appointment in Geological Survey of India. This communication also 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.

6. The issue of fitness of a candidate who had undergone Lasik Surgery for the post of Junior Geologist also arose for consideration before this court in an earlier writ petition being W.P.(C) No.3196/2012 in **Ms.Sreeja K. vs. Union of India and Another**. In that case the candidature of the of petitioner for the post of Junior Geologist was cancelled when the medical board declared 'unfit' on account of 'High Myopia'. The petitioner placed reliance on the aforesaid order dated 2nd September, 2011. On consideration of the matter, in the judgment dated 29th May, 2012 this court had held as follows:

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

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 in as much 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.”

(Emphasis supplied)

7. The respondent has also placed reliance on judgment dated 12th August, 2013 passed by the Central Administrative Tribunal in O.A.No.2078/2012 in support of her challenge. The present respondent had submitted that the challenge had been laid by the petitioner before the Hon’ble Supreme Court by way of Special Leave Petition filed against O.A.No.74/2012 dated 11th June, 2012 entitled ***Shri Anjanjoti Deba vs. Union of India & Ors.*** wherein the facts and circumstances were identical as to the case of ***Ms.Sreeja K.***(Supra) had been dismissed vide order dated 15th April, 2013 leaving the question of law open.

8. Learned counsel for the petitioner submits that the order passed in ***Ms.Sreeja K.(Supra)*** by this court had been assailed by way of a Special Leave Petition which was pending before the Supreme Court. In the impugned order dated 12th August, 2013, the Tribunal has noted that the SLP in the case of ***Sreeja K.*** (supra) was pending without any stay, and directed in the interest of justice, the respondent be treated identically as the other two applicants. The application of

the respondent was allowed with the direction to the petitioner to consider the respondent's case for appointment to the post of Junior Geologist taking him to be medically fit. However, the respondent's appointment would be subject to the outcome of the SLP in **Sreeja K.**'s case (supra).

9. Learned counsel for the respondent has entered appearance today as a Caveator and has placed copy of the order dated 19th August, 2013 passed by the Supreme Court whereby S.L.P.(Civil) no.33451/2012 entitled *Union of India and Anr. Vs. Sreeja K.* has been dismissed by the Supreme Court on the ground that the present petitioner had already issued letter of appointment to her on 12th October, 2012. In view of this development, the S.L.P. was dismissed leaving the question of law open.

10. There is no dispute at all before us that there is no prescription in the recruitment rules to the effect that a person who had undergone Lasik Surgery to correct vision, would be disqualified for consideration for appointment. The medical board which has examined the respondent has not found his vision acuity to be defective. The respondent meets the prescribed vision criterion. The

only ground for rejecting him was the fact that he had undergone corrective Lasik Surgery. It cannot be disputed that in the absence of any prescription in rule or regulation, the mere fact that the person has undergone corrective surgery ipso facto cannot tantamount to his being medically unfit and result in rejection of a candidate.

11. For all these reasons, we find no error in the decision of the Central Administrative Tribunal. The writ petition is accordingly dismissed.

GITA MITTAL, J

DEEPA SHARMA, J

JANUARY 24, 2014

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