

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00192/2019

DATED THIS THE 10TH DAY OF DECEMBER 2019

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Hoovegowda  
S/o Hoovegowda,  
Aged about 34 years,  
R/at Masalukoppalu,  
Alur Taluk 573213  
Hassan District.

..... Applicant

(By Shri MR.Achar...Advocate)

V/s.

1.The General Manager,  
Representing South  
Western Railway,  
Hubli Zone, Hubli 580 020.

2.The Chief Medical Director,  
South Western Railway,  
Club Road, Keshavapur,  
Hubli-580 020.

3.The Senior Divisional  
Personnel Officer,  
Mysuru Division,  
Mysuru – 570020.

.....Respondents

(By Shri N.Amaresh, .. Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER (J):

1. Heard. The matter is in a very small compass. The only objection raised against the applicant being considered for compassionate appointment for Group 'D' post and it was rejected is that applicant is suffering from Diabetes Mellitus patient coupled with Hypertension. We do not think that there is sufficient enough ground to reject his application as Diabetes as well as Hypertension, even taken together is not such a debilitating disease at present. Even though, when the medical science was not yet that advanced earlier it was considered to be a serious issue affecting human health. Now, it has been established conclusively and scientifically that a person with both Diabetes and Hypertension together can exist and be a useful member of the society.

2. It is seems to be covered by decision of Hon'ble High Court of Karnataka, Dharwad Bench in WP.No.106814/2016 (S-CAT) which we quote:-

***"IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH***

***DATED THIS THE 04TH DAY OF JULY 2017***

PRESENT

**THE HON'BLE MR.JUSTICE A.S.BOPANNA**

AND

**THE HON'BLE DR.JUSTICE H.B. PRABHAKARA SASTRY**

WRIT PETITION NO.106814/2016(S-CAT)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.04.2016, PASSED IN OA NO.170/0619/2015 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, BENGALURU(PRODUCED VIDE ANNEXURE-A).

THIS PETITION COMING ON FOR **PRELIMINARY HEARING** THIS DAY,**A.S.BOPANNA J.**, MADE THE FOLLOWING:

**ORDER**

*The petitioners are before this Court assailing the order dated 20.04.2016 in OA No.170/01619/2015.*

2. *The respondent herein who was selected for the post of Commercial Clerk, but was denied the employment after the medical examination on the ground that he was suffering from Diabetes was before the Central Administrative Tribunal(for short, 'the CAT') assailing such action of the petitioners herein.*

3. *The CAT after referring to the decision of the Division Bench of the High Court of Madras in WP No.33859/2015 dated 27.10.2015 was of the opinion that the diabetes as such cannot be considered as disease to bar the employment and in that light has directed the*

*petitioners herein to reconsider the issue in terms of the said judgment and to grant benefits to the respondent herein. The petitioners therefore, claiming to be aggrieved by the same, are before this Court.*

4. *Learned counsel for the petitioners while assailing the order would contend that the denial of the employment has been made based on the Circular which is in force. Since the said circular has not been assailed, the denial of the employment could not have been assailed is the contention. It is his further case that the CAT ought not to have relied on the judgment of the High Court of Madras, since the said case was in a circumstance, where the Division Bench of that Court was considering the case of compassionate appointment and in that circumstance, a direction has been issued. In that light, it is contended that the order passed by the CAT is liable to be set-aside.*

5. *Learned counsel for the respondent however would seek to sustain the order and would contend that it is in similar set of circumstance, the High Court of Madras as well as the CAT, in the other cases has taken a view and as such, the order impugned does not call for interference.*

6. *In the light of the above, we have perused the petition papers. Though the circular has not been assailed, the consideration that is required is as to whether the candidate who is selected for the post but is found to be suffering from the diabetes could be barred from being issued that appointment order. If in that light, the consideration is made, at that outset, we are also of the opinion that the candidate suffering from diabetes unless, otherwise disabled for the post cannot be denied the employment only because of diabetes.*

7. *Be that as it may, we have taken note of the judgment passed by the High Court of Madras, which was referred to by the CAT. A copy of the judgment is available at Annexure-A16 to this petition. A perusal*

*of the same would indicate that in the said case, the Division Bench no doubt was considering the case where the request of the respondent before it for appointment on compassionate ground had been rejected by the employer. However, while considering the said aspect and issuing the direction, the Division Bench has in fact referred to the earlier judgment of that Court in WP No.4268/2015, dated 3.3.2015, wherein the position of law on the aspect was enunciated. It is in that light the said judgment was applied and thereafter a direction was issued to grant the relief. For appropriate understanding of the matter, it would be beneficial to extract the relevant portion of the judgment, which reads as under:*

*9. In the judgment in WP No.4268/2015 dated 3.3.2015, the Hon'ble High Court of Madras has held as under: "9. Today, India has become the diabetic capital of the world. It is common perception that diabetes is more of a disorder than a disease. The decisions relied upon by the learned counsel for the petitioner, came before the advent of the persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Today, quite a number of posts on the non- technical side are reserved even for persons, who are physically challenged. Therefore, to reject the candidature of the second respondent on the sole ground that he is a diabetic, cannot be accepted and the Tribunal was right in allowing the claim of the second respondent. We find no merits in the writ petition."*

*10. Since the OA on hand is identical to the case in which the Hon'ble High Court of Madras has rendered its finding cited supra and following the same ratio, the orders passed by this*

*Tribunal in OA No.546/2014 and 1743/2013, the respondents are not justified in rejecting the case of the applicant herein on the ground of Diabetes. The applicant could be considered for appointment on the compassionate ground against any one of the posts which do not come under safety category, if he is otherwise found eligible for appointment under the compassionate appointment scheme.*

8. *Having taken note of the above extracted portion, it would be clear that the judgment of the High Court of Madras in the earlier case will be relevant. Though it would only have persuasive value, w having already indicated that the candidate suffering from diabetes cannot be considered as barred for appointment, we see no reason to take a different view though that has been taken by the High Court of Madras. Therefore, adopting the reason indicated in the aforesaid judgment, we are of the opinion that the CAT has not committed any error in its order dated 20.04.2016 so as to call for interference in this petition.*

9. *Accordingly, the instant writ petition being devoid of merit stands disposed of.*

*Since the main petition has been disposed of, IA No.3/2017 filed for dispensation does not survive for consideration, hence, it also stands disposed of.*

**Sd/-  
JUDGE**

**Sd/-  
JUDGE “**

3. The learned counsel would submit that it is covered by several other judgements also but then no need to express all of these

since it is already covered by the order of the High Court of Karnataka. Therefore, OA is allowed. Respondents are directed to consider the applicant on all other matrixes of eligibility other than these 2 issues cited earlier and if found eligible, pass appropriate orders within 2 months next. OA is allowed to this extent. No order as to costs.

(CV.SANKAR)  
MEMBER (A)

(DR. K.B. SURESH)  
MEMBER (J)

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**Annexures referred to by the applicant in OA.No.192/2019**

- Annexure A1: Copy of service certificate dtd. 30.6.2011  
Annexure A2: Copy of death certificate dtd. 7.3.2011  
Annexure A3: Copy of representation dtd. 14.3.2011  
Annexure A4: Copy of representation dtd. 5.3.2013  
Annexure A5: Copy of representation dtd. 16.8.2012  
Annexure A6: Copy of marks card 8.2.2013  
Annexure A7: Copy of letter Dtd. 16.1.2014  
Annexure A8: Copy of letter Dtd. 15.9.2016  
Annexure A9: Copy of physical fitness certificate dtd. 26.4.2017  
Annexure A10: Copy of physical fitness certificate dtd. 17.1.2019

**Annexures referred to by the Respondents in the OA**

- Annexure R1: Copy of medical certificate dtd. 23.10.2013  
Annexure R2: Copy of IRMM(para-511)  
Annexure R3: Copy of IRMM Vol.I (para-12.6) Hon.Apex Court judgement in Chandi Prasad case  
Annexure R4: Copy of Railway Board letter Dtd. 8.1.2016  
Annexure R5: Copy of Railway Board letter Dtd. 9.2.2016

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