

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.9942 of 2016
and W.M.P.No.8919 of 2016

N.Sivakumar

..Petitioner

Vs.

1.Union of India
rep. By The General Manager
Southern Railway
Park Town
Chennai-600 003

2.The Chief Personnel Officer
Commissioner-Excise
Southern Railway
Park Town
Chennai-600 003

3.The Central Administrative Tribunal
Madras Bench
Chennai-104

..Respondents

Writ Petition filed praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order Dated 26.08.2015 passed in O.A.No.310/01067/2014 on the file of Central Administrative Tribunal-Madras Bench, the third respondent herein and quash the same and direct the first respondent to subject the petitioner to physical endurance test for the Group D Post of Substitute Helper.

For petitioner : Mr.P.S.Ganesh

For respondents : Mr.M.Vellaisamy for
Mr.V.G.Suresh Kumar,
Standing Counsel for R1 and R2
R3-Tribunal.

O R D E R

(Order of the Court was made by K.RAVICHANDRABAABU, J.)

This Writ Petition is filed challenging the final order passed by the Central Administrative Tribunal, Madras Bench, made in O.A/310/01067/2014 dated 26.08.2014 wherein the petitioner had sought for a direction to the first respondent to subject him to physical endurance test for Group D Post of Substitute Helper Grade-II.

2. The case of the petitioner is that the petitioner has completed apprenticeship in the Trade of Turner at Engineering Workshop of Southern Railway. He is a physically challenged person with disability of 55% and he belongs to SC Community. In pursuance to the notification dated 29.11.2004 and 05.06.2006, the petitioner submitted his application for the Group 'D' post of Substitute Helper Grade-II in Southern Railway Workshops in which lifting of 35 kg of weight was prescribed for physical endurance test. As per CPO/Chennai letter dated 15.07.2008, he appeared before the Screening Committee on 29.07.2008, but the Screening Committee had not subjected the petitioner to lift the weight due to his disability and therefore, he was not selected. The petitioner made representations to respondents 1 and 2 and to the Ministry of Social Justice & Empowerment, seeking appointment as Substitute Helper-II. The 2nd respondent rejected the claim of the petitioner by its impugned order dated 15.05.2014. The case of the petitioner is that two similarly placed physically handicapped apprentices were appointed at Perambur Workshop of the Southern Railway and therefore, denial of engagement to the petitioner as Substitute Helper Grade-II is against the provisions of persons with disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1985.

3. Before the Central Administrative Tribunal, the stand taken by the respondents was that the petitioner was required to lift 35 kgs weight, but the petitioner could not successfully complete the same and as such, his candidature was rejected.

4. The learned counsel appearing for the Writ Petitioner has drawn the attention of this Court to the order of the 2nd respondent dated 09.09.2008 which is found in page No.24 of the typed set of papers, wherein, it is seen that Sl.Nos.5 and 6 viz., G.Senthil Kumar - Physically Handicapped Quota, not involving lifting heavy weight and climbing Wagon and A.Saravanan, not involving walking long distance or climbing Wagon and Carriage, were considered for engagement as Substitute Helper Grade II. He also drew the attention of this court to page Nos.73 and 74 of the typed set of papers, wherein, the 2nd

respondent pointed out that the non-engagement of Substitutes due to medical unfitness classification are allotted to Mechanical Workshop for engagement as Substitutes (Helper Gr.II) by order dated 21.07.2008.

5. As a residual argument, the learned counsel for the Writ Petitioner submitted that the petitioner having completed the Act Apprentices Course, he should be considered for the post of Substitute Helper or any other suitable post.

6. On the other hand, learned counsel for the respondents 1 and 2 reiterated the averments made in the counter affidavit, wherein, in paragraph No.10, it is stated as under:-

"10.While issuing advice to Carriage Workshop, Perambur to engage Shri.Senthilkumar and Shri.Saravanan under letter dated 21.07.2008 (Annexure R-5 to the counter in the original application), no mention to engage them on physically Handicapped quota was made. Hence mention in the office order issued by Carriage Workshops, Perambur (Annexure A-4 to the Original Application) to the effect that Shri.Senthilkumar was engaged against physically handicapped quota is only a clerical error."

7. Further it is the stand of respondents 1 and 2 that the petitioner, who could not successfully complete the simple endurance test, cannot make a claim for appointment, as the engagement of course completed Act Apprentices was only a stop-gap arrangement since those persons are appointed without following the regular process of selection such as written examination etc., but only by holding a simple physical endurance test and screening to the safety category posts and therefore reservation of posts for physically challenged persons would not be applicable.

8. After hearing the learned counsel on either side, it is evident from the Railway Board's letter dated 27.11.2001, physical efficiency test shall be prescribed having regard to the nature of duties involved for the posts advertised for recruitment. Further, it is the stand of respondents 1 and 2, the petitioner did not qualify in the simple physical endurance test and hence his claim for engagement as substitute in Group 'D' in safety category vacancies was rejected.

9. In our considered view, the petitioner had every right under Article 16 of the Constitution to seek for equality of opportunity in matters of public employment, however subject to his successfully completing the simple endurance test. In the absence of completion of the same, his claim for the post notified is of no avail. It is not in dispute that the

petitioner has successfully completed the Apprentice Act Course, and, therefore, his candidature could be considered for any appropriate post which will not involve physical endurance test like lifting 35 kgs of weight, etc., In such view of the matter, as two similarly placed persons have been absorbed in two other posts, there shall be a direction to the respondents 1 and 2 to consider the case of the petitioner on similar lines.

10. Accordingly, the respondents 1 and 2 are directed to call the petitioner for selection to any other posts, commensurate with his qualification and further which also does not involve the lifting of weight and if the petitioner is found fit for appointment to any such post, the authorities shall pass necessary orders regarding selection after following the necessary statutory rules.

11. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager,
Southern Railway,
Park Town,
Chennai-600 003,

2.The Chief Personnel Officer,
Commissioner-Excise,
Southern Railway,
Park Town,
Chennai-600 003.

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

+1cc to Mr.P.S.Ganesh, Advocate sr.25319

Writ Petition No.9942 of 2016

GJ[co]
srg 13/06/2016