



1

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/005/7/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

NIRAJ KUMAR

VS

UNION OF INDIA & ORS. (S.E.RLY.)

For the applicant : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

For the respondents : Mr.B.P.Manna, counsel

Order on : 30.6.16

O R D E R

Ms.Bidisha Banerjee, J.M.

Counsels were heard. Materials on record were perused.

2. It transpired from the averments made and oral arguments advanced by the counsels with that the applicant has been denied entry into Railway service on the ground that he is diabetic.

3. Ld. Counsel for the applicant during the course of hearing relied upon a decision rendered by Hon'ble Madras High Court in *UOI -vs- M.Packiyaraj in WP 33859/15*, on 27.10.15, wherein Hon'ble Madras High Court affirmed the stand of the Madras Bench of this Tribunal that the respondents were not justified in rejecting the claim of the applicant for appointment on compassionate ground on the ground of being diabetic. The relevant excerpts of the decision would be as under :

..... The substance of the objections of the writ petitioners is that the 2nd respondent is suffering from diabetes and hence found unfit for appointment in all classes, in Railways.

6. After considering the rival submissions and contentions of the learned counsel appearing for the parties and taking note of the decision of the Hon'ble Division Bench of this Court in W.P. No. 21082 of 2013 dated 01.08.2013 the Central Administrative Tribunal, Madras Bench, at paragraph Nos. 8 & 11 in O.A. No. 310/2014, has ordered as follows :-

2

8. The Hon'ble High Court Madras in its order dated 01.08.2013 in W.P.No.21632/2013, while affirming the order of this Tribunal in OA 381/2012 dated 15.03.2013, observed in para-5 as follows:-

"5. We are unable to accept the stand taken by the learned counsel for the petitioners as the said provision viz., para-511(9)(d) speaks about constitutional disorders commonly deemed progressive and chronic disorders liable of recurrent exacerbation of a disabling kind. No record has been placed by the Railway administration to establish that diabetes is said to be a constitutional disorder commonly deemed progressive and chronic disorders liable of recurrent exacerbation of a disabling kind. Medical experts opine that diabetes is a condition where the body fails to utilize the ingested glucose properly. Further, there is a 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 form the large work force of our country. Diabetes usually has no impact on 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. The matter largely rests on individual assessment, such assessment may occur in two different situations, first when the applicant is offered a placement/job subject to passing a medical fitness test. In such cases, the fitness is assessed whether the applicant can perform the functions of that particular job/assignment, with or without accommodation, not solely upon being diagnosed as a diabetic. The second situation is when on medical evaluation the employee being a diabetic, could affect his job performance or safety, in such situation there shall be an assessment as to whether an employee could safely carry out his duties assigned..."

9. In the Judgment in W.P.4268/2015 dated 03.03.2015, 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."

The Hon'ble High Court referred to a decision rendered by a Division Bench as under:-

"We are unable to accept the stand taken by the learned counsel for the petitioners as the said provision viz., Para 511(9)(d) speaks about constitutional disorders commonly deemed progressive and chronic disorders liable of recurrent exacerbation of a disabling kind. No record has been placed by the Railway Administration to establish that diabetes is said to be a constitutional disorder commonly deemed progressive and chronic disorders liable of recurrent exacerbation of a disabling kind. 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

62.4million (as against 1.2 billion Indian population) are diabetics, which is stated to increase in 2030 to 410.1 million form the large work force of our country. Diabetes usually has no impact on an individuals 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. The matter largely rests on individual assessment, such assessment may occur in two different situation, first when the applicant is offered a placement/job subject to passing a medical fitness test. In such cases, the fitness is assessed whether the applicant can perform the functions of that particular job/assignment, with or without accommodation, not solely upon been diagnosed as a diabetic. The second situation is when on medical evaluation the employee being a diabetic, could affect his job performance and/or safety, in such situation there shall be an assessment as to whether the employee could safely carry out his duties assigned. In such circumstances, the assessment can hardly be based on a single blood sugar test.

6.

7. This Court is conscious of the legal position that there is no vested right to secure appointment on compassionate grounds. Yet, when the Court finds that there has not been any objective consideration, or arbitrary approach, this Court is not denude of jurisdiction from extending its arms under Article 226 of Constitution. In the case on hand, there is no dispute that the second respondent was eligible for being reconsidered for appointment on compassionate grounds, the application filed by her was well within a time, she was otherwise found eligible to secure employment. 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.

8. Therefore, the Tribunal was perfectly justified in observing that the interpretation given by the Railway Administration appears to be a narrow interpretation and for trivial reasons, the case of the second respondent was rejected. By taking note of the peculiar facts and circumstances, we find that there is no error in the order passed by the Tribunal, granting the relief. Accordingly, the writ petition being devoid of merits is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

It held as under :

"14. Considering the persistent attitude of the Divisional Personnel Officer, in consistently rejecting the case of the 2nd respondent, without assigning any valid reasons, with due reference to what is observed and held by this Court made in W.P. No. 21082 of 2013 and finding no merit in the writ petition, we dismiss the same, with a cost of Rs. 10,000/- to be paid by the Divisional Personnel Officer, Southern Railway, Madurai Division, Madurai, who has passed the order dated 04.08.2014, to the 2nd respondent. Directions of the Central Administrative Tribunal, Madras Bench to consider the case of the 2nd respondent for employment assistance on compassionate grounds to any one of the posts other than those posts which fall under safety category, subject to the 2nd respondent satisfying the other criteria prescribed for compassionate appointment shall be complied within 15 days from today. The only reason for rejection is medical fitness. The respondent has not been found unfit in respect of any other criteria. It is made clear that the writ petitioners should not fish out new reasons for rejection, and strictly comply with the

directions, regarding the eligibility criteria prescribed for compassionate appointment and directed to comply with the orders of the Tribunal within the time stipulated to avoid further litigation. Learned counsel for the appellant is directed to communicate the order of this court to the petitioners today itself. Post on 16.11.2015 for reporting compliance. Consequently, the connected M.P. is closed. No costs.

4. Ld. Counsel for the applicant also relied upon a decision rendered by the Bangalore Bench of this Tribunal in OA 1690/15 on 20.4.16, in the light of the decision of Hon'ble High Court at Madras supra.

5. On 8.1.16 the Railway Board issued an order on "Fitness of candidates including cases of compassionate ground" appointments, PWD (non-gazetted) & land losers etc. found diabetic in first medical examination".

The relevant extracts of the circular would be as under

"In the recent past, it was observed that in a number of cases, especially in cases of compassionate ground lappoiment, Hon'ble Courts have ordered that the candidates suffering from Diabetes Mellitus are to be taken in Railway Service even though they were declared unfit for Railway services by the Competent Medical Authorities. The Hon'ble Courts in their various judgments have held that Diabetic Mellitus is not a disease. Keeping in view the persistent observations coining from Hon'ble Courts, a three member' committee was constituted to examine the issue"

The Committee has recommended the following parameter for diagnosing Diabetes Mellitus and deciding of fitness candidates:-

1	Fasting Plasma Glucose Level	More than or equal to 126mg/ dl.
2	Two-Hours Post-Prandial Plasma Glucose Level	More than or equal to 200mg/ dl.
3	Hb A1 C	More than or equal to 6.5%

Purpose of re-examination will be the thorough clinical evaluation and investigation to rule out any complication of Diabetes or involvement of any End Organ.

Xxx xxx xxx

If there is no complication or involvement of End organ, the candidate will be declared "FIT IN CEY ONE OR BELOW".

Citing the aforesaid the Id. Counsel for the applicant would contend that if the purpose of re-examination, as the circular explicitly holds out, is to rule out "any complication of Diabetes or involvement of any end organ" it was incumbent upon the authorities to come to the conclusion that the type of diabetes the applicant was suffering from would result in such complications

62

involving any end organ and only then he could have been declared unfit in C-1 or below denying him employment, and not otherwise.

6. It could be noticed that the circular supra prescribed certain parameters for diagnosis of diabetes mellitus in order to decide the fitness of the application. The comparative parameters of the medical reports of the applicant as Annexure A/10 reveal and the permissible levels as per Railway Circular extracted supra are as under :

	<u>Applicant</u>	<u>Permissible level</u>
Sugar (F)	128 mg %	More than or equal to 126mg/ dl.
FCBS	176 mg/dl	More than or equal to 200mg/ dl.
HbAIC	5.6 %	More than or equal to 6.5%

It was argued that, apart from the fact that the reading of fasting sugar was 2 units more than the prescribed limit, the readings of FCBS and HbAIC were well within the prescribed limits as per Railway Board's circular, yet the authorities concluded that the applicant was "overtly diabetic" and that "there was a possibility of taking treatment for the same" to deny him employment, which treatment was arbitrary.

7. Lt. Counsel for the respondents dispelled the claim by submitting that benefit of Railway Board's circular dated 8.1.16 was not available to the applicant since the circular was not issued at the material time when he was found unfit and it was not retrospective in nature.

8. In our considered opinion since the circular was issued in view of several decisions of Hon'ble Higl. Court which were already holding the field and in view of the fact that the circular supra was not made expressly prospective, the contention of the Lt. Counsel about its non-applicability could not be concurred with. The manner in which a person suffering from diabetes with no alarming readings in his medical certificates and in absence of any conclusion about involvement of any end organ, the manner in which the applicant has been denied entry could neither be visualised, nor comprehended or countenanced.

9. Going by the true import of the decision of *M. Packiyaraj* (supra) the OA is disposed of with a direction upon to the respondents to re-consider the applicant for suitable appointment in the Railways where the type of diabetes he is suffering from would not be a bar in effective discharge of his services.

10. No order is passed as to costs.

D
(JAYA DAS GUPTA)
MEMBER (A)

In

(BIDISHA BANERJEE)
MEMBER (J)