
(2012) 08 DEL CK 0088

In the Delhi High Court

Case No : Writ Petition (C) No. 13461 of 2009

Bhan Khatana

APPELLANT

Vs

Uoi and Ors

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0088

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Raunak Jain and Mr. Varun Aggarwal, for the Appellant; Tushar Singh and Mr. Jatan Singh, CGSC, for the Respondent

Judgement

1. This writ petition raises a challenge to an order dated 26th July, 2007 whereby the petitioner's services with the Central Reserve Police Force ("CRPF" for brevity) were terminated under Rule 6 of the Central Civil Service Rules ("CCS Rules" for brevity). The petitioner's appeal challenging the termination was rejected by an order passed on 24th January, 2008 and his revision assailing the same met the same fate by an order passed on 15th May, 2008. The facts leading to the present writ petition briefly stated are that the petitioner was recruited as "barber" in the CRPF in March, 2005 after undergoing the complete recruitment process which included the medical examination. The petitioner has drawn our attention to the Medical Board conducted on 30th December, 2006 wherein he was graded as being in Shape-I.

2. The petitioner states that he was suffering from myopia in his eyes. For correction of his vision, he underwent the lasik procedure which is stated to be a non-evasive correctional procedure in his eyes. The myopia was thereby corrected. The petitioner contends that he continued to render satisfactory service with the respondents without any complaint.

3. At this stage, by an order dated 26th July, 2007, the services of the petitioner were terminated by the Commandant of the 126th Battalion of the CRPF, Jharoda

Kalan where the petitioner was posted, after constituting a Medical Board in terms of Rule 6 of the Central Civil Services Rules, 1965 which declared the petitioner unfit for retention in service. The petitioner was aggrieved by the fact that the report of the Medical Board on which the termination order was passed was not furnished to him. The petitioner also challenged the findings of the said Board to the effect that he was medically unfit for retention in service. He was placing reliance on the report of the Bharti Hospital, a private facility as well as the certification of his fitness in his medical examinations conducted in the CRPF Hospitals.

4. As noticed above, the petitioner's appeal against the findings of the Medical Board as well as the termination of his services and revision petition were rejected by orders passed on 21st January, 2008 and 15th May, 2008.

5. Aggrieved by these orders, the petitioner filed a writ petition before this court being W.P.(C)No.7651/2008 and inter alia sought directions to the respondents to hold a Review Medical Board with a specialist for the problem with which the petitioner had been suffering. This writ petition was disposed of by an order passed on 24th October, 2008 directing a fresh medical board of the petitioner to be conducted by the respondents.

6. In terms of the order passed by this court, the respondents constituted a Review Medical Board on 10th November, 2008 which examined the petitioner and returned the following opinion:

OPINION OF THE BOARD

Board is of the opinion that individual had defective distant vision of both eyes with small optic disc pit with serous macular detachment (Lt.) eye. He was recruited with this eye disease (i.e. defective distant vision of both eyes with small optic disc pit with serous macular detachment (Lt) eye) and later he underwent surgical intervention. As per existing rules and regulations for Non Gazetted officer (from enrolled follower and up to the rank of Inspector) having defective distant vision and any surgical intervention done in any eye is not acceptable in forces.

(Emphasis Supplied)

7. The petitioner has asserted that as a matter of abundant caution, he got himself examined on 11th November, 2008 by the experts of All India Institute of Medical Sciences (AIIMS) whose report is also contrary to the aforementioned opinion of the Review Medical Board.

8. The petitioner's representations dated 7th January, 2009, 16th February, 2009 and 28th February, 2009 to the respondents seeking reinstatement in service on the ground that he was medically fit were of no avail necessitating the filing of the present writ petition. The petitioner has assailed both the orders of termination of his service dated 26th July, 2007 as well as opinion of the medical board on the ground that the same are based on no material at all and are

actually contrary to the applicable rules and regulations.

9. The respondents have opposed the writ petition primarily on the ground that having undergone the correctional lasik procedure, the continuation in service of the petitioner with the CRPF was prohibited under Standing Order No.4/08 as well as the guidelines issued by the Director General, CISF for medical examination tests for combined recruitment of Constable (GD) in Central Armed Police Forces (CAPF) and Armed Rifle (RA) dated 12th July, 2011.

10. We have heard learned counsel for the parties. It is trite that the opinion of a Medical Board would bind adjudication on issues relating to the medical science. However, in the instant case, the rejection of the petitioner is not on any ground relating to the medical field. A perusal of the aforementioned opinion of the board would show that the board has opined that the petitioner was unfit for continuation in service on the following two grounds:

(i) that the individual was recruited with defective distant vision of both eyes with small optic disc pit with serous macular detachment (lt.) eye and later he underwent surgical intervention.

(ii) that as per existing rules and regulations for Non Gazetted officers (from enrolled follower and up to the rank of Inspector) having defective distant vision and any surgical intervention done in any eye is not acceptable in forces.

A perusal of the Review Medical Board opinion shows that it notes that the petitioner had defective vision and that is to say that the petitioner so suffered in past. It notes that he had undergone surgical intervention. The Board does not refer to any existing defect in the petitioner's petition. Therefore, the question which arises before this court is as to whether the petitioner had been recruited with a problem in his eyes and as to whether there were any rules and regulations prohibiting continuation in service of an enrolled follower who had undergone any correction of his vision when the services of the petitioner were terminated.

11. So far as the first objection of the Review Medical Board is concerned, our attention has been drawn to the grading of the petitioner even on 30th December, 2006 by the medical experts of the respondents. Upon a medical examination as per the extant medical rules, the petitioner has been graded as Shape-I. No record at all has been placed before us by the respondents to the effect that the petitioner was unfit in performing his duties on account of any medical unfitness or incapacity. Therefore, the observation that the petitioner had been recruited with defective vision is not based on any material.

12. We may now examine the second issue noticed above. The record of the instant case shows that the petitioner has taken a categorical stand that there were no rules prohibiting the continuation in service to a person who had undergone lasik surgery. Despite repeated opportunities, the respondents were not able to produce any rule or regulation prohibiting the enrolled followers from

continuing in service for the reason that they had undergone a surgical intervention to correct any defect in the vision or in the eye.

13. Learned counsel for the petitioner has placed reliance on "Recruitment Rules for Enrolled Followers" for the post of Barber to which the petitioner had been recruited. The relevant extract of these rules is to the following effect:-

Part - VI Enrolled Followers

14.6 The following members of the Force come under the category of Enrolled Followers:-1) Cook

2) Washerman

3) Barber

4) Safai Karmachari

5) Water Carrier

Eligibility for appointment

For appointment to the post of Followers in Central Reserve Police Force, candidates must meet the following eligibility conditions:

1)

Age

Between 18 to 23 years.

(Cut off date for age will be

1st August every year)

Age relaxation will be

available to SC/ST/OBC

candidates as per Govt.

policy

2)

Educational

Qualification

8th Pass

II. Physical standards

The candidate should be physically fit in call respect. The condidates should be able to complete 1 mile race in 10 minutes.

III. Medical Standards

The candidates must not have colour blindness, knock knee, flat foot, varicose vein or squint in eyes. 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.

The petitioner has submitted that he was recruited as per medical standards.

14. These were the standards which were applied when the petitioner was recruited and which were invoked even on 26th January, 2007 when his services were summarily discontinued. The rules contain no prohibition for continuation in service of a person who has undergone the lasik procedure.

15. Learned counsel for the respondents has placed reliance on Standing Order No.4/08. It is an admitted position that this Standing Order came into effect from the year 2008 and was not even in existence either in 2005 when the petitioner was recruited or on 26th July, 2007 when his services were terminated.

16. So far as the Guidelines issued by the Director General, CISF for "Medical Examination Tests for Combined Recruitment of Constable (GD) in Central Armed Police Forces (CAPF) and Assam Rifle (RA)? are concerned, these are dated 12th July, 2011 and would not apply to the case of the petitioner which pertains to consideration in the year 2005 and 2007.

17. In this background, the observations of the Review Medical Board in the opinion rendered on 10th November, 2008 to the effect that the petitioner's continuation in service was prohibited under rules and regulations for the reason that he had undergone a lasik procedure is again erroneous and not sustainable

18. We may note that in our order dated 17th July, 2012, we had noticed the above position in detail and also extracted the Standing Order as well as the Guidelines relied upon by the respondents. It was noted by us that the Standing Orders and Guidelines could not apply to the case of the petitioner which pertain to the consideration in the year 2006 and 2007. A last opportunity was given to the respondents to produce any rule in this regard which could guide adjudication into the matters challenged before us. Learned counsel for the respondents has been unable to produce any such rule or regulation which prohibited an enrolled follower from continuation in service if he underwent a lasik procedure for correction of myopia even today.

19. Learned counsel for the petitioner has placed reliance on the decision of this court dated 29th May, 2012 in W.P.(C)No.3196/2012 titled Ms. Sreeja K. v. Union of India & Anr. and contended that in a similar circumstances, where the petitioner's services were terminated for the reason that she was found unfit on account of having undergone lasik surgery when there was no bar against correction of vision through such procedure in any rule, regulation, by-law or order. We may note that the above case related to service with the Geological Survey of India. In the instant case, we are concerned with the service of the petitioner with the para military force. However, the well settled principle that the

respondents have to abide by the applicable rules and regulations and more so when the matter relates to termination from service cannot be deviated from. The principles laid down in the judicial precedent therefore, clearly applies.

20. We may note that even the Review Medical Board dated 10th November, 2008 had observed that the vision of the petitioner is 6/6 in both eyes and therefore, he had no difficulty with his visual capacity.

21. In view of the above, it has to be held that the opinion of the review medical board dated 10th November, 2008 is contrary to the record and is erroneous. The order dated 26th July, 2007 is also not sustainable in law. The petitioner has been out of service since 26th July, 2007. The fitness of a person to join service with the para military force is paramount.

In view of the above discussion, the order dated 26th July, 2007 is hereby set aside and quashed and it is directed as follows:

(i) The respondents shall conduct a medical examination of the petitioner within three weeks from today. It is made clear that the petitioner shall not be held medically unfit on the ground that he had undergone the corrective lasik procedure. The petitioner shall be given written notice of date and time of the medical examination.

(ii) If the petitioner is found otherwise medically fit, he shall be reinstated into service.

(iii) The petitioner shall not be entitled to backwages. However, the petitioner shall be treated as if he had continued in service throughout and shall be entitled to notional seniority and any other consequential benefits which enured as a result.

This writ petition is allowed in the above terms. Dasti.