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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21.02.2022***+ **W.P.(C) 8250/2021 & CMs 25620-21/2021****MS. ROSHI**

..... Petitioner

Through Md.Azam Ansari, Md.Ashfaque
Ansari, Advs. along with
petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Rajan Sabharwal,
Mr.Raghav Sabharwal, Advs.
Dr.S.M.Sharma is present
through audio-video link.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner praying for a direction to the respondents to immediately/forthwith issue the appointment letter to the petitioner for the post of Sub-Inspector/Railway Protection Force (hereinafter referred to as 'SI-RPF'). The petitioner further prays that the Medical Examination dated 06.07.2019 of the Railway Hospital, Lucknow be ignored /quashed in view of the subsequent medical re-examination dated



15.11.2019, 26.11.2019 and 17.12.2020 conducted by the Railways itself.

2. It is the case of the petitioner that in February, 2018, the recruitment for the post of SI/RPF was centrally advertised by the Ministry of Railways, Government of India by way of employment notice No.SI/RPF-02/2018. The petitioner applied for the said post and was declared to have passed the written examination, achieving the desired cut-off marks. The petitioner was thereafter directed to report to Sr. Divisional Security Commissioner /RPF/NR at DRM/NR Officer, Hazratganj, Lucknow on 05.07.2019 for conduct of the petitioner's Detailed Medical Examination (in short, 'DME') in 'BEE-ONE' category.

3. In such DME, the petitioner was declared unfit for '*substandard vision (BE)*', recording the same as 6/60 and 6/60.

4. The petitioner applied for medical re-examination along with a fitness certificate issued by the Hindu Rao Hospital, Delhi.

5. That while the above application of the petitioner was pending consideration, the petitioner had also applied for the post of Constable in the RPF pursuant to Advertisement No.01/2018 and was selected against the said post. The petitioner underwent a medical examination for the said post.

6. It is the case of the petitioner that at the time of her medical examination for the post of Constable, the petitioner informed the Medical Board that she had been declared unfit for the post of SI/RPF. The petitioner was thereafter made to write on her application that she had not undergone any corrective eye operation. The petitioner duly



complied with the said condition and only thereafter, on examination, she was declared to be medically fit in the 'BEE-ONE' medical category, on 03.09.2019. The petitioner was thereafter appointed as Constable/RPF.

7. On her examination conducted before the Appeal Medical Board (in short 'AMB') for the post of SI-RPF, the respondents appointed a Medical Board consisting of Specialist Ophthalmologist at Northern Railway Central Hospital, New Delhi (hereinafter referred to as 'NRCH'). The said AMB in its report dated 15.11.2019 declared the petitioner to be medically fit in 'BEE-ONE' category.

8. The petitioner was thereafter referred to the All India Institute of Medical Sciences, Delhi (hereinafter referred to as 'AIIMS') for ruling out the petitioner having undergone Keratorefractive, or LASIK, surgery. AIIMS, by its report dated 26.11.2019, opined that there was no evidence of the petitioner having undergone any LASIK Surgery.

9. The petitioner's appeal was thereafter considered and on being examined by a Special Ophthalmic Board of the NRCH on 29.01.2020, the petitioner was again declared fit in 'BEE-ONE' category with visual acuity of 6/9 and 6/9 in both eyes.

10. On the recommendation of the Chief Health Director, a board of seven doctors was thereafter constituted to examine the petitioner at Ambala. The said board in its report dated 17.12.2020 again declared the petitioner to be medically fit in 'BEE-ONE' medical category for the post of SI/RPF.



11. The petitioner contends that in spite of the above reports, by the internal communication dated 24.05.2021, the candidature of the petitioner for the post of SI/RPF was rejected on the ground that the petitioner had deliberately concealed the declaration of unfitness at the time of subsequent medical examination and that the view of the refractive corrective measures are almost impossible to detect by the current examination rules and benefit of limitation of examination rules cannot be given to the petitioner.

12. The learned counsel for the petitioner submits that the impugned order of rejection is arbitrary as it ignores the reports of repeated Medical Boards that were constituted by the respondents themselves to determine the medical fitness of the petitioner. It also ignores the reports of AIIMS and of a Board of seven doctors. He submits that the impugned order is based on mere conjectures and surmises and is totally unfounded.

13. This Court issued notice on the petition to the respondents vide order dated 11.08.2021. In spite of two opportunities being granted, as the counter affidavit was not filed by the respondents, vide order dated 15.12.2021, this Court directed the respondents to produce the original medical file of the petitioner and also directed the doctor who had last examined the petitioner to join the proceedings by way of an online video link.

14. In compliance with the said direction, the medical record of the petitioner has been produced before us. Dr. S.M. Sharma also appeared through online vide link.



15. Dr. S.M. Sharma has submitted that though AIIMS had ruled out the petitioner having not undergone any LASIK surgery, however, there are other technologies, including Ortho-K lenses and corneal refractive therapy for myopic correction. He explains that the Ortho-K is the fitting of specially designed gas permeable contact lenses that one wears overnight. While asleep, the lenses quietly reshape the front surface of the eye (cornea) so that the person can see clearly the following day after removing the lenses when he/she wakes up. He submits that the petitioner having used such technology cannot be ruled out.

16. We have considered the submissions made by the learned counsel for the petitioner as also Dr. S.M. Sharma.

17. From the medical record, it is apparent that the petitioner has been repeatedly examined by different Medical Boards and found to be fit in 'BEE-ONE' category. The submission of Dr. S.M. Sharma of the petitioner having adopted Ortho-K lenses, is only a supposition based on the variance between the visual acuity recorded in the medical examination at Lucknow and other Medical Boards. In our opinion, such presumption could not have been drawn against the petitioner. The purpose of the AMB is to ensure that there is no mistake committed at the stage of DME of a candidate. The subsequent reports of the Medical Boards cannot be simply ignored because they are inconsistent with the report of the DME. To do so would, in fact, negate the purpose and object of the AMB.

18. Be that as it may, as there clearly are divergent medical opinions and a doubt expressed by the respondents, we are of the



opinion that this is a fit case where the petitioner must be examined by an independent Board of the doctors on her visual acuity.

19. Accordingly, it is directed that the respondent no.3 shall refer the petitioner to the Army Hospital Research and Referral, New Delhi (hereinafter referred to as 'R&R Hospital') with a request to appoint a Medical Board consisting of specialist Ophthalmologists to examine the petitioner within a week from today. Prior intimation of the date and time of such examination shall be given to the petitioner. In case the petitioner is found fit under 'BEE-ONE' medical category in such examination, the petitioner shall be offered appointment as SI-RPF within two weeks of receipt of such report.

20. To bring quietus to this selection process, it is directed that the report of R&R Hospital shall be considered as final and neither party shall be allowed to challenge the findings thereof.

21. The present petition is disposed of with the above directions. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 21, 2022
RN/AB