Dalbir and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Aug-04-2016

Judge : Pradeep Nandrajog &Amp; The Honourable Ms. Justice Pratibha Rani

Appeal No. : W.P.(C) Nos. 3214, 5105 & 8092 of 2015 & 3207 of 2016

Appellant : Dalbir and Others

Respondent : Union of India and Others

Judgement :

Pradeep Nandrajog, J.

1. The writ petitioners of the above captioned petitions except Dharmender Kumar the writ petitioner of WP(C) No.8092/2015 have admittedly undergone surgical correction of eye sight by a process commonly known as Lasik surgery. Post surgery the distal and near vision is as per the prescribed standards without using any external aid i.e. specs. All of them have been denied employment on the ground that the medical standards prescribed require the distal and near vision to be as per the prescribed standard sans any correction surgery. The writ petitioners of all writ petitions were detected with either distal or near vision problem when they were medically examined and each undertook a Lasik surgery to correct the medical infirmity detected in them. Dharmender Kumar the writ petitioner of WP(C) No.8092/2015 disputes that he has undergone Lasik surgery and the dispute in said writ petition is whether his corrective eye vision is on account of Lasik

surgery.

2. The writ petitioners of WP(C) 5105/2015 and WP(C) 3214/2015 claim employment as constables in the Railway Protection Force. The writ petitioner of WP(C) No.3207/2016 claims employment under BSF as a constable and the writ petitioner of WP(C) No.8092/2015 claims employment as a constable under CISF.

3. Photo Refractive Keratectomy (PRK) was invented in the early 1980s and the first FDA approval of a Laser for PRK was given in the year 1995. It is performed with an Eximer Laser, which uses a cool ultraviolet light beam to precisely remove (ablate) very tinny bids of tissue from the surface of the cornea in order to re-shape it. Both Myopic and Hyper-metropic refractive errors can be corrected by PRK. The procedure of PRK does not cut a thin flap into the eye s surface as occurs with Lasik. Instead, laser energy is directly applied to the eye s surface. The ultra thin, outer layer of the eye (epithelium and superficial stroma of cornea) is removed completely by laser energy during a PRK procedure, and epithelial eventually grows back. As per the respondents data shows that 17.5% of the patients who have undergone Lasik surgery report night vision problem i.e. difficulty in night driving. Factors contributing to night driving problems include a postoperative decrease in contrast sensitivity and starburst and halos around lights at night.

4. It being settled law that a person seeking employment to a public post has to be evaluated on the prescribed standards, it would be profitable for us to note the medical standard prescribed for eye sight by the Indian Railways.

5. The relevant portion of the Indian Railways Medical Manual, 2000 pertaining to the standards for visual acuity are as under:-

512 (i) Acuity of Vision:

Class	Distant Vision	Near Vision
A-1	6/6, 6/6 without glasses with fogging test (must not accept +2D)	Sn.0.6, 0.6 without glasses

A-2	6/9, 6/9 without glasses(no fogging test)	...Do...
A-3	6/9, 6/9 with or without glasses. Power of lenses not to exceed 2D.	Sn.0.6, 0.6 with or without glasses.
B-1	6/9, 6/12 with or without Power of lenses not close work is required to exceed 4D.	Sn. 0.6, 0.6 with or without glasses when reading or glasses.
B-2	same as above	...Do...
C-1	6/12, 6/18 with or without glasses.	...Do...
C-2	6/12, nil with or without or without glasses	Sn. 0.6 combined with OR WITHOUT glasses where reading or close work is required

6. Para 512 of the aforesaid medical manual reads:-
512 (9) Radial Keratotomy: Candidates: having undergone Radial Keratotomy may not be considered for recruitment to A-1, A-2, A-3 and B-1 categories. However candidates with such operation may be considered for recruitment in B-2 categories and below, if otherwise medically fit.

Employees: working in categories A-1, A-2, A-3, and B-1, who have undergone Radial keratotomy should not be allowed to work on Rajdhani and Shatabdi Express. However for eligibility to work on other trains, the periodical medical examination of such employees should be conducted at half the prescribed intervals of the P.M.Es. Such employees in categories B-2 and below may however be medically passed with this operation.

7. Relevant would it be to note that the medical manual clearly specifies that those who have undergone radial keratotomy would not be considered for recruitment to

A-1, A-2, A-3 and B-1 categories. Constables in RPF are considered in B-1 categories.

8. Somebody realized that there is an omission in the manual concerning Lasik surgery. Thus, on November 11, 2013 an amendment was made in para 512(9) of the Railway Manual vide Railway Board Circular No.2011/8/5/7/(VR). The amendment incorporated is as under:-

Procedure	New Recruit	Existing Employee
All Surgeries done to correct refractive error. (Mandatory declaration from the candidate about such surgeries)	Unfit in AandB categories	Unfit in AandB categories

Para 512(a) may be read as under-
All surgeries done to correct refractive error

I. Candidates- Unfit in categories A and B

II. Employees-Unfit in categories A and B

7. Relevant would it be to highlight that the Indian Railways Medical Manual, 2000 was issued in the year 2000 when Lasik surgery was not available in India, Radical Keratotomy being the only procedure available. In order to update the Manual a committee of three Senior Railway Ophthalmologists was constituted. The Committee submitted its report recommending that Lasik surgery should not be permissible in categories A-1, A-2, A-3 and B-1 posts; and this was accepted. Meaning thereby that the exercise was undertaken by specialists resulting in an amendment being made in the Medical Manual.

8. Pertaining to the Border Security Force, concededly the medical standards for eye sight prescribed for constables are:-

The minimum distant vision should be 6/6 and 6/9 of both eyes without correction i.e. without wearing of glasses.

The candidates must not have knock knee, flat foot, varicose vein or squint in eyes and they should possess high colour vision. 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.

9. Pertaining to CISF, the petitioner of WP(C) No.8092/2015 Dharmender Kumar does not dispute that a person who has undergone Lasik surgery is medically unfit to be appointed as a constable, but he claims that he has not undergone Lasik surgery.

10. Now, as regards the petitioner of WP(C) No.8092/2015, relevant would it be to highlight that on December 27, 2008 he admitted that after he was declared unfit by the Ophthalmologist of CISF hospital at Saket he went for a check-up to Abhilasha Eye Hospital. He gave an evasive information by denying that he got operated but said that he underwent medical treatment.

11. We have no reason to doubt the opinion dated November 21, 2007 which has found him to be myopic with parameters recorded in the report as also December 31, 2007 of the Review Medical Board opining that he had got his eye vision surgically corrected after undergoing Lasik surgery pursuant to he being found to be myopic.

12. Thus, WP(C) No.8092/2015 is dismissed.

13. As regards the other three writ petitions, learned counsel for the writ petitioners referred to a gazette notification issued by the Government of India in which radial keratotomy/lasik surgery as a corrective measure was permitted for eye vision correction. The petitioners highlighted the undernoted part of the gazette notification:-

(i) General--The candidate's eyes will be submitted to a general examination directed to the detection of any disease or abnormality. The candidate will be rejected if he suffers from any morbid conditions of eye, eyelids or contiguous structure of such a sort as to render or are likely at future date to render him unfit for service.

(ii) Visual Acuity The examination for determining the acuteness of vision includes two tests one for distant the other for near vision. Each eye will be examined separately.

(b) There shall be no limit for maximum naked eye vision but the naked eye vision of the candidates shall however be recorded by the CSMB or other medical authority in every case, as it will furnish the basic information in regard to the condition of the eye.

(c) The following standards are prescribed for distant and near vision with or without glasses for different types of services

(i) The candidates who have Myopia of more than 6.00 D including spherical and cylindrical error should be referred to Special Ophthalmic Board. The SOB will examine the candidate for degenerative changes in retina (indirect ophthalmo scopy as well as direct ophthalmo scopy and if the macular area is healthy then the candidate should be declared fit. If the candidate is having only peripheral degenerative changes which can be treated then the candidate should be declared temporarily unfit till the candidate gets treated. However if degenerative changes are only in periphery and require no treatment then the candidate should be declared fit. ()(ii) For cases of myopia up to 6D fundus examination should be done and if the candidate is having only peripheral degenerative changes which can be treated then the candidate should be declared temporarily unfit till the candidate gets treated. However if degenerative changes are only in periphery and require no treatment then the candidate should be declared fit. This is for both technical services and nontechnical services.

(d) Field of Vision: The field of vision shall be tested in respect of all services by the confrontation method. When such test gives unsatisfactory or doubtful result

the field of vision should be determined on the perimeter.

Table- Standards for distant and near vision for Class of Service

		(Technical Services)		(Non-technical Services)	
		Better eye (corrected vision)	Worse eye	Better eye (corrected vision)	Worse eye
1.	Distant vision	6/6 or 6/9	6/12 or 6/9	6/6 or 6/9	6/18 to Nil or 6/12
2.	Types of corrections permitted	Spectacles, CL and Refractive Surgery* like Lasik, ICL, IOL etc.	Spectacles, CL and Refractive Surgery* like Lasik, ICL, IOL etc.	Spectacles, CL and Refractive Surgery like Lasik, ICL, IOL etc.	Spectacles, CL and Refractive Surgery like Lasik, ICL, IOL etc.

14. Aforesaid is the extract from Appendix-III to the notification issued by the Government of India, date whereof has not been disclosed by the petitioners or the respondents. The notification classifies services under two categories: Technical and Non-technical . The Technical Services enumerated are: (i) Indian Railway Traffic Service; (ii) Indian Police Service and other Central Police Service Group A and B ; and (iii) Group A posts in the Railway Protection Force. The Non-Technical Services are : (i) IAS; (ii) IFS; (iii) IAand AS; (iv) IRS (Customs and Central Excise); (v) Indian Civil Accounts Service; (vi) Indian Railway Account Service; (vii) Indian Railway Personnel Service; (viii) Indian Defence Accounts Service; (ix) Indian Revenue Service (IT); (x) Indian Ordinance Factory Services Group A ; (xi) Indian Postal Service; (xii) Indian Defence State Service Group- A ; (xiii) Indian P and T Accounts and Finance Service Group ; and (xiv) Other Central Civil Service Group A and B .

15. Suffice it to state that the extract from the notification in question relied upon by the petitioners would be applicable to those who are seeking employment in the

aforenoted 14 services.

16. The vires of the medical standard prescribed for appointment of constables in BSF and Indian Railways not being challenged, we hold that reliance by the petitioners on the gazette notification concerning 14 services is misplaced. Only those who seek employment in 14 services aforenoted in paragraph 14 can avail the benefit of eye correction by Lasik laser surgery and not anyone else.

17. It is in this connection we have noted in paragraph 7 above that a committee constituted by the Indian Railways of three Ophthalmologists had gone into the issue of Lasik surgery to cure defective eye vision and had opined that it would not be permissible for those who seek employment in categories A-1, A-2, A-3 and B-1 posts. As noted above, the post of a constable is in category B-1. Though, the medical standards have not been challenged, there is a good reason to do so and which reason is in paragraph 3 of our opinion above. 17.5% of those who have undergone Lasik surgery report night vision problems. Additionally we find in the report submitted by the three doctors, copy whereof was handed over to us during arguments in the writ petitions that 3% to 5.7% patients have flap related complications after the surgery. 0.1 to 0.8% suffer from corneal ectasia. The data justifies the medical standard prescribed keeping in view that constables in the Indian Railways i.e. in the Indian Railway Protection Force and in the Border Security Force have to perform night duties. If the policy mandates a standard of vision sans any corrective surgery, we find no infirmity therein. It is trite that a policy decision is not ordinarily to be interfered with and the superior courts, while exercising the power of judicial review, shall only consider whether the policy is arbitrary and thus violative of Article 14 of the Constitution of India. In deciding the issue of arbitrariness the validity and effect of the policy decision has to be judged keeping in view the object and purport thereof.

18. The other three writ petitions i.e. WP(C) 3214/2015, WP(C) 5105/2015 and WP(C) 3207/2016 are also dismissed.

19. All the four captioned are dismissed but without any order as to costs.