

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. OA 350/01675/2015

Date of order : 27.1.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. P.K.Basu, Administrative Member

SOUVIK DUTTA

VS

UNION OF INDIA & ORS.

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

For the respondents : Ms.S.D.Chandra, counsel

O R D E R (ORAL)

Ms. Bidisha Banerjee, J.M.

Heard both the Id. Counsels.

2. The present OA is filed seeking the following reliefs :

- a) Office order dated 12.9.14 issued by Additional Chief Medical Director (H&FW) on behalf of Chief Medical Director cannot be sustained in the eye of law and as such same may be quashed.
- b) An order do issue directing the respondents to grant appointment to the applicant to the post of stenographer and to allow him to join in the said post declaring him fit for appointment in 'CI' category since the diabetes is not a disease and it is a disorder.

3. The order under challenge which is dated 12.9.14, would run thus :

"In reference to your queries under reference dated following information is appended below:

(i)	Unfit in C-I medical category. Reason as described by the authorized Railway doctor indicting as "the candidate is a case of uncontrolled Diabetes which is a chronic progressive illness" (Copy enclosed)
(ii)	Medical fitness is one of the criteria for appointment.
(iii)	Your appeal in regard to re-medical test has been rejected by the authorized Railway doctor indicating as "the candidate is a case of uncontrolled Diabetes which is a chronic progressive illness."

4. Ld. Counsel for the applicant would submit that the applicant has been certified by the Private Doctors to be fit for office work which certificate has been issued upon examination of his Blood Sugar level, in full knowledge of the fact that the candidate has been rejected as unfit for service in C-I medical category by the Medical Authority appointed by the Railways and in terms of

Rule 522 of Railway Medical Manual, the applicant had to approach for a re-consideration on the adverse Medical Report prepared by the Railway Doctors on the basis of the certificates which contained a note by the Medical Practitioner to the effect that

"it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the medical authority appointed by the Railway in his behalf."

5. Ld. Counsel for the applicant relied upon a decision of this Tribunal, rendered in the case of one **Neeraj Kumar (OA 542/15)**, who was disqualified as he was found to be a diabetic patient. Railways had produced an order dated 5.6.14 which provided that candidates disqualified due to diabetes/blood pressure could not seek re-examination. This Tribunal found that the case of the applicant emerged anterior to the circular as the employment process started in 2008. Therefore the Tribunal directed that "the applicant shall be subjected to re-medical examination based on the certificate issued by the private practitioner as contained in Annexure A/4 therein and after obtaining such re-medical examination report appropriate decision will be taken within three months from the date of communication of the order".

6. Ld. Counsel for the applicant further placed reliance on a decision rendered by the Hon'ble Madras High Court in **WP No. 21082/13** wherein the Hon'ble High Court was examining the correctness of the decision rendered by the Tribunal in OA 381/12. The relevant extract of the decision would be as under :

"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 in 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.

The second respondent's husband was a Clerk in the Railway Association and she has completed her +2 examination. In the given circumstances one can reasonably conclude that the second respondent

would have been unaware that her blood glucose level is higher than the acceptable norms. It is unfair on the part of the Railway Administration to reject her candidature on a single blood test."

7. Ld. Counsel for the respondents submitted that she had no instruction in the matter and would require to file a reply in the matter.

8. We heard the ld. Counsel for the parties and perused the materials placed on record as well as the decisions cited above. We noted that the applicant was selected anterior to the circular dated 5.6.14 as referred to hereinabove.

9. In view of the settled position as emerged from the decision in WP 21082/13 as rendered by the Hon'ble High Court of Judicature at Madras on 1.8.13 and identical relief granted by the Tribunal in OA 542/15 and in view of the certificate issue by the private Medical Practitioner as contained in Annexure A/4 to the OA, we are of the considered view that the applicant would deserve a re-medical examination by the Railway Medical Board consisting of experts in the field.

10. In such view of the matter we dispose of the present OA with a direction upon the Railways to hold a re-medical examination for the applicant as stated hereinabove within three months in order to ascertain whether he is fit for office work and to pass appropriate orders keeping in view the decision rendered by the Hon'ble Madras High Court, that "there cannot be a blanket ban on giving public employment to persons with diabetes".

11. This OA is accordingly disposed of.

12. No order is passed as to costs.

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(P.K.BASU)
MEMBER (A)

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(BIDISHA BANERJEE)
MEMBER (J)

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