

**Central Administrative Tribunal
Principal Bench**

OA No. 3209/2018

Order reserved on : 01.08.2019
Order pronounced on: 02.09.2019

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. R.N.Singh, Member (J)

Abhishek Yadav
S/o Sh. Devender Singh
R/o RZ-16, K Block, Gandhi Market,
Sagarpur, New Delhi-110046

Aged about 26 years
(Group 'C')
(Candidate towards SSC recruitment)

... Applicant

(By Advocate: Sh. Ajesh Luthra)

VERSUS

1. Staff Selection Commission (NR)
Through its Chairman,
Block No.12, C.G.O. Complex, Lodhi Road,
New Delhi-110003.

2. Commissioner of Police
PHQ, MSO Building,
IP Estate, New Delhi.

... Respondents

(By Advocate: Sh. Amit Anand and Sh. S.N.Verma)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

The Staff Selection Commission (SSC) had issued an advertisement for recruitment of Sub Inspector in Delhi

Police, Central Armed Police Forces (CAPF) and Assistant Sub Inspector in CISF Examination 2017. The closing date for receipt of application was 15.05.2017. The candidates could indicate their preference for postings e.g. Delhi Police, Border Security Force (BSF), Central Industrial Security Force (CISF) etc.

2. The applicant herein applied for the same recruitment process and qualified successfully in the written examination, Physical Endurance Test and Physical Standard Test on 23.10.2017 and as per his marks obtained he was hopeful for offer of appointment in Delhi Police. His medical examination was held on 17.04.2018 and for reasons of eye sight he was medically disqualified as he had undergone LASIK surgery to correct his vision.

In regard to eye sight, following medical standard was specified for said recruitment:

- “(i) the minimum distant vision should be 6/6 and 6/9 of both eyes without correction i.e. without wearing of glasses.
- (ii) The candidates must not have knock knee, flat foot, varicose vein or squint in eyes and they should possess high colour vision.
- (iii) They must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties.”

3. Applicant was disqualified as his vision in the right eye is 6/18 and in the left eye is 6/9 and there was also a tattoo on right arm.

4. He also underwent refractive eye surgery to correct the vision, which is commonly known as LASIK surgery, in July 2018 and also got the tattoo removed. Based on a certificate issued by Eye 7 Hospitals Pvt. Ltd. on 20.07.2018, he claims that he qualified in the eye sight as per medical categorisation. Thereafter, applicant preferred an appeal. He was called for the review Medical Board on 08.08.2018 and he has been rejected again. While rejecting him, the remarks written indicate “refractive surgery scar present” and “Unfit from eye side”.

5. Feeling aggrieved at this rejection, instant OA has been filed. Applicant has pleaded as under in this OA:

“4.10. xxx xxx that in the advertisement, it is clearly stated that the minimum distant vision should be 6/6 and 6/9 of two eyes without correction i.e. without wearing of glasses. Thus, the only correction which can lead to disqualification is wearing of glasses.

4.11 That it is furthermore submitted that the medical condition of defective vision is curable. It is curable by refractive surgery popularly known as ‘LASIK’ (Leaser Asisted in Situ Keratomileusis) which is a vision correction measure. There is no rule prescribing that a person who has undergone LASIK surgery would be disqualified or declared unfit.

4.12. That without prejudice to the above, it is submitted that in Delhi Police itself, appointment of candidates who had undergone ‘LASIK’ surgery have been made like Sh.

Pawan Kumar, Roll No. 411036, Yogender, Roll No. 435370, Rakesh Yadav, Roll No. 406957, (all Constable (Exe.) Male 2009 Phase-I); and Sunita Bai Meena, Roll No. 600766 Constable (Exe.) Female – 2008 recruitment, etc.

4.13. That it is submitted that Hon'ble Delhi High Court vide its judgment dated 29/05/2012 in CWP 3196/2012 – Ms. Sreeja K. Vs. UOI & Ors. has already held to the effect that LASIK cannot be a ground for medical disqualification for purposes of appointment to a public post. A copy of judgment is annexed herewith as **Annexure A/10**.

4.14. That this Hon'ble Tribunal in its various orders including orders in OA 146/2014 and connected OAs (**Annexure A-II**) has already granted relief to the candidates, on same issue.

4.15. That now the respondents are in the process of making appointment to the exclusion of the applicant.”

6. Applicant pleads that candidates with LASIK surgery have been found to be medically fit even by Hon'ble Delhi High Court, as quoted above in his OA and under similar circumstances relief was also granted to certain other candidates in OA No.145/2014 and batch, which was decided on 04.09.2014 by this Tribunal and the applicant seeks similar relief as under:

- “(a) Quash and set aside the impugned medical report(s) and orders of ‘unfitness’ dated 08/08/2018 and 09/08/2018 in respect of applicant (placed at Annexure A/I) (colly) and direct the respondents to treat the applicant as medically fit and
- (b) Direct the Staff Selection Commission to further consider the applicant for appointment in the recruitment process against his roll number 2201071398 with all consequential benefits.”

7. Applicant has also relied upon a judgment by Hon'ble Apex Court in the case of **Union of India vs. Satya Prakash**

Vasisht, 1994 SCC Supl. (2) 52 wherein it was held that medical standards, as were prescribed in the advertisement, should prevail.

8. Respondents have opposed the OA. It has been brought out that after the judgment in OA No.145/2014 and batch was received, the matter was reviewed keeping in view the job requirements of Delhi Police and it was assessed that candidates with LASIK surgery cannot be declared as medically fit. Accordingly, a proposal to correct the medical standards was initiated and a notification to this effect was issued on 25.10.2018. As per this notification, the medical standards were modified to read as under:

“(i) Eye sight: The minimum near vision should be N6 (better eye) and N9 (worse eye). The minimum distant vision should be 6/6 (better eye) and 6/9 (worse eye) of both eyes without any correction like wearing glasses or surgery of any kind to improve visual acuity. In right handed person, the right eye is better eye and vice versa.”

9. The respondents also drew attention to another judgment by Hon’ble Apex Court in **State of Tripura & Ors. vs. Nikhil Ranjan Chakraborty & Ors.**, CA No.691-693 of 2017 delivered on 20.01.2017 that rules prevalent on date of selection when it is actually being held shall prevail and not those which were prevalent when selection was originally notified.

10. In view of the above, it was pleaded that medical standards are prescribed in keeping with the job requirement and LASIK surgery has been barred for appointment to SI (Executive) in Delhi Police. It was further pleaded that Delhi Police has not received the dossier of the applicant from SSC. Under these circumstances, the OA was without merit and was pleaded to be dismissed.

11. SSC was also a respondent and pleaded that they are only an exam conducting body and they rely upon the medical examination and certification as issued by the CAPF who are nominated to carry out the medical examination. In this context, since the medical exam was conducted by CAPF and it had declared the candidate as unfit in eye sight as he had undergone LASIK surgery, SSC has little option except to reject the candidature of the applicant which they had done.

12. Matter has been heard at length. Sh. Ajesh Luthra, learned counsel represented the applicant and Sh. Amit Anand and Sh. S.N.Verma, learned counsel represented the respondents.

13. It is noted that certain similarly placed candidates, who had appeared in another recruitment examination for Delhi Police were rejected on account of eye sight as they had undergone LASIK surgery. Feeling aggrieved, they had

approached the Tribunal in OA No.145/2014 and batch, which was allowed. Since those orders were not implemented, the petitioners therein had to prefer the contempt petition also and at that stage those petitioners were appointed in Delhi Police.

14. The applicant in the instant case is also similarly placed, as the medical standard prescribed for the instant selection and the selection under question in OA No.145/2014, is exactly the same and for same post. In view of this, it would not be correct to discriminate the instant applicant when other circumstances are similar.

15. The judgment by Hon'ble Apex Court relied upon by the respondents (para 9 supra) is not of much help to the respondents as in that case while Hon'ble Apex Court has held that the State is empowered to apply the rules as were applicable on the date when selection was being made and not limit itself to the rules that were applicable when the selection was initially notified, is in the context of a departmental promotion and specially so when the candidates found eligible as per initial notification were not debarred from being eligible as per the rules modified later but before finalising selection. Instant case is of direct recruitment and rules got modified subsequent to the closing date of

advertisement. And further, the candidates eligible earlier are now being debarred as per modification of standards.

16. In the instant case after decision in OA No.145/2014 and batch, the respondents had undertaken the exercise to correct the medical standards, yet these medical standards were not notified for the selection in question. The implementation of the medical standards notified in October 2018, if applied to the selection under question which was notified in May 2017, has the effect of debarring those candidates who were eligible as per the initial notification.

17. In view of the foregoing, the OA is allowed in keeping with the ratio of judgment in OA No.145/2014. Respondents are directed to initiate the action, i.e. sending the dossiers and for follow up action in respect of appointment if there is no other impediment. This exercise be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.

(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

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