



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.P(C) No. 410/2019

Reserved on: 04.03.2024

Pronounced on: 15.03.2024

Smti. Naresh Kumari

... Petitioner

-vs-

1. Union of India
Represented by the Secretary to the Government of India,
Ministry of Home Affairs, North Block,
New Delhi – 110001
 2. The Director General of Assam Rifles,
Mahanideshalaya, (The Directorate General of Assam Rifles)
Shillong, Meghalaya – 793011
 3. The Presiding Officer,
Laitkor Centre, AR Tech and Tdn Rally 2017-2018,
Mahanideshalaya, (The Directorate General of Assam Rifles)
Shillong, Meghalaya – 793011.
 4. The Commandant, Assam Rifles Composite Hospital,
Mahanideshalaya, (The Directorate General of Assam Rifles)
Shillong, Meghalaya – 793011
- ... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Appearance:

For the Petitioner : Mr. V.Kumar, Adv.

For the Respondents : Dr. N.Mozika, DSG with
Ms. A.Pradhan, Adv.

- | | | |
|-----|--|-----|
| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |
-



ORDER

(Made by Hon'ble Chief Justice)

This Writ Petition has been filed, seeking to interfere with the recommendation dated 08.06.2018 of the Review Medical Board, declaring the petitioner as unfit and also challenging the Government of India Guidelines dated 18.05.2012 and the Policy dated 20.05.2015 to the extent it infringes rights under Article 14 of the Constitution of India in prescribing different visual standards for Gazetted posts of Doctors and Non-Gazetted post of Nurses by permitting Lasik correction for Doctors and excluding the same for Nurses. The petitioner sought a direction to the Assam Rifles to consider her case for appointment as Staff Nurse, pursuant to her selection and medical fitness.

2. The case of the petitioner was that she had applied for the post of Staff Nurse and came out successful in the selection, but however, the Review Medical Board on 08.06.2018 has rejected her candidature on the ground that she had undergone Lasik surgery in both the eyes. It was the further case of the petitioner that in terms of the Guidelines for Recruitment Medical Examination in Central Armed Police Force (CAPFs) and Assam Rifles, which specifically deals with Refractive Surgeries, Clause No. 67 specifies as follows:



“67. Refractive Surgeries: Candidates who have undergone LASIK (LASER in Situ Keratomileusis) may be considered fit for recruitment for the post of Direct Entry Gazetted Officers.”

3. Learned counsel for the petitioner drew the attention of this Court Table No.3, prescribing Visual Standards for Direct Entry to SOs and ORs in CAPFs, NSG including Assam Rifles and the said Tabular Column is extracted below:

Sl. No.	Category	Visual Acuity Unaided (Near Vision)		Uncorrected Visual acuity (DIST ANT VISION)		Refraction	Color Vision	remarks
		Better eye	Worse eye	Better eye	Worse eye			
01	Ors & SOs Age at the entry: 18-35 Years	N6	N9	6/6	6/9	Visual correction of any kind is not permitted even by glasses	CP III BY ISIHARA	-In right handed person, the Right eye is better eye and vice versa- Binocular vision is required
02	CT (Drivers) & DCPO Age at entry: 18-35 Years	N6	N9	6/6	6/9	Visual correction of any kind is not permitted even by glasses	CP III BY ISIHARA	Binocular vision is required

4. Learned counsel for the petitioner submitted that the petitioner was declared unfit only on the ground that there was a Lasik correction in her eyes and the guidelines issued by the Government of India in respect of medical examination in CAPFs and Assam Rifles exhibits clear discrimination between Officers and other Staff Members, which, being violation of Article 14 of the Constitution of India, needs to be struck off.



5. Learned DSG appearing for the respondents contended that by mere referring to Clause No.67, the petitioner cannot demand as a matter of right that she is entitled to be considered for appointment. Learned DSG drew the attention of this Court the very same guidelines to substantiate his argument that different yard sticks are prescribed in respect of visual standards of different category of employees vide Tabular Columns. Learned DSG respondent also referred to the introduction to Ophthalmic Systemic Examination, which stipulates as under:

“Visual defects and systemic ophthalmic conditions are among the major causes of rejection and hence a thorough and accurate eye examination is of great importance in selecting personnel.”

Thus, it was prayed that in the light of the decision of the Medical Board, the petitioner is not entitled to any relief and the Writ Petition is liable to be rejected *in limine*.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The petitioner has applied for the post of Staff Nurse and was selected with a condition that her selection would be subject to obtaining medical fitness certificate from the Medical Board. However, the Medical Board, on



examination, found that she had undergone Lasik surgery in both eyes, on account of which, she was declared unfit vide proceedings dated 08.06.2018. The petitioner has also approached this Court earlier by way of WP(C) 235 of 2018, which was withdrawn with liberty to file a fresh one.

8. Now, the question before this Court was as to whether there is any discrimination in prescribing visual standards or not, as vehemently argued by the petitioner. This Court cannot criticize the opinion offered by the Medical Board, as the Medical Board had rejected the request of the petitioner based on the guidelines that stipulated that the Staff Nurse is excluded from the purview of Clause No.67. A close scrutiny of Clause No.67 discloses the fact that there is no hurdle for the Doctors to be considered for appointment, even if they have undergone a Lasik surgery, which is nothing but a discrimination. This Court is of the view that a different yardstick cannot be applied to a Staff Nurse, who is after all going to assist the Doctor or attend the patients in the General Wards or Special Homes. When the correction in the eyesight by means of Lasik surgery is permissible to Doctors in terms of the guidelines, it is highly ridiculous that such exemption is refused to a Staff Nurse. Though it has been argued on the side of the respondents that such yardsticks are prescribed even for Barber, Cooks, etc as per various tables, this Court is concerned with the applicability of the yardstick to the Staff Nurse alone on



par with a Doctor. The main role of a Staff Nurse is to assist Doctors and attend to the medical requirement of patients. In my view, the Clause No.67 should be made applicable to Doctors only, as they, in the midst of performing surgery to patients affect with vision problems caused by refractive errors, then the life of the patients would be at stake. In the past, we have come across several instances about wrong site surgery performed by Doctors in the medical history, which includes performance of surgery on the wrong body, wrong side of the body, wrong patient, etc. When concession is given to a Doctor, treating a Staff Nurse with dissimilar yardstick cannot be acceptable.

9. It was pleaded by the respondents that when guidelines have prescribed certain criteria to be taken into account, while examining a candidate, it is impermissible for the Medical Board to act contrary to the guidelines. If the guidelines permit the same yardstick applicable to Doctors to be applied in the case of Staff Nurses, the Medical Board would have definitely cleared the same.

10. Upon considering the whole scenario projected by the parties, this Court is of the view that there is clear discrimination among the sect of persons working in the medical industry, namely, Doctors and Nurses, who are equally responsible for the well-being of patients. Hence, the



Regulations/Guidelines in respect of Lasik surgery giving relaxation to Gazetted Offices and denying such concession to Nurses cannot stand in the eye of law. For the foregoing discussions, this Court is inclined to pass the following orders in this Writ Petition:

- i) The Clause No.67, being discriminatory, arbitrary and violative of Article 14 of the Constitution of India is interfered with. A direction is issued to the respondents to include both Doctors and Nurses in the Guidelines / Tabular Column to be eligible for appointment, even if they have undergone Lasik Surgery. To that extent, the Guidelines are quashed;
- ii) Since nearly six years have gone-by, the petitioner shall undergo another medical examination and if found suitable, she shall be accommodated in the existing vacancy or in the next vacancy that may arise;
- iii) It is made clear that without appointing the petitioner as a Staff Nurse (if medically fit other than Lasik Surgery), no other nurse shall be appointed.

11. With the above direction, W.P(C) No. 410 of 2019 is allowed in part.

(S.Vaidyanathan)
Chief Justice

Meghalaya
15.03.2024
“Tiprilynti-PS”

PRE-DELIVERY ORDER IN
W.P(C) No. 410 of 2019