

\$~1

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

+ **W.P.(C) 9140/2017**

SMT. PUNEET KAUR DAS Petitioner
Through: Mr. Pulkit Aggarwal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. P.S.Singh, Senior Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

% **ORDER**
28.02.2019

1. The petitioner has come to this Court praying for a writ of mandamus directing the Respondents to appoint her for the post of Head Constable(HC) (Ministerial) (M) on compassionate grounds in the the Central Industrial Security Force (CISF).

2. The background facts are that the husband of the petitioner died in 14th April 2011 while working in the CIFS as Sub Inspector. At that time, he was posted with ONGC Post, Jorhat (Assam). On 18th April 2011, being the sole major descendant, the Petitioner applied to the Respondents for appointment at HC (M) on compassionate grounds.

3. The above facts are not disputed by the Respondents. In the counter

affidavit filed in first instance in this petition on 15th January 2018 while objecting the maintainability of the petition, reference is made to the CISF Circular No.21/2005/R&S dated 14th January 2005 (hereafter ‘the 2005 Circular’) and a copy thereof was enclosed as Annexure A-1. It was stated that the 2005 Circular was consistent with the guidelines issued by the DOPT by way of Office Memorandum (OM) letter No. 14014/6/94-Estt (D) dated 9th October 1998.

4. According to the Respondents, the Petitioner had to qualify in the first place in the typing tests. She was given three chances for this purpose on 29th October 2012, 20th May 2013 and 21st October 2013. A fourth chance was given to her on 1st December 2013 when she qualified. However, when she underwent a medical examination on the following date i.e. 2nd December 2014, she was disqualified on account of open “defective distant vision in both eyes, right eye is 6/24 and left eye is 6/24”.

5. The Petitioner then submitted an appeal against the said findings. She was examined by the Review Medical Board (RMB) on 12th March 2015. She was declared to have a defective distance vision of right eye is 6/12 and left eye 6/12.

6. Thereafter the Petitioner submitted a second appeal and the case is again referred to a Special Medical Board. She was examined on 28th October 2015 at Dr. Ram Manohar Lohia (RML) (Hospital). The report submitted by a Special Medical Board at the RML Hospital dated 24th November 2015 has been enclosed with the counter affidavit as Annexure A-6. The relevant

portion thereof reads as under:

"Vision -6/9(R), 6/9(L) unaided
 -6/6(R), 6/6(L) with glasses

CV normal.

The candidate is fit for the posts which permit use of glasses".

7. By a letter dated 25th November 2016, the Petitioner was informed by the Director General, CISF that her request for compassionate appointment had been examined but she did not qualify in any of the chances given to her.

8. In the counter affidavit, it was stated that the RMB disqualified her on the ground that her vision is 6/9 in both eyes unaided. The RMB did not appear to have taken note that the reading with glasses is 6/6 in both eyes.

9. When the matter was heard by this Court on 7th December 2018, learned counsel for the Respondents produced across the bar another set of Policy Guidelines issued by the MHA on 20th April 2015 which purportedly set a different standard for direct entry SO/Ors in the CAPFs. This standard required the uncorrected vision in the better eye to be 6/6 and further that "visual direction at any time is not permitted even by glasses". When asked whether the earlier 2005 Circular would still apply, learned counsel for the Respondents sought time to seek instructions.

10. At the hearing on 17th January 2019, counsel for the Petitioner contended that even in terms of the Guidelines issued on 20th May 2015, the Petitioner's case would be covered since the medical standard therein for

uncorrected visual acuity in the better eye as 6/9 or 6/6 and in the worst eye as 6/9 and 6/12. His contention was that inasmuch as the petitioner has 6/9 (uncorrected) in both the eyes, and 6/6 with glasses, she would be eligible in terms of even in the 2015 Guidelines. At this stage, again counsel for the respondents sought time for instructions.

11. At the hearing on 30th January 2019 an OM dated 24th August 2015 was produced which *inter alia* stated in para (ii) that Recruitment Medical Examination or Appeal Medical Examination required to be done in respect of previous year recruitments “will be done as per the instructions issued in the notification for that year recruitment”.

12. Two additional affidavits have been filed by the Respondents. One was filed on 15th January 2019 in which reference has been made to the Medical Policy Guidelines issued on 20th April 2015. The stand taken was that the Guidelines issued by the MHA that had become operational with effect from 20th May 2015 are applicable to all candidates whose Recruitment Medical Examination was conducted subsequent to the said date irrespective of the mode of recruitment and rank for which they are recruited.

13. The second additional affidavit was filed on 12th February 2019. In para 2 of the additional affidavit, it is *inter alia* stated as under:

“2. That the petitioner first time appeared in the recruitment process on 29/10/2012 for consideration of her candidature for appointment to the post of HC/M against the vacancy year 2012 and failed in skill test (typing test). As per UO dated 13/7/2011 uniform guidelines for medical examination test of Const/GD in

CAPFs & ARs were issued by ADG/Medical, CAPF which specifying visual standard distant vision 6/6 & 6/9 of 2 eyes without wearing of glasses. The same standard was also mentioned in the notification dated 26/2/2013 issued for recruitment to the post of HC/M for the recruitment year 2012. Further as per recruitment rules of the rank of HC/M the visual Standard is defined as uncorrected visual acuity (DISTANT VISION) Better eye-6/6 and worse eye- 6/9. Hence the same visual standards are applicable to the petitioner.”

14. Learned counsel for the Petitioner submitted that before filing the present petition in this Court, the Petitioner had approached Central Administrative Tribunal (CAT) and after the CAT found the petition not to be maintainable by its order dated 24th August 2017 while granting liberty to the Petitioner to approach the appropriate forum, the present petition was filed. He pointed out that both before the CAT and before this Court and in the counter affidavits filed, the Respondents have referred to the 2005 Circular which make a specific reference to appointment on compassionate grounds. According to him, the 2005 Circular which is specific to appointment on compassionate grounds has not been revoked and therefore continue to apply to the case of the Petitioner and have not been superseded even by the subsequent Recruitment Rules.

15. Learned counsel for the Respondents, on the other hand, maintains that with the Central Industrial Security Force (CISF), Assistant Sub Inspector and HC (Ministerial) Recruitment Rules 2013 (hereafter the 2013 RR) notified on 21st March 2013 would apply across the board whether the appointments are by way of regular recruitment or compassionate appointment. He referred to the Schedule to the 2013 RR where for the post

to HC (M) the medical standard as far as uncorrected visual acuity was 6/6 in the better eye and 6/9 in the worse eye. Further “visual correction at anytime is not permitted even by glasses”.

16. The short question that arises for consideration as far as the present case is concerned, is whether for the purposes of appointment on compassionate grounds whether the 2005 Circular which has been referred to by the Respondents themselves would apply or the 2013 RR would apply?

17. If the 2013 RR were to apply, then clearly the Petitioner does not satisfy the medical standard as her vision in both eyes is 6/9 and with glasses it is 6/6. However, if one went by the 2005 Circular, which was relied upon by the Respondents themselves throughout, then she satisfies the prescribed medical standard. A report of the Special Medical Board of the RR clearly states that her vision with glasses in both eyes is 6/6 and that she therefore satisfies the requisite medical standard.

18. It appears to the Court that a different set of standards was consciously put in place by the CISF itself when it came to appointment on compassionate grounds. The 2005 Circular applies exclusively to appointments on compassionate grounds. In drawing up the 2005 Circular, the CISF has followed the DOPT guidelines for that purpose. It therefore appears that for appointments on compassionate grounds, CISF consciously adopted a different set of standards.

19. If one now turns to the 2013 RR, it essentially applies to recruitments to the posts of ASI, HC (M) either by way of direct recruitment or by promotion. It makes no reference to appointments on compassionate grounds. For that matter, there is no specific reference to the 2005 Circular. If it was intended that the 2005 Circular would no longer operate, then that should have been very clearly stated in the 2013 RR.

20. In the circumstances, the Court holds that as far as the Petitioner is concerned, since she is seeking appointment on compassionate grounds, it is the 2005 Circular and not the 2013 RR which would apply. The Respondents have themselves, both before the CAT and before this Court, stated in their counter affidavit that it is the 2005 Circular which would apply.

21. The Petitioner has qualified the typing test. She was sought to be disqualified only because her vision did not meet the standard in terms of the 2013 RR. Since the Petitioner does fulfil the medical standard for vision in both eyes i.e. 6/6 with glasses, the impugned decision of the Respondents communicated to the Petitioner by the letter dated 25th November 2016 is hereby set aside.

22. The Respondents are directed to issue a letter appointing the Petitioner on compassionate grounds as HC (M) within period of four weeks from today. The Petitioner with two minor children to support has had to litigate for over three years for justice. Accordingly the petition is allowed with costs of Rs. 20,000/- which will be paid by the Respondents to the Petitioner

within four weeks.

23. Order *dasti* under the signature of the Court Master.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 28, 2019

neelam