



W.P.(MD)No.16276 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P(MD).No.16276 of 2020

and

W.M.P.(MD)Nos.13609 and 13611 of 2020

D.Prakash

... Petitioner

Vs

- 1.The Secretary
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road,
New Delhi.
- 2.The Deputy Secretary,
Staff Selection Commission,
Southern Region,
2nd Floor, E.V.K.Sampath Building,
Chennai - 600 006.
- 3.The Directorate General CRPF (Recruitment Branch)
Eastern Block-07, Level-04, Sector-01,
R.K.Puram,
New Delhi- 110066.



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4.The Review Medical Examination Board (RME Board),
CRPF CH Bangalore,
Composite Hospital, CRPF,
Yelahanka,
Bangaluru,
Karnataka - 560 064.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to direct the fourth respondent in his proceedings in Form No.4 of Constable (GD) Exam 2018, Review Medical Examination Report dtd 23.09.2020, quash the same and direct the respondents to select and appoint the petitioner as Constable in CAPFs.

For Petitioner : Mr.V.Panneer Selvam

For R1 to R3 : Mr.K.R.Laxman

ORDER

Heard the learned counsel on either side.

2.The petitioner is an engineering graduate. He applied in response to the notification issued by the Staff Selection Commission for recruitment to the post of constable. The petitioner wrote the written examination on



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12.09.2019. He secured 75.72 marks. He also cleared the physical tests.

The petitioner underwent medical examination on 30.01.2020 at Sivagangai Medical Board. The Board gave their diagnosis about the petitioner's vision. Aggrieved by the same, the petitioner applied for review. The review medical board came to the conclusion that the petitioner had undergone Refractive Error Correction Surgery and on that ground he rendered unfit. Challenging the said proceedings, the present writ petition has been filed.

3. The respondents have filed detailed counter affidavit and the learned standing counsel took me through its contents. The core argument of the learned standing counsel is that the decision of the review board is final and that it cannot be quashed. He prays for dismissal of the writ petition.

4. I carefully considered the rival submissions and went through the materials on record. I do endorse the contention of the learned standing counsel that if the petitioner had undergone Refractive Error Correction



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Surgery, he must be rendered unfit. But the moot question is whether the petitioner has undergone such a surgery or not. The petitioner in the affidavit filed in support of the writ petition has asserted categorically that he never underwent any eye surgery and that he is ready to undergo any kind of medical examination. Since such a tall claim was made in the affidavit filed in support of this writ petition, this Court passed the following impugned order on 22.06.2022.

"The case of the petitioner is that in the Review Medical examination, the petitioner's eye sight was shown as 6/6 in both the eyes. It is also his case that even prior to the Review Medical Examination(RME), the Kovai Medical College Hospital had given a report dated 13.02.2020, which evidences that his eye sight was 6/6 in both the eyes.

2.The learned Assistant Solicitor General of India placed reliance on the counter-affidavit and submitted that the petitioner appeared before the RME Board on 23.09.2020 at Composite Hospital, CRPF Bengaluru and though it was found that the vision of the petitioner was 6/6 in both the eyes, on Slit-lamp examination, haze was notice on cornea and therefore, he was referred to Dr.Agarwal's Eye Hospital, Bengaluru, where, it was revealed that the petitioner had



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undergone a refractive correction surgery. In view of the conditions prescribed in the Staff Selection Commission notification, such refractive correction surgery between the DME and RME is impermissible in law and also a disqualification and therefore, there is no infirmity in the order.

3.The petitioner affirms that he had not undergone any such refractive correction surgery either between the medical examination report and the Review Medical Examination or at any point of time.

4.The issue, as to whether such a refractive correction surgery has been done, requires to be certified only by a qualified specialist. In view of the contradictory factual statements being adduced by both the parties, I am of the view that the petitioner could be referred to another ophthalmologist attached to the Government Hospital.

5.Accordingly, the Dean of Government Rajaji Hospital, Madurai is requested to assign the head of hte Ophthalmology Department to examine both the eyes of the petitioner and certify as to whether any sort of refractive correction surgery has been performed on him and send a report of the same in a sealed cover to this Court. The Dean shall endeavour to send such report at least within a period of two(2) weeks from the date on which the petitioner appears before him along with the copy of this order."



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5. Pursuant to the said impugned order, the petitioner was referred to The Professor, HOD of Ophthalmology, Rajaji Government Hospital, Madurai, who gave the following report vide communication dated 12.07.2022.

"

On Examination

Vision:

Distant:	Right Eye 6/6	Left Eye 6/6
Near Vision	Right Eye N6	Left Eye N6
Nil Glass		

Slit Lamp Examination: Both Eyes : Cornea clear; no evidence of any refractive correction scar

Fundus: Both Eyes: Normal

Field of Vision: Both Eyes Normal

Colour Vision : Both Eyes Normal

Anterior Segment - OCT:

Right Eye Corneal thickness 487um

Left Eye Corneal thickness 480um

IMPRESSION:

Since the patient is having corneal thickness of below



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*normal range (normal corneal thickness 540-550um), the above person should be subjected to **Corneal topography and Confocal Laser** at Regional Institute of Ophthalmology, Chennai (Corneal Topography is not available at GRH, Madurai) to rule out EPILASIK as LASIK surgery when epithelium is removed AS-OCT will not show corneal surface changes. It cannot be reported that any refractive procedures were done without the above investigations. Hence the referral to higher centre."*

6. In view of the said stand the petitioner was referred to Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai - 8. He was subjected to examination on 18.08.2022 and 19.08.2022. Vide communication dated 22.08.2022, the said institution has given the following report:

"Patient was found to have 6/6 vision both eyes. Corneal Topography was done in cornea department Regional Institute of ophthalmology and Government ophthalmic hospital Egmore, Chennai-8.

Slitlamp Examination and corneal Topography did not reveal any evidence of patient having undergone refractive corneal surgery."

7. It has been definitely established that there is absolutely no



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evidence in support of the stand of the respondent that the petitioner has undergone refractive error correction surgery. The petitioner cannot be called upon to prove the negative. He can only make an assertion that he never underwent any eye surgery. If according to the respondent, the petitioner had undergone the said surgery, it is for the respondent to establish the same. Since a doubt arose in the mind of this Court, this Court decided to obtain expert opinion in this regard. The experts attached to two hospitals namely Madurai Rajaji Government Hospital, Madurai and the Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai - 8, subjected the petitioner to a comprehensive examination and came to the conclusion that they do not find any evidence to show that the petitioner has undergone any refractive error correction surgery. Since that is the only ground on which the petitioner was disqualified, the impugned order is set aside.

8. The petitioner was eligible when he applied for recruitment. He had scored good marks in the written examination. He was also successful in the physical endurance test. The only reason for disqualifying him is



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what is mentioned above. Since the ground of disqualification has been demonstrated to be palpably erroneous, this Court has to necessarily interfere. The order impugned in this writ petition is set aside. The respondents 1 to 3 are directed to select and appoint the petitioner as Constable (GD), Central Armed Police Forces(CAPFs), NIA & SSF and Rifleman(GD) in Assam Rifles(AR). Such an order will be issued by the competent authority within a period of five weeks from the date of receipt of a copy of this order. While the petitioner will not be entitled to any monetary benefits, he will be placed on par with his batch mates. The monetary benefits will accrue to the petitioner with effect from the date of his appointment.

9. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

08.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes / No

Note: Issue order copy on **10.03.2023**



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G.R.SWAMINATHAN, J.

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To

- 1.The Secretary
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