
(2012) 01 DEL CK 0260
In the Delhi High Court
Case No : WP (C) No. 5500 of 2011

Sh. Shubham Mahendrawal	Vs	APPELLANT
Union of India and Another		RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 187 DLT 299 : (2012) 2 SLJ 224

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : N.D. Kaushik, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought directions to the respondents to withdraw/set aside the letter dated 5th January, 2011 intimating the petitioner that he has been found unfit in SMB at MH Allahabad, in the AMB at Base Hospital, Delhi Cantt and in RMB at the Army Hospital (R&R) for the TES Course SER No. 24 and for directions to the respondents to conduct a fresh eye test of the petitioner by an independent eye Hospital/center for night visual capacity. The petitioner has also sought directions to the respondents to reconsider the candidature of the petitioner on the basis of the fresh eye test report from an independent eye hospital.

2. The relevant facts to comprehend the controversies are that the respondents had invited applications from the candidates for the TES-24 course. On the basis of the eligible cut off percentage of marks obtained by the petitioner, he was allotted batch No. HTES-64994 Roll No. 3458, Chest No. 28 by letter dated 2nd September, 2010 and was called to attend the SSB interview for joining the Military Academy. Pursuant to the intimation received by the petitioner he appeared in the interview at Allahabad on 26th October, 2010 and after the interview the petitioner was recommended for a medical checkup by a medical board to be held at SMB c/o. MH Allahabad. The medical board at SMB MH

Allahabad on 4th November, 2000 examined the petitioner and declared him unfit on account of Multiple Lenticular Opacities (B.E).

3. The petitioner disclosed that he was given the option for two appeals. The first appeal was in AMB at Base Hospital, Delhi Cantt. On 30th November, 2010 the petitioner was again marked medically unfit on account of Multiple Lenticular Opacities (B.E) Dr. Colonel Sirohi by the Head of the Department of the Eye Department. The petitioner thereafter, opted for a 2nd appeal in the RMB at Army Hospital, Delhi Cantt. The petitioner in the second appeal was again examined on 24th December, 2010 and was declared medically unfit by Dr.Colonel Parihar (HOD) Eye Department.

4. After being declared medically unfit by the medical board at SMB MH Allahabad and the two appellate boards, the petitioner independently got himself examined from the All India Institute of Medical Sciences and from the Guru Nanak Eye Center, New Delhi.

5. According to the petitioner the All India Institute of Medical Sciences and Guru Nanak Eye Center declared the petitioner medically fit for the alleged reasons of vision for which he had been declared unfit by the respondents.

6. The petitioner was declared medically unfit by the respondents by communication dated B/51723/10+2/TES/Rtg.SE dated 5th January, 2011. Aggrieved by the actions of the respondents of declaring the petitioner to be medically unfit, the petitioner filed a writ petition being W.P(C) No. 2978/2011.

7. The writ petition being W.P(C) No. 2978/2011 was contested by the respondents and during the arguments, the petitioner had referred to the medical references regarding the effect of the Blue Dot Cataract on the Central visual axis of the eye. The petitioner, however, had not raised any such plea about the effect of the Blue Dot Cataract on the Central visual axis in his writ petition. The petitioner, therefore withdrew the writ petition with the liberty to file a fresh petition on the same cause of action, in order to urge that the effect of the density of the Blue Dot opacities on the periphery area of the eye viz-a-viz the central visual axis of the eye, does not affect the night vision abilities of the petitioner and therefore it does not lead to such an unfitness in the petitioner so as to render him ineligible for the TES-24 course.

8. The petitioner thereafter, has filed the present petition contending inter-alia that the concentration/density of Blue Dot Opacities in the case of the petitioner is prevalent at the periphery area of the eye which has no night vision abnormalities. In support of his plea the petitioner even got himself examined from the Guru Nanak Eye Center, Delhi for the night vision test. According to the petitioner, test again revealed that the Blue Dot Cataract in the eyes of the petitioner does not affect his night vision which has been wrongly held by the respondents. Relying on the counter affidavit which was filed by the respondents in the writ petition being W.P(C) No. 2978/2011, the petitioner asserted that the documents relied on by the respondents reveal that the petitioner was not even

tested for night visual capacity by the respondent either at the Military Hospital, Allahabad or at the Base Hospital, Delhi Cantt or at the Army Hospital (Research & Referral). In the circumstances, the petitioner contended that the order to declare him unfit is perverse and is unjust and is in violation of the principle of equity, good conscious and natural justice.

9. The writ petition is contested by the respondents who filed a reply to the show cause notice contending inter-alia that the petitioner was examined at three places and that all the medical boards had opined that the petitioner suffers from Multiple Lenticular Opacities because of which the petitioner was declared medically unfit. Referring to the decision of the appeal medical board and the review medical board, the respondents have pleaded that the petitioner had been thoroughly examined by three different senior eye specialists, who found that the petitioner has Multiple Lenticular Opacities (Blue Dot Opacities) in both eyes and that the Blue Dot Opacities were numerous and occupying all the parts of the lens including the central axis of the eye.

10. The respondents categorically asserted that the Blue Dot Opacities could interfere with the functioning of the eyes in the low light and low contrast situations and could affect the performance of the military duties such as at night and low light operations and that such a problem could have the consequence of poor vision and could further result in danger not only to the individual but also to those under his command and, therefore, the petitioner is unfit. Commenting on the opinion obtained by the petitioner from the other institutes, the respondents contended that it is not disputed even by the other institutions from where the petitioner has obtained the reports that the petitioner suffers from Blue Dot Cataract. The respondents asserted that the civil hospitals had examined the petitioner from a different angle and have not taken into consideration or into account the type of duties the petitioner would be required to perform in the military service. They contended that the petitioner may be medically fit for performing some of the civil services, however, the requirements under the civil services cannot be extrapolated to infer his fitness for the military service, as the job profile and requirements of the duty of Military services are different.

11. Therefore it is contended on behalf of the respondents that the petitioner does not fulfill the standards of medical fitness required for military service as the medical fitness standards required for military service are vastly different from those required for any other services.

12. The respondents refuted the allegation that the petitioner has been discriminated against in conducting his medical examination. The petitioner was rather given two appeals to be re-examined, the appeal medical board and the review medical board, however, all the three boards of the respondents declared the petitioner medically unfit, therefore bias on the part of either of the boards cannot be claimed by the petitioner.

13. The respondents also asserted that although the civil hospitals have given a contradictory opinion despite the petitioner having Blue Dot Opacities, however, the degradation of the vision under the service conditions, training and combat are not well known to civilian ophthalmologists and the same cannot always be duplicated within laboratory scenarios. Regarding the results of Electroretinography(ERG) the respondents have contended that the test is merely an indicator of general health of the retinal cells and does not give any indications of the visual acuity of the individual, nor does it indicate as to how the acuity may degrade under marginal conditions since it tests only the response of the retinal cells and not the opacities in the structures in front of the retina.

14. The petitioner also filed a rejoinder to the reply filed by the respondents and contended that perusal of the three medical examination reports of the petitioner rendered by the respondents would unequivocally shows that no tests have been conducted to evaluate the vision of the petitioner at night. The petitioner has contended that Blue Dot Cataract usually forms in the first two decades of life and that the opacities are usually stationary and do not affect vision. The petitioner has also relied on the para expounding on the aspect of Blue Dot Cataract in the chapter titled as "Diseases of the lens" which is as under:-

2. Blue dot cataract. It is also called cataracta-punctata-caerulea. It is usually forms in the first two decades of life. The characteristic punctuate opacities are in the form of rounded bluish dots situated in the peripheral part of adolescent nucleus and deeper layer of the cortex. Opacities are usually stationary and do not affect vision. However, large punctuate opacities associated with coronary cataract may marginally reduced the vision.

15. In the circumstances, it was contended that in the case of the petitioner, the Blue dot opacities are concentrated at the periphery area of the eye which has no night vision abnormalities. By relying on the report of the Guru Nanak Eye Centre, New Delhi, the petitioner has further asserted that it has been wrongly held by the respondents that the night vision of the petitioner is ineffective on account of the blue dot cataract. The petitioner has also claimed that if there is any specific test available at the All Indian Institute of Medical Sciences to evaluate the petitioner's vision in dim light conditions at night, then the Courts should direct the respondents for conducting such a test for the petitioner. However, the averments made on behalf of the respondents that the petitioner has numerous blue dot opacities occupying all parts of the lens including the Central visual axis of the eyes has not been specifically denied by the petitioner.

16. This Court has heard the learned counsel for the parties in detail. This has not been disputed by either of the parties that the petitioner suffers from Multiple Lenticular Opacities (BE). The first dispute is whether the blue dot cataract found in the eyes of the petitioner is confined and concentrated at the periphery area of the eye or are there numerous blue dot cataracts occupying all parts of the lens including the central axis of the eye. No prejudice and bias has been attributed

by the petitioner against the respondents. The medical examination reports of the petitioner by the respondents categorically reveals that extensive blue dot lenticular opacities were found in both the eyes of the petitioner. This is the finding of the medical board of the respondents comprising of three experts, Major General L.R. Sharma, Major General Prakash Singh and the Air Marshal K.M.Suryanarayana, President of the medical board. The review medical board also opined extensive blue dot opacities occupying all parts of the lens including the central axis of the eyes. Even the Guru Nanak Eye Centre, New Delhi where the petitioner had got himself examined as an outpatient, in its prescription had recorded that the petitioner was declared medically unfit in the Army entrance. It was also stipulated that the petitioner does not have any night vision abnormalities, though it was further clarified that both the eyes have congenital blue dot cataract which however does not cause any visual disturbance to the patient and that he is otherwise fit to do all works.

17. Be that as it may, the opinion of a medical board comprising of three specialists of the rank of Major General and Air Marshal cannot to be completely ignored.

18. In Union of India (UOI) and Others Vs. Keshar Singh, ; Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, ; Union of India (UOI) and Others Vs. Dhir Singh China, Colonel (Retd.), and Union of India (UOI) and Another Vs. Baljit Singh, it was held that the opinion of the medical board of the respondents which comprises of experts, was to be given primacy in order to infer whether the injuries sustained by the Army personnel were due to Military services, or was aggregated by the Military services in order to ascertain if the said army personnel were entitled to receive any disability pension..

19. The respondents have categorically asserted that the petitioner has opacities in both the eyes, which has not been denied by the petitioner. It has further been contended by the respondents that in view of the medical condition of the petitioner in low light and low contrast situations the performance of his Military duties could be interfered with and that the consequences of the poor vision could also result in danger not only to the petitioner but to all those who may be put under his command. In view of the conflicting opinion by the Civilian Ophthalmologist, there may be the possibility of the petitioner not having an extreme disability in his eyes for light and low light operations, however, if the respondents do not want to take any chances in these circumstances, and put any person under the command of the petitioner, the petitioner does not have a right to insist that they must do so. In the absence of any bias or mala fides against them, they are the best judge of their standards of requirements and to hold whether a particular person is fit or unfit to render services according to their requirements. Though the petitioner has contended that if there is any specific test available at the All India Institute of Medical Sciences to substantiate and evaluate the petitioner's vision in dim light conditions then this Court may direct the respondents to test the petitioner for the same. However, this Court in

these circumstances does not deem it necessary to neither ascertain whether any such test is available or not, nor direct the respondents to get such test carried out on the petitioner. This is not disputed that the petitioner does have blue dot cataract. Had the conflicting opinion been about the very existence of the blue dot cataract, then it would have been an appropriate situation, for this Court to have directed for another opinion to ascertain the same. But since this is not disputed that the petitioner has blue dot cataract, then whether or not this blue dot cataract of the petitioner's will impact the performance of the petitioner in discharging his duty has to be left to the discretion and judgment of the respondents so long as there is no mala fides, prejudice or any sort of bias alleged against the respondents. If the respondents do not want to take any chances regarding the performance of the duties by a particular individual, then they cannot be forced to enlist the person who has a medical abnormality which may or may not affect the performance of the duties by such an individual.

20. For the forgoing reasons, and in the facts and circumstances, it will not be appropriate for this Court in exercise of its jurisdiction under Article 226 of the Constitution of India to issue any writ directing the respondents to reconsider the candidature of the petitioner after conducting a fresh eye test of the petitioner, nor is there any ground to set aside the letter dated 5th January, 2011 holding that the petitioner is unfit in SMB, AMB and in RMB for the Test Course SER No. 24. The petitioner is not entitled for the relief claimed by him. The writ petition is therefore, dismissed.