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

% Judgment delivered on: 24.08.2023

+ W.P.(C) 11150/2023 & CM APPL.43346/2023,
CM APPL.43347/2023

NAVDEEP Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Anurag Ojha with Mr. Gautam
Barnwal, Advocates.

For the Respondent: Mr. Sanjay Kumar, Senior Panel
Counsel for UOI.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks setting aside of order dated 19.11.2019 whereby the appeal filed by the petitioner for medical re-examination has been rejected.

2. Petitioner had participated in the recruitment process for the post of Constable in the Railway Protection Force in the year 2018-2019. Petitioner was found to be medically unfit and rejected on the ground "mark of Lasik flap positive on cornea".



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3. Learned counsel for the petitioner relies on the order of the Supreme Court dated 10.05.2022 in Civil Appeal Nos.1270-1271/2022 titled ***Dalbir Etc. vs. Union of India & Ors. Etc.*** to contend that in similar circumstances, the Supreme Court had permitted petitioners therein who had undergone lasik surgery for being recruited in the Railway Protection Force.

4. Learned counsel for the petitioner contends that the Supreme Court had constituted a Committee and the Committee had opined that undergoing lasik would not be a disqualifying condition for recruitment in the Railway Protection Force.

5. We are unable to accept the contention of the learned counsel for the petitioner for the reason that the Supreme Court in ***Dalbir vs. Union of India*** in its order dated 04.02.2022 (2022 SCC online SC 1037) had constituted a Medical Committee to revisit the aspect of fitness of the candidates, who had undergone lasik surgery in the past or during their service period and held that the appellants therein were concerned only with a particular aspect of railway employment which did not require fine technical work or operation of heavy machinery.

6. The Supreme Court put a caveat that a parallel with the position in the Armed Forces may also not be appropriate as Constables in the Railway Protection Force are not deployed at the frontline.

7. A concern was raised on behalf of the Union of India as is noticed in the said order dated 04.02.2022 that it may open floodgate of litigations if applied retrospectively. The Supreme Court clarified



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that apprehension of flood of litigation may not be appropriate as it was not as if people who were watching from the way side would be entitled to the benefit and the Supreme Court had clarified that they were concerned with the appellants therein. The individual cases of the appellants therein were directed to be re-examined.

8. Subsequently, by order dated 10.05.2022 relied upon by the petitioners, the Supreme Court noticed that a report had been given by the Technical Committee and steps were being taken for amendment of the norms and all future advertisements would incorporate the effect of the report within a period of two months from the said date. The Supreme Court directed that the report would logically have prospective effect in general and would not open the window for people who had not agitated their rights.

9. Specific direction of the Supreme Court in *Dalbair* (supra) that the benefit would be applicable only prospectively and would be incorporated in future advertisements and would not be available to people who had not agitated their rights, shows that the judgment has been specifically declared to have a prospective effect and would have no bearing on the recruitment processes that had commenced and concluded prior to the decision of the Supreme Court.

10. In the instant case, petitioner has sought to impugn the recruitment process which had commenced in the year 2018 – 2019. In the case of the petitioner, petitioner was required to undergo a medical examination on 11.09.2019 and even his appeal was



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dismissed as far back as on 19.11.2019. Petitioner has sought to raise the issue after a gap of over 3½ years.

11. In view of the above, we are of the view that petitioner cannot avail of the benefits of the judgment of the Supreme Court in *Dalbir* (supra) and seek to reopen the recruitment process which is already concluded.

12. Accordingly, we find no merit in the petition. Petition is, consequently, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 24, 2023
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