

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

% *Date of decision: August 29, 2023*

+ W.P.(C) 11426/2023 & CM APPL. 44500/2023 and
CM APPL. 44501/2023

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through: Mr. Naushad Ahmed Khan, Adv. for
DSSSB and GNCTD.

versus

SUNIL KUMAR Respondent
Through: Mr. Ankur Chhiber,
Mr. Yogesh Kumar Mahur,
Mr. Harkesh Parashar and Ms. Neha
Bairagee, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

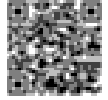
CM APPL. 44501/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

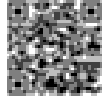
W.P.(C) 11426/2023

1. The challenge in this petition is to an order dated December 9, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA. No. 894/2022, whereby the Tribunal has allowed the OA filed by the respondent herein by stating in Para 9 as under:



“In view of the aforesaid facts and circumstances and in the fitness of things, the impugned orders dated 17.03.2022, 31.05.2021 and 04.10.2021 are quashed and set aside. The O.A. is disposed of with a direction to the respondents to conduct another medical examination of the applicant at the Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi, within a period of two months from the date of receipt of a copy of this order. It is made clear that in case the applicant is found fit, the applicant may be given the offer of appointment along with all other consequential benefits within a period of two weeks thereafter.”

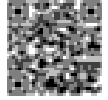
2. The case of the respondent before the Tribunal was, that in response to an employment notice of the year 2014, he had applied for the post of Fire Operator, Post Code-71/14 conducted by the DSSSB, i.e., petitioner No.3. After completion of various stages of the selection process the respondent was declared successful on June 25, 2020 and was given the offer of appointment on August 8, 2020 subject to, being deemed fit in the medical examination. The respondent was medically examined at Aruna Asaf Ali Hospital, Civil Lines, New Delhi and was referred to Guru Nanak Eye Centre for eye check-up. The respondent was declared unfit for the said post vide letter dated November 9, 2020 on the basis of the report of the Guru Nanak Eye Centre and was diagnosed with Orbscan and Keratometry showing flat cornea suggestive of previous refractive surgery, commonly known as Lasik.
3. In effect, the respondent was declared unfit in view of the Lasik surgery and was issued a show-cause notice on November 19, 2020 to which he responded vide letter dated December 1, 2020 along with two



medical certificates from the Doctors with regard to his fitness, i.e. eye sight being 6/6 after the refractive surgery.

4. The respondent was called for the second medical examination at Deen Dayal Upadhyay Hospital on January 28, 2021. He claims that the said medical examination was an eye wash and the report of the said examination was never provided to him. Therefore the same is invalid. The respondent made a representation dated April 8, 2021 which was rejected vide order dated May 3, 2021. In fact, we find that the rejection was also by order dated October 4, 2021. Aggrieved by the same, the respondent approached the Tribunal by way of the aforesaid OA. He relied upon the Judgment of this Court in the case of ***Ms. Sreeja K. v. Union of India, W.P.(C) 3196/2012***, wherein according to Mr. Ankur Chibber, learned counsel for the respondent, the Court was concerned with the Lasik surgery undertaken by the petitioner therein, and this Court had allowed the appointment of the petitioner therein. We reproduce the operative part of the Judgment as under:

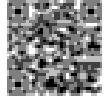
"11. There is nothing in the other lists appended to the said letter which would even remotely suggest that a person having undergone LASIK surgery is disabled from using the said instruments. As such, we find that there is nothing either in the rules, regulations or in any other document of the Geological Survey of India which debars the petitioner from functioning as a Junior Geologist in the Geological Survey of India on account of the fact that she had undergone LASIK Surgery. On the contrary, it must be kept in mind that her corrected vision now falls within the parameters and standards prescribed under the said Regulation itself. That being the case, she cannot be denied



employment on the purported ground that she is unfit for the post on account of LASIK surgery.

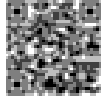
12. The learned counsel for the respondents has placed reliance on the case of Deepak Kumar v. Union of India: WP(C) No. 13159/2009 decided on 23.09.2010. However, on going through the said decision, we find that the same is clearly distinguishable inasmuch as the petitioner in that case had failed to 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."



5. The submission of Mr. Naushad Ahmed Khan, learned counsel appearing for the petitioner is that as the post concerned is of a Fireman, the nature of duty would suggest that with Lasik surgery, the respondent shall not be able to perform the duties. He further states, the respondent was declared unfit. He draws our attention to page 185 of the paperbook to contend that as per the medical report as against requirement of 6/6, the vision of respondent in both the eyes is 6/9 and as such the respondent's case was rightly rejected as unfit. We find that the Tribunal has in fact directed, fresh medical examination of the petitioner.

6. Since an issue has been raised by Mr. Khan that given the nature of eye sight, that even if the power of both the eyes of the petitioner is 6/6, because of the Lasik surgery he shall not be able to perform his duties as Fireman, we without interfering with the order passed by the Tribunal direct the petitioners herein to conduct another medical examination of the petitioner at Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi within a period of two months. We further add that even in the eventuality the above Centre comes to a conclusion that the power of both eyes of the respondent is 6/6, the Board shall also consider the effect of Lasik surgery on the discharge of the duties by the respondent as Fireman. For this purpose, the petitioner shall place before the Medical Board at AIIMS, New Delhi the details of the duties to be performed by a Fireman in Delhi Fire Service. The aforesaid exercise shall be carried out by the petitioners herein as well as the Medical Board under the aegis of Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi within a



period of three months as an outer limit. It is made clear that if the Medical Board gives fitness to the respondent, he shall be given the offer of appointment in terms of the order of the Tribunal within two months thereafter.

7. It is also made clear if the Medical Board does not find the respondent fit, the matter shall be treated as closed with no liberty / remedy for the respondent to challenge the decision of the Board.

8. The petition stands disposed of.

CM APPL. 44500/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 29, 2023/jg