

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.021/1555/2015
Date of order : 27-03-2018

Between :

Sridhar Mittapally
S/o Parsharam M.
Aged about 34 years,
Occupation : Unemployed,
R/o Flat No.202,
Sree Sree Towers,
Mythrinagar, Phase 2,
Madinaguda, Hyderabad – 500 049.

....Applicant

AND

1. Union of India rep by
Its Secretary,
Ministry of Health and Family Welfare,
New Delhi.
2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Central Drugs Standard Control Organization (HQ),
FDA Bhavan, Kotal Road,
New Delhi – 2.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi – 69.

....Respondents

Counsel for the Applicant: Mr. M. V. Krishna Mohan
Counsel for the Respondents : Mrs. K. Rajitha, Sr.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS. MINNIE MATHEW, ADMINISTRATIVE MEMBER

(Oral order per Hon'ble Mr.Justice R.Kanta Rao, Judicial Member)

(Oral order per Hon'ble Mr. Justice R. Kanta Rao, Judicial Member)

This Original Application is filed to call for the records pertaining to F.No.A.12025/03/2012-D, dated 29th January, 2014 cancelling the nomination for appointment of the applicant to the post of Drugs Inspector on the ground of being found medically unfit due to type-2 Diabetes mellitus and set aside the same by declaring the same as arbitrary, illegal and unjust and to direct the Respondents to appoint the applicant as Drugs Inspector.

2. The version of the applicant is that he has applied for the post of Drugs Inspector in response to the advertisement No.16/2010 in the 2nd Respondent organization and he was also qualified in the written examination conducted for the said post by the 3rd Respondent. Further, the applicant had also appeared for the interview and was selected for the said post by the 3rd Respondent. Thereafter the applicant was issued an offer of appointment dated 12.11.2012 subject to production of a certificate of fitness from a Civil Surgeon authorized for the purpose.

3. Thereafter, vide letter dated 04.04.2013, the applicant was asked to appear for medical examination at DR.RML Hospital, New Delhi, wherein the applicant was declared 'unfit' by the Medical Board on account of 'diabetics mellitus'. The applicant preferred an appeal dated 11.09.2013 along with the medical certificates issued by two different Doctors stating that he is not a 'diabetic' and requested the authorities to conduct

re-examination. In response to the applicant's request, the Respondents have agreed for re-medical examination and the applicant was directed to appear before the Medical Board of Safdarjang Hospital on 18.11.2013 for re-medical examination. The Medical Board of Safdarjang Hospital also declared the applicant as 'unfit' for the post of Drugs Inspector and the said decision was communicated to the applicant vide impugned order dated 29.01.2014. Hence this application.

4. The Respondents have filed a reply statement stating that, as the applicant has been declared 'unfit' by two Medical Boards separately on different occasions, he has no grounds for seeking the reliefs and prayed for dismissal of the OA.

5. We have heard Mr. M. V. Krishna Mohan, learned counsel for the applicant and Mrs. K. Rajitha, learned Senior Central Govt., Standing Counsel for Respondents.

6. During the course of the arguments, learned counsel appearing for the applicant placed reliance on the order passed by the Madras Bench of CAT in OA No.381/2012 which was also upheld in WP No.21082 of 2013 by the Hon'ble High Court of Madras, wherein it was held as under :-

“.....Medical experts opine that diabetes is a condition where the body fails to utilise the ingested glucose properly. Further, there is a strong school of thought that a diabetic is not suffering from a disease, but only a disorder that could be managed. Approximately, as of 2011 as per survey 62.4 million (as against 1.2 billion Indian population) are diabetics, which is stated to increase in 2030 to 110.1 million from the large work force of our country. Diabetes usually has no impact on an individual's ability to do a particular job, and in most

cases the employer may not even know that his employee has diabetes. As the impact of diabetes and its management varies among individuals there cannot be a blanket ban on giving public employment to persons with diabetes.....”

It was further observed that :

“.....Therefore, to deny employment to the second respondent on speculation that what might occur in future is unreasonable. Medical experts state that blood glucose levels fluctuate throughout the day, which is also the case of people without diabetes, and one test result cannot be an assessment of the overall health of a person with diabetes.”

The learned counsel for the applicant also submits that, relying on the aforementioned decision of the Hon’ble High Court of Madras, this Tribunal has also allowed OA No.715 of 2012 vide order dated 10.10.2017.

7. Further, the Respondents have also produced letter F.No.C.18018/13/2015-D, dated 3/4th January, 2018, wherein it is stated that two vacancies of Drugs Inspector are available as on date. In view of the submissions of both the learned counsel, the Respondents are directed to appoint the applicant as Drugs Inspector in pursuance of his offer of appointment dated 12.11.2012 within a period of two months from the date of passing of this order.

8. Original Application succeeds and is therefore allowed. The parties shall bear their own costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 27th March, 2018.
Dictated in Open Court.

