

ITEM NO.24 Court 6 (Video Conferencing)

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition(s) for Special Leave to Appeal (C) No(s). 28003-
28004/2017(Arising out of impugned final judgment and order dated 04-08-2016
in WP No. 3214/2015 04-08-2016 in WP No. 5105/2015 passed by the
High Court Of Delhi At New Delhi)

DALBIR

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

Date : 04-02-2022 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESHFor Petitioner(s) Mr. Raj Kumar, Adv.
Mr. Karunakar Mahalik, AOR
Mr. Abhishek Sonkar, Adv.
Ms. Sangeeta Chauhan, Adv.
Ms. Sashi Gupta, Adv.For Respondent(s) Ms. Madhvi Divan, Ld. ASG
Ms. Vanshaja Shukla, Adv.
Mr. Piyush Beriwal, Adv.
Ms. Vaishali Verma, Adv.
Ms. Preeti Rani, Adv.
Mr. Amrish Kumar, AOR

Mr. Brajesh Pandey, Adv.
Mr. Sunil Prakash Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The advancement of medical field over a period of time has been enormous. This is what more than anything else persuade us to pass this order.

The appellants before us appeared in a competitive examination of the Railways and they sought recruitment as constables in the Railway Protection Force (RPF).

An Advertisement was published inviting applications for this post in the year 2011, but the recruitment process took its own time. The appellants were held unfit for service in categories A and B of the Indian Railway Medical Manual, 2000 (RPF is categorized as B1), in view of a policy decision taken by the respondents dated 11.11.2013 qua their medical suitability having gone through lasik surgery to the eye.

It is there say that the decision has been brought into force almost 3 years after the date of advertisement, hence cannot thus apply to the recruitment process of the appellants. There are other aspects of challenge, but we may not be required to go into it at present. The impugned

judgment of the High Court dated 04.08.2016 has repelled the contention of the appellant on the reasoning that once the technical committee goes into this aspect, it may not be proper for the court to step into this domain.

On the last date of hearing, we had requested the learned ASG to look into this aspect in accordance with various judicial pronouncements. Learned Counsel has also placed on record the report which form the basis of introducing the requirement of prohibiting the candidates who have gone through lasik surgery, that being an impediment in the way of the recruitment of the appellants.

The aforesaid document shows that an order was passed on 17.08.2011 constituting a committee of Ophthalmologists, all from the Railways, to make an in-depth study and formulate guidelines for medical fitness/unfitness qua candidates and employees of various medical categories who have undergone lasik surgery in the past or during the service period.

The report placed by the learned ASG is cognizant of its own limitations. It notes that at the time of its publication, the lasik

procedure had been available in India only for a period of 10 years. The aforesaid report is accompanied by a qualification that latest medical procedures should be observed over a period of time and until then a conservative approach may be necessary. We may note that now we have the benefit of an extra decade of medical study and observation with respect to the effects of this procedure. In view of the same, it may be time to revisit the issue.

We have pointed out to learned Counsel the order passed recently by us in SLP(C) No. 32132/2017 titled Ashutosh Kumar vs. The Film and Television Institute of India and Another on 30.11.2021, looking to the issue of colour blindness qua a candidate who had applied for Diploma in Film Editing course. In the course of hearing, we had noted the contention of the claimant upon the principle of 'reasonable accommodation' which underlines the Rights of Persons with Disabilities Act, 2016 with an objective of recognizing the worth of every person as an equal member of the society in the context of observations in Vikash Kumar vs. Union Public Service Commission and Ors¹.

We also took note of a difficult case where a candidate suffered from partial colour blindness and was declared ineligible to take admission to the MBBS course. In *Pranay Kumar Podder vs. State of Tripura & Ors.*² The issue was debated and the court opined that the Medical Council of India should constitute a committee of experts to review the situation. We were also informed that ultimately the medical committee opined in favour of the candidate.

In the context of the Film Editing course, we constituted a committee of medical experts as well as eminent film directors/editors to take a view in the matter. That matter is, however, pending and listed for directions on 15.03.2022.

Insofar as the present matter is concerned, qua the aspect of Railways, we are of the view that a fresh medical committee be constituted of three or more members, out of which not more than one Doctor should be from the Railways. An independent Ophthalmologist from a Government hospital and private field should also be included. The committee be constituted within a period of two weeks' from today. The committee would revisit the aspects forming part of the

report submitted in pursuance to the aforesaid order dated 17.08.2011 about the fitness of candidates who have undergone lasik surgery qua different aspects of Railway employment.

This is a larger issue. Appellants here are concerned only with a particular aspect of railway employment which does not require fine technical work or the operation of heavy machinery. A parallel with the position in the armed forces may also not be appropriate as constables in the RPF are not deployed at the frontlines.

We require the committee to opine on the issue and carry out the exercise on or before 30.04.2022.

The issue is what is to be done insofar as the appellants are concerned. Learned ASG submits that the report should have only prospective effect and also expressed the apprehension that it may also open a flood gate of litigations if applied retrospectively.

We are, however, of the view that the apprehension of a flood of litigation may not be appropriate as it is not as if people who are watching from the way side would be entitled to

the benefit. We are only concerned with the appellants herein. No doubt normally the report should have a prospective effect, but then if we look to the facts of the case, the advertisement issued in the year 2011 took almost three years to process and the norms were brought in place only in the year 2013. Employment is a very important aspect in our Country and we have to take a broader conspectus of this issue. We, thus, do believe that the individual cases of the appellants can then be examined within the guidelines brought before us on their medical examination by a Board. That would, however, be the second stage.

In order to complete the first stage of process, we direct the matter to be listed for directions pursuant to the report on 10.05.2022 in miscellaneous matters.

(POOJA SHARMA)
COURT MASTER (SH)

(POONAM VAID)
COURT MASTER (NSH)