



2024/KER/8401

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 29TH DAY OF JANUARY 2024 / 9TH MAGHA, 1945

OP (CAT) NO. 300 OF 2017

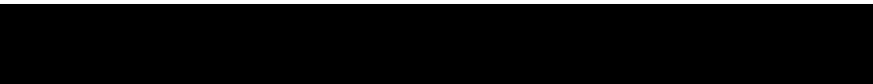
**AGAINST THE ORDER/JUDGMENT OA 995/2015 OF CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH**

PETITIONER/S:

- 1 UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN
RAILWAY, PARK TOWN P.O., CHENNAI-600003.
- 2 SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, DIVISIONAL OFFICE,
PALAKKAD, KERALA.
- 3 APPELLATE AUTHORITY
RAILWAY RECRUITMENT BOARD, DR.P.V.CHERIAN
CRESCENT ROAD, EGMORE, CHENNAI-600008.
BY ADVS.
SRI.S.RADHAKRISHNAN, SENIOR PANEL, RAILWAY
KRISHNA T C

RESPONDENT/S:

UDAYACHANDRAN P.



BY ADVS.
SRI.I.V.PRAMOD
SRI.K.V.SASIDHARAN

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON
29.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**CR****JUDGMENT****A. Muhamed Mustaque, J.**

The Union of India and Railways are before us. The respondent/Applicant was an ex-service man. He applied for the post of Ticket Examiner. He was found unfit by the Medical Board for the reason that he has diabetes. Apparently, the Medical Board relied on Circular issued by the Railways Ministry. The relevant portion of the Circular reads thus:

“II. If a candidate has been found to be unfit on grounds of vision/colour vision/hypertension/diabetes or any other condition/disease, the medical examiner will not issue any certificate and will put up his/her findings to the CMO/MD/CMS/ACMS in charge of the Unit/Division/Sub-division/Production Unit.”

2. The tribunal had no advantage to consider the circular or the medical certificate as the Railways had not filed a reply statement. It is seen from the records that they filed a statement, but it was returned defective. The tribunal allowed the challenge against the



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rejections, holding that no document was produced by the petitioner herein to show that Diabetes Mellitus, a disease which would disentitle a candidate from getting an appointment in the post of Ticket Examiner. This finding was apparently made on the reason that the Railways could not produce the circular before the Tribunal while the matter was heard and disposed of.

3. We note, that the Railways made all attempts to bring the circular on record. The question now is whether we should remand it back for fresh consideration. Since, all the records are on board, we find no reason to send it back for the same. The question is, in the light of circular mentioned above, whether the medical certificate should be accepted or not.

4. On reading of the circular, it can be seen that no candidate can be found unfit merely for the reason that he has diabetes or any other disease. The doctor shall take into account the nature of employment and determine whether, because of such disease he is unfit or not. That means, merely for the reason that one is found to have diabetes or any other disease, it cannot be said he is unfit to hold the post for which he has applied. The provision is very clear: if a doctor is examining such



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candidates, he has to apply his mind as to the nature of the job and function, he must determine that due to diabetes or any other diseases candidate is medically unfit. Merely stating that he is having diabetes, it cannot be said that he is unfit for the purpose of the job. The unfitness has to be found out with reference to the functions and duties to be discharged by the candidate. Without examining a candidate who is alleged to be a diabetic, with reference to the nature of job, he cannot be declared unfit for the job for which he has applied.

5. We note that the respondent applied for the post of Ticket Examiner. Except for finding that he has diabetes, nothing has been stated indicating he is unfit to discharge the functions as Ticket Examiner due to diabetes. Diabetes may affect his vision or some other organs but mere presence of diabetes itself will not be decisive to disqualify a person from discharging any other duties. We note a judgment of Madras High Court in W.P.4268 of 2015 in similar circumstances. The relevant paragraph reads thus:

"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 or 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."

6. Similarly, the Madras High Court in another judgment in WP(C) No.14760 of 2016 held as follows:

*16.The Central Administrative Tribunal has relied upon a decision of the Division Bench of this Court in **Union of India v. Registrar Central Administrative Tribunal, Madras [(2013) 6 MLJ 617]**, wherein it was held that employment cannot be denied merely on speculations of what might happen in the future. It was pointed out therein that "to deny employment on a speculation that might occur in the future is unreasonable".*

We also endorse the views of the Madras High Court. Merely citing a disease one cannot be denied



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employment unless it is found that such a disease would have impact on his functional duties or responsibilities. Thus we dismiss this original petition. However, we permit the Railway to evaluate his medical condition to find out whether any disease as above would materially or substantially impair him to be engaged as ticket examiner or not.

sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

sd/-

**SHOBA ANNAMMA EAPEN
JUDGE**

das

**APPENDIX OF OP (CAT) 300/2017**

PETITIONER ANNEXURES

- EXHIBIT P1 A TRUE COPY OF OA NO.180/995/2015 FILED BY THE RESPONDENT ON 09-12-2015.
- ANNEXURE A1 TRUE COPY OF COMBINED CERTIFICATE OF DISCHARGE AND RECOMMENDATION FOR CIVIL EMPLOYMENT
- ANNEXURE A2 TRUE COPY OF PROVISIONAL SELECT LIST PUBLISHED ON 1.11.2014
- ANNEXURE A3 TRUE COPY OF COMMUNICATION DATED 24.9.2014 ISSUED BY RAILWAY RECRUITMENT BOARD, THIRUVANANTHAPURAM
- ANNEXURE A4 TRUE COPY OF OFFICER OF APPOINTMENT VIDE ORDER DATED 23.12.2014 NO J/P 268/11/TE/GDCE/ VOL11. SUBJECT TO VERIFICATION OF CERTIFICATES SHOWING ELIGIBILITY
- ANNEXURE A5 COMMUNICATION DATED 3.3.2015 BY THE CHIEF MEDICAL SUPERINTENDENT ATTACHED TO THE 2ND RESPONDENT
- ANNEXURE A6 TRUE COPY OF REPRESENTATION/APPEAL DATED 30.5.2015 BEFORE THE 3RD RESPONDENT APPELLATE AUTHORITY
- ANNEXURE A7 TRUE COPY OF THE PROCEEDING NO J/0.268/11/TE/VOL X1 DATED 15.6.2015 ISSUED BY 2ND RESPONDENT
- ANNEXURE A8 TRUE COPY OF CERTIFICATE DATED 19.5.2015
- EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 16-05-2017 PASSED BY THE CAT IN O.A.NO.18/995/2015.
- EXHIBIT P3 A TRUE COPY OF THE REVIEW APPLICATION NO.49/2017 FILED IN O.A.NO.180/995/2015.
- ANNEXURE RA1 TRUE COPY OF THE REPLY STATEMENT IN OA 995/2015
- ANNEXURE RA2 TRUE COPY OF REJOINER TO THE REPLY STATEMENT IN OA 995/2015
- ANNEXURE RA3 TRUE COPY OF THE MISCELLANEOUS APPLICATION DATED 11.7.2016



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ANNEXURE RA4 TRUE COPY OF THE ORDER DATED 16.5.2017 IN
OA NO 995/2015

ANNEXURE RA5 TRUE COPY OF THE RAILWAY BOARD LETTER NO
2008/H/5/18 DATED 8.1.2016

EXHIBIT P4 A TRUE COPY OF THE CENTRALIZED EMPLOYMENT
NOTICE NO.04/2010 DATED 27-02-2010
NOTIFIED BY THE RAILWAY RECRUITMENT BOARD,
MINISTRY OF RAILWAYS.

EXHIBIT P5 A TRUE COPY OF THE ORDER DATED 27-09-2017
IN RA NO.180/49/2017 IN
OA.NO.180/995/2015, PASSED BY THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.