

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD**

**Original Application No.021/00185/2017**

**Date of C.A.V. : 08.09.2017**

**Date of Order :10.10.2017**

**Between :**

Sri G.Raghunath, aged 36 years,  
S/o late G.Bikshapathy Ex-Gr.III (Group-C),  
O/o SE/W/WW/SC. S.C.Railway,  
R/o H.No.12-1-228, Lalapet, Secunderabad,  
Telangana State.

... Applicant

**And**

UOI represented by its

1. The Director General,  
Railway Health Service,  
Railway Board, Rail Bhavan,  
New Delhi.

2. The General Manager,  
3<sup>rd</sup> Floor, Rail Nilayam, S.C.Railway,  
Secunderabad.

3. The Chief Personnel Officer,  
4<sup>th</sup> Floor, Rail Nilayam, S.C.Railway,  
Secunderabad.

4. The Chief Medical Director,  
Rail Nilayam, S.C.Railway,  
Secunderabad.

5. The Sr.Divisional Personnel Officer,  
Hyderabad Bhavan, Hyderabad Division,  
Secunderabad.

... Respondents

Counsel for the Applicant

... Mr.G.Pavan Murthy, Advocate

Counsel for the Respondents

... Mrs.A.P.Lakshmi, S.C.for Rlys.

***CORAM:***

**Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)**  
**Hon'ble Mrs.Minnie Mathew ... Member (Admn.)**

***ORDER***

***{As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }***

The father of the applicant worked in the Engineering Department of S.C.Railway as Gr.III (Fitter). He died in harness on 20.02.2008. The department considered to examine the case of the applicant for appointment on compassionate grounds, directed him to produce all the original certificates and to appear for examination for Group-C post in Railways. The applicant twice appeared for the written examination, but did not qualify. Thereafter he was considered by the department for the post of Yard Porter in Group 'D' post for which no written test was required. He was subjected to medical examination and found that he was suffering from diabetes. The Railway Doctor opined that it is doubtful as to whether the case of the applicant is a known case of Diabetic Mellitus (Type 2). The results of the other examinations were found to be satisfactory. However, by letter dated 28.03.2012 the department declared the applicant unfit for all categories of Railway Services on the ground that he was Diabetic.

2. The issue involved in the present case i.e. whether a person who is found to be a diabetic is entitled to be selected for Railway services came up for consideration before the Hon'ble High Court of Madras in W.P.No.4268/2015 and also in some other cases. The Hon'ble High Court of Madras in all cases took a consistent view that diabetes is more of a disorder than a disease and the persons cannot be denied employment in Railway service on the mere speculation that

complications would develop in the body of a person who suffers from diabetes. The Hon'ble Madras High Court in those cases issued a direction to the Railway department to consider the cases of the candidates whose cases were rejected for appointment in Railway service on the ground that they are diabetic. The Ministry of Railways (Railway Board) kept in view the law laid down by the Hon'ble High Court of Madras not to reject the candidature of the persons seeking employment in Railways on the ground that they are diabetic issued proceedings dated 08.01.2016 by appointing a three member committee to look into different kinds of appointments wherein a candidate is found to be diabetic in the first examination and also specifically mentioning therein that if there is no complication or involvement of End organ, the candidate will be declared as fit in "CEY One or Below". It is also further directed in the proceedings that the Establishment Directorate has to regulate those candidates as per the available vacancy.

3. In the above circumstances, the applicant filed the present OA to declare the letter dated 28.03.2012 where under the applicant was found unfit for all categories of Railway services as illegal, arbitrary and to set aside the same. Further seeking a positive direction to the respondents to consider his case for appointment on compassionate grounds in view of the law laid down by the Hon'ble High Court of Madras and also as per the proceedings of the Railway Board dated 08.01.2016.

4. In the reply affidavit the respondents inter alia contended that the request of the applicant by his representations dated 01.02.2016 and 18.02.2012 to consider him for appointment on compassionate grounds duly quoting the

judgements of the Madras High Court and subsequent instructions of the Railway Board vide letters dated 08.01.2016 and 09.02.2016 cannot be considered, as the Chief Personnel Officer / SCR / SC, CPO/SC advised that past cases need not be reviewed.

5. Thus the contention put forth by the respondent Railways appears to be that the instructions issued by the Railway Board vide letters dated 08.01.2016 and 09.02.2016 have no retrospective effect and therefore the applicant basing on the said instructions cannot pursue his case for appointment on compassionate grounds.

6. Even prior to the instructions dated 08.01.2016 and 09.02.2016 issued by the Railway Board, the cases of several candidates even in regard to direct selection have been considered by the respondent Railways by virtue of the decisions rendered by the Hon'ble High Court of Madras in several cases. It is therefore mainly on account of the law laid down by the Courts, the instructions dated 08.01.2016 and 09.02.2016 came to be issued. The crucial aspect is that the Hon'ble Madras High Court has categorically laid down that a person who is diabetic cannot be refused appointment in Railway service. The judgements were followed by the Railways and the authorities were directed to issue appointments to several candidates who were suffering from diabetic. The situation lead to issuance of the circular instructions dated 08.01.2016 and 09.02.2016. Therefore even prior to the circular instructions the respondent Railways considered the cases of several candidates found to be diabetic for the posts in Railway services. Here is a case wherein the applicant is seeking compassionate appointment. There is no bar for making successive applications for compassionate appointment and they

would be considered by the departments whenever the vacancies arise and the candidates become suitable to be appointed in the said vacancies. Thus more particularly with regard to compassionate appointment it is not open for the respondent Railways to contend that the circular instructions dated 08.01.2016 and 09.02.2016 have no retrospective effect. The respondents have to consider the case of the applicant for compassionate appointment in the light of the judgements of the Hon'ble High Court of Madras which lead them to issue circular instructions dated 08.01.2016 and 09.02.2016, Therefore, we absolutely see no force in the contention urged by the respondents.

7. Consequently, the respondents are directed to consider the case of the applicant for compassionate appointment for a suitable post on his fulfilling the requisite criteria, notwithstanding the fact that he was found to be diabetic in the medical examination conducted by the Doctor of Railways.

8. The OA succeeds and is allowed. There shall be no order as to costs.

**(MINNIE MATHEW)**  
**MEMBER (ADMN.)**

**(JUSTICE R.KANTHA RAO)**  
**MEMBER (JUDL.)**

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