

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 122 of 2013

Tuesday, this the 4th day of February, 2014

CORAM:

Hon'ble Mr. Justice A.K. Basheer, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Praveen S., S/o. P. Subramanian,
Aged 25 years, residing at T.C. 25/2064,
Dharmalayam Road, Thiruvananthapuram-695 001. **Applicant**

(By Advocate – Mr. Ayyappan Sankar)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of Mines, M-II Section, Shastri Bhavan,
New Delhi – 110 001.
2. The Director General, Geological Survey of India,
21 Jawahar Lal Nehru Road, Kolkata, West Bengal.
3. Union Public Service Commission, represented by Secretary,
Dholpur House, Shahjahan Road, New Delhi – 110 001.
4. The Central Standing Medical Board (First Medical Board),
represented by its Chairman, Ram Manohar Lohia Hospital,
New Delhi – 110 001.
5. The Central Standing Medical Board (Second Medical Board),
Represented by its Chairman,
Safdarjung Hospital, New Delhi – 110 001. **Respondents**

**[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1,3,4&5) &
Mr. Thomas Mathew Nellimoottil (R3)]**

This application having been heard on 4.2.2014, the Tribunal on the
same day delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant in this Original Application has been denied an appointment to the post of Geologist Group-A in the Geological Survey of India under the Ministry of Mines on the sole ground that he has undergone Lasik surgery for correction of eye.

2. The applicant contended that he satisfied all vision and other physical standards prescribed in Appendix-II of Annexure A1 and there is no provision therein which declares Lasik surgery as a reason for declaring a candidate medically unfit for the post of Geologist Group-A in the Geological Survey of India. The applicant has 6/6 vision in both eyes as per the rules prescribed. However, he is declared unfit only because of his undergoing Lasik surgery for correction of vision. Lasik surgery is not a ground prescribed in Annexure A1 rules and regulations for declaring him unfit for appointment. The respondents cannot prescribe a new condition for rejecting the candidate for any reason not stipulated in the rules and regulations for appointment at Annexure A1 after completion of whole process of competitive examination. The applicant relied on Annexures A10 and A11 verdicts to substantiate his contention that he is eligible for appointment, treating him as medically fit for the post of Geologist Group-A.

3. The respondents in their reply statement submitted that the order produced as Annexure A11 in the OA was challenged before the Hon'ble Supreme Court vide SLP No. 18220 of 2012. As the respondents were facing



contempt proceedings, the applicant involved therein was appointed subject to the result of the said SLP. It is the prerogative of the standing medical board of the Safdarjang Hospital or Dr. RML Hospital to judge the medical suitability of the candidates recommended by the Union Public Service Commission. In the instant case both the hospitals have judged the candidate as medically unfit for the post. As per FR 10 Sub Section (2) there is no discretion to ignore certificate declaring one unfit. Further as per DO PAR's OM dated 26.6.1979 in no case a person should be allowed to join Government service in a pensionable establishment without having been medically examined and found fit. In the circumstances the Original Application is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records.

5. In Original Application No. 74 of 2012, the Guwahati Bench of this Tribunal held as under:-

"7. We have heard the rival submissions. In the facts of the present case, we find that the 2nd Medical Board, RML declared the applicant unfit on account of Lasik surgery when there was no bar against correction of vision through such a procedure in any rule, regulation by law or order. As such, we do not find any justification in considering the Lasik surgery as disqualification for the post of Geologist (Junior). Accordingly, we direct the respondents to consider the applicant for appointment to the post of Geologist (Junior) by taking him to be medically fit and the same be done within two weeks from the date of the receipt of this order.

8. In the result, OA stands disposed of at the admission stage. There will be no order as to costs."



6. In WPC No. 3196 of 2012 against the order dated 4.4.2012 passed in OA No. 1122 of 2012 by the Central Administrative Tribunal, Principal bench, New Delhi the Hon'ble High Court of Delhi has held 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 23.9.2010. 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.”



7. There is no bar against correction of vision through Lasik surgery in any rule, regulation or order. Following the decisions cited above we allow this Original Application. Annexures A4 and A9 are set aside. The respondents are directed to consider the applicant for appointment to the post of Geologist Group-A in the Geological Survey of India under the Ministry of Mines within a period of two months from the date of receipt of a copy of this order. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

“SA”