

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.3.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Petition No.4268 of 2015
and
MP.No.1 of 2015

1. Union of India, rep.by the General
Manager, Southern Railway,
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Chennai Division,
Chennai-3.
3. The Chief Medical Superintendent,
Southern Railway, Chennai Division,
Chennai-8.

...Petitioners

Vs

1. The Registrar, Central Administrative
Tribunal, Madras Bench, Chennai-104.
2. Mr.H.Paul Johnson

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records of the first respondent in O.A.No.1743 of 2013 including the order dated 11.6.2014 and quash the same.

For Petitioners : Mr.V.G.Sureshkumar

Order of the Court was made by V.Ramasubramanian, J

The Railway Administration has come up with the above writ petition challenging an order of the Central Administrative Tribunal, allowing the claim made by the second respondent herein for appointment on compassionate grounds.

2. Heard Mr.V.G.Sureshkumar, learned counsel for the petitioners.

3. The second respondent's father was a Head Clerk in the Cash Office of the Chennai Division of Southern Railway and he died in harness on 16.11.2007. When the second respondent applied, his case was rejected on the ground that he was medically unfit due to diabetes. Therefore, the second respondent filed an application in O.A.No.1743 of 2013 on the file of the Tribunal. The said application was allowed by the Tribunal by an order dated 11.6.2014. As against the said order, the Railway Administration has come up with the above writ petition.

4. The facts that the second respondent's father was an employee of the Railways and that he died in harness on 16.11.2007 are not in dispute. The fact that the second respondent consequently became eligible for consideration for appointment on compassionate grounds is also not disputed. Even according to the Railway Administration, the second respondent was considered eligible to be allotted provisionally to a Group C post in the non technical category.

5. However, when the second respondent was subjected to medical examination in terms of Paragraph 509 of the Medical Manual Vol.I, it was found that he was unfit in Aye-Two and below category. The second respondent requested for a re-medical examination. In accordance with Paragraph 522 of the Medical Manual, he was sent once again for examination. After re-examination, he was again declared unfit.

6. Mr.V.G.Sureshkumar, learned counsel for the petitioners produced reports of the medical examination conducted on the second respondent. The only ailment, if it can be called an ailment, from which the second respondent was said to be suffering, was a metabolic disease namely blood sugar at the level of 265 mgs/dl. Other than this, the second respondent was not found to be suffering from any other ailment. The report also discloses that the level of urine sugar was 4+.

7. Inviting our attention to the decisions of the Supreme Court in SBI Vs. G.K.Deshak [1994 (1) Supp. SCC 70] and Indian Council of Agricultural Research and another Vs. Smt. Shashi Gupta [AIR 1994 SC 1241], the learned counsel for the petitioners contended that the petitioners are entitled to reject the candidature of the second respondent, if he was found medically unfit and that it is not necessary for the Establishment to select such persons for appointment.

8. But, we are unable to agree with the contention of the learned counsel for the petitioners.

9. Today, India has become the diabetic capital of the world. It is common perception that diabetes is more of a disorder than of a disease. The decisions relied upon by the learned counsel for the petitioners, 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. Accordingly, the writ petition is dismissed. Consequently, the above MP is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

1 CC to Mr.V.G.Sureshkumar, Advocate SR.No. 11978

W.P.No.4268 of 2015
and MP.No.1 of 2015

RV (CO)
PSI (19.03.2015)