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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.NO.1200/95

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 23rd day of November, 1995

Raju
s/o Late Shri Kallu Ram
r/o E-426, M.C.D.Colony
Azadpur
DELHI. ... Applicant

(By Shri N.S.Bhatnagar, Advocate)

VERSUS

1. The Chief Secretary
Delhi Administration
D E L H I.

2. The Executive Engineer,
I&P Division,
Flood Control Department
I.S.B.T. Building
IV th Floor
Kashmere Gate
DELHI Administration
D E L H I - 110 006.

3. The Executive Engineer
Division - IV,
Basai Darapur
Near Moti Nagar
NEW DELHI. ... Respondents

(By Shri Arun Bhardwaj, Advocate)

ORDER (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant was appointed as M.R.Beldar in the
office of Flood Control Department of the Delhi Administration
w.e.f. 08.07.1988. The applicant claims that by serving the

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respondents continuously, he became in fact a regular employee in the year 1991. The applicant submits that he had undergone Vasectomy Operation on 25.1.1993 whereafter, he could not attend to his duties due to illness and later because he was falsely involved in a Criminal Case from which he was ultimately acquitted on 16.01.1995. The grievance of the applicant is that he was neither granted Special Casual Leave on account of the Vasectomy Operation to which he was entitled under the standing Government instructions nor was granted leave on account of his illness, despite the fact that he had submitted the requisite medical certificate and that, when he went to his office on 08.07.1993, to report for his duty, the respondent No.3 refused to take him back. As he has since been not allowed to rejoin his duties, the applicant now seeks the relief that any order of dismissal or termination of his services which may have been passed may be set-aside, and he may be reinstated in service with all consequential benefits with a declaration, in his favour, that he has been continuously in service.

2. We have heard the learned counsel on either side. Learned counsel for the applicant has based his arguments on the premise that the applicant having rendered the requisite period of service for regularisation had required that status w.e.f. 1991 and therefore, any further action regarding the termination of his services had to be taken by the respondents in accordance with the law and rules, as if he was a regular employee. He also contended that

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certain procedural steps for regularisation, had also been undertaken by the respondents and he had been medically examined for the purpose as well as necessary police verification had also been done in 1990. He further states that from July, 1993 onwards, the applicant had been regularly visiting his office and requesting that he may be restored to duty and had also intimated to the department the result of the Criminal Case in which he was acquitted, but the respondents had not allowed him to rejoin his duties.

3. The respondents have denied the contentions of the applicant and have stated that the applicant had never made a regular employee. They have also stated that the Muster Roll Employees were not entitled for Earned Leave and Special Casual Leave on account of Vasectomy Operation in terms of the relevant Government orders/instructions. In view of the fact that the applicant was not a regular employee, the respondents aver that there was no question of either placing him under suspension or taking any further action against him. It is stated by the respondents that they had in fact directed the applicant to report for duty immediately without any further delay on 21.06.1993 and 15.07.1993 but the applicant had failed to do so.

4. The learned counsel for the respondents has therefore, stated that while there was no question of treating the applicant as a regular employee or of taking action against him in that capacity, the applicant having abandoned service himself as a Muster Roll Employee, could again be considered for the same in case if he wishes to report for the same in preference to freshers.

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5. We have considered the pleadings of both the parties.

There is a preliminary question of limitation in this case. The applicant on his own averment was not allowed to rejoin duty when he reported for the same on 08.07.1993. He also states that on receiving the letters from the respondents directing him to report for duty, he had gone to his office and explained ^{the} reasons for absence from duty and had made a request to the concerned Assistant Engineer to take him back on duty but the latter had refused his request. In these circumstances, under section 21 of the Administrative Tribunal Act, 1985, it was incumbent upon the Petitioner to file this application within a period of one and half years i.e. on or about December, 1994. The application is therefore, *prima-facie* late and barred by limitation.

6. The learned counsel for the respondents has fairly submitted

that in case the applicant wishes to report for fresh engagement as Muster Roll Employee, his request could be considered for the same if he is otherwise eligible, in preference to the freshers.

7. In the above circumstances of the case, we dispose of this application with a direction to the respondents that in case the applicant himself applies for consideration of his engagement as a Muster Roll Beldar within a period of one month from the date of the receipt of this order, the respondents will consider him for the said appointment, if he is otherwise eligible, in preference to the freshers. The respondents shall complete the entire process for appointment of the applicant, within two months from the date of the receipt of representation from the applicant. No costs.

R.K. Ahuja
(R.K. AHUJA)
MEMBER(A)

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(C)

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