

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.245/95

New Delhi this the 10th Day of March, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

Shri Jaibir Singh,
S/o Shri Jai Singh,
R/o Village Jamu
P.O. Fata,
District Chamoli(UP).

Applicant

(through Sh. Shyam Babu, counsel)

versus

1. The Deputy Commissioner of Police,
VIth Battalion,
Delhi Armed Police,
Kingsway Camp,
Delhi.

2. The Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate, Delhi.

Respondents

ORDER

delivered by Hon'ble Mr. B.K. Singh, Member(A)

This O.A.No.245/95 has been filed against order No.7151/7190/P.Branch/VIth Battalion DAP dated 16.12.1994 passed by the Deputy Commissioner of Police, VI Battalion, DAP, Delhi. The applicant had already approached the Tribunal vide O.A.No.1867/87 which was heard and decided by a Division Bench comprising Hon'ble Mr. Justice S.K. Dhaon and Hon'ble Mr. B.N. Dhoundiyal (as then they were) vide their judgement (oral) dated 13.9.1993. Every issue involving the case of medical unfitness and the rules framed by Delhi Administration which has also adopted the rules of Government of India were thoroughly discussed by the Division Bench.

The applicant was employed on daily wage basis in the Auxiliary Force of C.R.P.F. and after his discharge from the C.R.P.F. he joined the Delhi Police. The services of the applicant were terminated and

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aggrieved by that order he filed the aforesaid O.A.No.1867/87 alongwith Sh. Rajinder Singh who filed another O.A.No.1870/87. These two O.As were decided by a common order after discussing the rules framed by Delhi Administration and also rules adopted by it and framed by Government of India. In the previous O.A. it was clearly averred that these two applicants i.e. Sh. Rajinder Singh who is not before us and Sh. Jaibir Singh were found medically unfit. It was also admitted by both the parties in that O.A. filed by Sh. Jaibir Singh that he was not medically examined when he was allowed to join as Constable in Delhi Police. He was medically examined after a lapse of about 8 months.

Rule 5(e)(i) of Delhi Police (Appointment and Recruitment) Rules, 1980, (hereinafter referred to as the 'Rules') states that all direct appointments of the employees shall be made initially on purely temporary basis and it was held that the applicant in the present O.A. was appointed on temporary basis. This is also admitted by both the parties that while terminating the services under the aforesaid rule, he was not given an opportunity to make a representation against the report given by the Medical Officer that they were medically unfit. It was further admitted by both the parties that in exercise of the powers under Section 5 of the Delhi Police Act, the conditions of service of the members of Delhi Police shall be such as may be prescribed, "Prescribed" means prescribed by rules and these rules are contained in Section 2(n) of Delhi Police, Act.

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By a notification dated 17.12.1980, and in exercise of the powers under Section 5 of the said Act, the Administrator prescribed certain rules and orders, as amended or revised from time to time. Amongst others, the Rules contained in the said notification are the Fundamental Rules and Supplementary Rules and the C.C.S. (Temporary Service)Rules, 1965. On the basis of this notification, the said rules have become an integral part of the service conditions of the members of Delhi Police and this is not under challenge before us. It was admitted by both the parties in the previous O.A. that as per Rule 4 of the Supplementary Rules, the Government of India have issued orders from time to time. The O.M. dated 23.6.1953 as published in paragraph(g) at page 302 of Swami's Compilation of F.R. S.R. Part-I General Rules, states as follows:-

"(g) ... What should be done in the case of a temporary Government servant declared medically unfit:

(a) Whether he should be discharged from service (i) immediately on receipt of the adverse report, or (ii) after one month from the date of communication to him of the findings of the Civil Surgeon etc., or

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(b) Whether he should be allowed to continue in service until either his request for an appeal is rejected or until the appeal board, if agreed to, has been constituted and has given its verdict."

After discussing the rules in depth, the Tribunal found that the applicant was not given an opportunity of filing an appeal and on this technical ground the order of termination was set aside. However, it after reinstating the applicant and Sh. Rajinder Singh the respondents were given the liberty to subject them to a fresh medical examination and it was further directed that after the medical officer concerned gives a report adverse to the applicant, the respondents shall act strictly in accordance with the afore-mentioned instructions of the Government of India before terminating the services of the applicants as temporary employees.

Thus, it would be clear that the applicant was reinstated and given an opportunity to file an appeal for setting of a Medical Board and the respondents were given the liberty to subject them to fresh medical examination after reinstatement.

Order dated 16.12.94 (Annexure-A Page 20) is the order of the competent authority in compliance to the directions issued by this Tribunal in their judgement(oral) dated 13.9.93. The order is reproduced below:-

"In pursuance of Hon'ble C.A.T.s judgement dated 13.9.1993 Constable Jaibir Singh, No.7689/DAP, was reinstated in service with effect from 17.8.87 vide this office order No.4245-95/HAP/6th Bn. DAP dated 21.12.93 subject to the Medical Fitness. As per the judgement of Hon'ble CAT he was medically examined by Member Superintendent-cum-Medico Legal Expert, Rajpur Road, Civil Hospital, Delhi and declared medically unfit vide his office No.F.PA/MS/CH/Medical/94-317, dated 20.7.94. As per rules he was given one month notice to file an appeal by constituting a medical Board against the decision of medical Superintendent cum Legal Medico Expert, Civil Hospital Rajpur Road, Delhi but till he has not applied for constitution of a Medical Board for reexamination. Therefore, I, Yamni Hazarika, Dy. Commissioner of Police, 6th Battalion DAP, Delhi hereby terminate the services of constable Jaibir Singh, No.7689/DAP under the provisions of rule 5 of C.C.S. (Temporary Services) Rules, 1965 with immediate effect.

He should deposit all Govt. belongings i.e. Identity card, C.G.H.S. Card and also clear all dues before leaving the Department."

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There is total compliance of the directions given by the Tribunal in O.A.No.1867/87. The applicant was subjected to medical examination by Member Superintendent-cum-Medico Legal Expert, Rajpur Road, Civil Hospital, Delhi and he was medically declared unfit vide the aforesaid Superintendent Office letter No. F.PA/MS/CH/Medical/94-317 dated 20.7.1994 following the provisions of Section 5(e)(i) of the Delhi Police Rules and also the CCS (Temporary Services) Rules, 1965, the applicant was further given one month's time to file an appeal for constitution of a Medical Board against the decision of the Medical Superintendent-cum-Medico Legal Expert, Rajpur Road, Civil Hospital, Delhi but till date neither he applied for constitution of a Medical Board for reexamination nor did he appear before the authorities and, therefore, his services were terminated under the provisions of Rule 5 of the C.C.S. (Temporary Services) Rules, 1965. This coordinate Bench cannot sit in judgement over the final directions given by a Division Bench of this Tribunal which has become final. The directions have been fully complied with and as such this application is barred by principles of resjudicata. The Hon'ble Supreme Court has categorically held that the Tribunals are not expected to sit as an appellate authority over the decision of the Civil Surgeon or Medical Experts. The Hon'ble Supreme Court in the case of S. Rangaswamy Vs. Government of Andhra Pradesh & others reported in AIR 1990 SC 535 have laid down that is none of the business of courts to scrutinize the qualifications prescribed for posts. When the word qualification occurs it will also include the parameters laid down for medical fitness. The Hon'ble Supreme Court have further directed

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that it is none of the business of the courts to examine the question of relevancy and suitability of the qualifications laid down by the competent authority. Courts are not expected to sit as an appellate body over the decision of the expert Medical Superintendent or Civil Surgeon. The courts were directed to refrain from assessing relevancy/suitability of the various conditions and qualification for judging the suitability of a candidate. Since the same yardstick is being applied to all the Constables who are recruited to Delhi Police and they are expected to be free from colour blindness and this is a condition of service and since all are being subjected to the same tests no discrimination is involved in the case of the applicant. If we apply the same yardstick to all, the plea of arbitrariness cannot be taken and there is no violation of Articles 14 & 16 of the Constitution. The O.A. is also barred by principles of res judicata since the rules regarding medical examination and the termination as per CCS (Temporary Services) Rules, 1965 and also termination based on medical unfitness were discussed in totality in the previous O.A. filed by the applicant and decided by a coordinate Bench of this Tribunal. The Medical Rules etc. are not under challenge before us and if the applicant felt that the medical rules should have been challenged that could have been done in the previous O.A. itself. It cannot be done now.

Taking a synoptic view of all the facts and circumstances of the case we feel that the directions given by the Hon'ble Tribunal in the previous O.A. have

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been fully complied with and no grievance survives to the applicant. The O.A. is also barred by principles of resjudicata since the parties are the same and the same issues which were adjudicated upon in the previous O.A. have been again agitated in this O.A. Thus the application fails on both grounds and is dismissed leaving the parties to bear their own costs.

(B.K. SINGH)
Member (A)

/vv/

J. P. Sharma
(J.P. SHARMA)
Member (J)