

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 343/1999

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New Delhi this the 8th day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Ram Chander
S/O Sh. Bishana Ram
R/O Village Ghatorni,
Near School, P.O. Ghatorni,
New Delhi-30

.. Applicant

(By Advocate Mrs. Rani Chhabra)

Versus

1. Government of India
Cabinet Secretariat
Radio Research Centre Ghatorni,
New Delhi.
2. Joint Secretary (Pers.),
Research and Analysis Wing,
Cabinet Secretariat, Room No. 7,
Bikaner House Annexee, Shahjahan
Road, New Delhi-11
3. Deputy Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexee),
Shahjahan Road, New Delhi-11
4. Under Secretary (Tele.),
RRC Ghatorni, New Delhi.

.. Respondents

(By Advocate Sh. Madhav Panikar)

O R D E R (

(Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant has filed this application alleging that the action of the respondents in not appointing him as WCC Cook is illegal, arbitrary and unjustified on the ground of a suspected Tuberculosis (TB), though he had been declared medically fit by the Doctor.

2. The brief relevant facts of the case are that the applicant was appointed as a contingency paid Cook in ATTU hostel, Ghatorni by Memorandum dated 3.7.90 by respondent No. 2. on temporary basis. There was a post of WCC Cook at Leh (Ladhak) in the office of respondents for which he had applied. By Memo. dated 8.7.96, the respondents offered to the applicant a temporary post of WCC Cook (Ann. A.2). As per column 3(i) of the offer of appointment

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he had to produce a certificate of fitness from the Civil Surgeon in the proforma and it was also mentioned that he will not be allowed to join duty unless this certificate is produced. On medical examination of the applicant, he was declared to be suffering from TB and was referred to New Delhi TB Centre for treatment, by Dr. Ram Manohar Lohia Hospital, New Delhi. After treatment in New Delhi TB Centre, the applicant states that he has been healed and is now fit for the post of WCC Cook. He relies on the certificate issued by the Institute dated 30.4.1997 (Annexure A-3).

3. Mrs. Rani Chhabra, learned counsel for the applicant has submitted that after certificate of fitness, ^{was fit} issued by letter dated 30.4.97, the applicant had approached the respondents to allow him to join his duty in the post of WCC Cook but he was informed that the same has been cancelled by order dated 6.5.1997. Learned counsel has submitted that the action of the respondents, in the circumstances of the case, in cancelling the appointment of the applicant on the ground of suspected TB after he had been fully cured and healed from that disease is, therefore, illegal, arbitrary and unjustified. In the O.A. the applicant has prayed that (a) the respondents may be directed to restore the offer of appointment letter dated 8.7.96 appointing him to the post of WCC Cook as he has been declared fit and (b) direct the respondents to give him any other suitable alternative employment as Chowkidar or Farrash etc. as he had rendered more than seven years of service with the respondents earlier.

4. The respondents in their reply ^{have} ~~controverted~~ the above facts and I have heard Sh. Madhav Panikar, learned counsel for the respondents. According to the respondents, their action in not offering the post of WCC Cook on the ground that the applicant has been afflicted with TB is not illegal, arbitrary or unjustified. They have submitted that the applicant was offered appointment as WCC Cook which is a Group 'D' post in respondents' office at Leh, which is a high altitude area

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by Memo.dated 8.7.96. He had been declared unfit due to TB by Dr. R.M.L.Hospital, to which he has been referred to for Medical examination, for entry into Government service and for determination of fitness for posting ⁱⁿ high altitude areas. He has also submitted that as per the Govt.of India, DPA&R instructions dated 6.6.78, the offer of appointment made earlier to the applicant had expired after nine months and accordingly the same was cancelled. The respondents have also stated that the case of the applicant for reviving the offer of appointment as a special case in public interest was duly considered, keeping in view the fact ~~of~~ of his faving been afflicted with TB, a highly infectious disease, which though cured, has every chance of relapse and the job requirements of the post of WCC Cook involving working in kitchens to prepare food for the officials posted in high altitudes or remote areas. Therefore, they have submitted that it was not considered appropriate to revive the offer of appointment of the applicant to the post of WCC Cook and the same was rejected after careful consideration of risk of infection to officials posted in high altitudes or remote areas, ^{for} whom he will have to serve in that capacity. Learned counsel for the respondents has submitted that the decision of the respondents in the circumstances of the case, therefore, is not to be held as arbitrary, illegal or unjustified.

5. Learned counsel for the respondents has also submitted that the OA is highly belated and is barred by limitation as the applicant's appeal dated 11.7.97 had been rejected by the Special Secretary by Memo.dated 13.8.97. As the O.A. has been filed on 10.2.99, he has also submitted that the same is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

6. With regard to the claim of the applicant for appointment to any other suitable post in the event he was not found fit on medical grounds for appointment as WCC Cook for which he was

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earlier selected, the respondents have submitted that there is no merit as he can be appointed to other posts only in accordance with the relevant rules and fresh selection to be made. They have submitted that with regard to the applicant's representation for the post of Chowkidar for which recruitment process was on in 1997, they have submitted that although he appeared for the interview for the post of Chowkidar at Jammu but due to certain administrative reasons, the same could not be finalised. Shri Madhav Panikar, learned counsel has submitted that it is open to the applicant to apply for any suitable post in the office of the respondents and subject to his fulfilments of the terms and conditions, he could be considered in accordance with the relevant recruitment rules and not otherwise.

7. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The applicant had been given an offer of appointment in the temporary post of WCC Cook on 8.7.96 which offer of appointment was subject to the condition that he was to produce a certificate of fitness from the Civil Surgeon in the prescribed form and he will not be allowed to join the duty unless he produced the certificate. From the facts narrated above, it is clear that due to the fact that the applicant was unfortunately found to be suffering from TB, he could not produce the necessary medical certificate of fitness, to enable him to join the post of WCC Cook at that time. It was only later on that the New Delhi Tuberculosis Centre issued a certificate in which it has been stated that he has improved with the treatment and is fit for the post of Cook. The submissions of the learned counsel for the respondents that in the meantime as more than nine months had elapsed, they have cancelled the offer of appointment in terms of the Govt. of India, Deptt. of P&AR instructions dated 6.6.78 cannot be faulted. Although the certificate of the New Delhi TB Centre ^{has} mentioned that the applicant is fit for the post of Cook, the respondents have submitted that he had

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been selected against the vacant post of Cook at Leh. The competent authority had taken a decision, keeping in view the fact of his having been afflicted with TB, which though cured has every chance of relapse, and the job requirements of the post of WCC Cook involving working in kitchens to prepare food for the officials posted in high altitudes or remote areas. It cannot also be stated that this decision of the respondents is either arbitrary or illegal as they had to keep the interests of their own officers also. In the circumstances of the case, their decision not to revive the offer of appointment of the applicant as a special case after due consideration cannot be faulted and the claim of the applicant for a direction to the respondents to restore the appointment letter dated 8.7.96 is not tenable.

9. In the facts and circumstances of the case the OA is also barred by limitation as it has been filed only on 10.2.99, although his representation had been duly considered and rejected in August, 1997, and the offer of appointment itself had been cancelled by order dated 6.5.97. The O.A. is also liable to be rejected on this ground.

10. With regard to the claim of the applicant to give him any other suitable alternative employment like Chowkidar or Farrash etc., this can be done only in accordance with the Recruitment Rules for which if he applies, the respondents may consider his case, keeping in view the above facts and his past service.

11. In the result, for the reasons given above, the claim of the applicant for being appointed as WCC Cook based on the earlier offer of appointment made in July, 1996 fails and is rejected. O.A. is disposed of in terms of Para 10 above. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)