

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

New Delhi this the ^{Q.A. No. 323/1995} 18th Day of April 1996.

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Hon'ble Shri S.R. Adige, Member (A)

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

Shri Chander Pal,
S/o Shri Phooli Singh,
R/o House No. H-16,
Shahdara,
Delhi-110 032.

Applicant

(By Advocate: Shri V.C. Sondhi

Vs.

1. ESI Hospital,
(Through its Director)
Sector-24, NOIDA (U.P.)

2. The Director General,
ESI,
ESI Corporation Building,
Kotla Road,
New Delhi-110 002.

3. Union of India,
(Through Secretary)
Ministry of Health,
Nirman Bhawan,
New Delhi.

Respondents

(By Advocate: Shri G.R. Nayyar)

J U D G E M E N T

Hon'ble Shri S.R. Adige, Member (A)

We have heard Shri V.C. Sondhi for the applicant and Shri Nayyar for the respondents.

2. Admittedly the applicant who was enrolled as a Safai Karamchhari (Sweeper) on 3.7.1990 with E.S.I. Hospital, NOIDA, worked there till 27.9.1993. The applicant claims that he fell sick on that date and informed the respondents vide registered letters dated 6.12.1993 and 28.12.1993, but on recovering, was not allowed to rejoin duty. The respondents however contend that on the afternoon of 27.9.1993 while the Cook mates in the E.S.I. Hospital premises were distributing food, the applicant alongwith another Sweeper came there in a drunken state, picked

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a quarrel with the Cook mates, and, started assaulting them. The authorities instituted an FIR (Annexure R-1), ^{against the applicant} and according to the respondents the applicant was not reporting for duty thereafter.

3. We find it a strange coincidence that the applicant claims to have fallen ill, which necessitated his remaining away from duty, on the very day the FIR was instituted against him. No medical certificate during the course of the illness appear to have been ^{given} but what has been filed is a medical certificate issued by a private hospital in February 1995 (attached with rejoinder) claiming that the applicant was under treatment for four months for lumbago from 28.9.93 to 29.1.94 and was advised bed rest. Prima facie we are unable to place any reliance on this medical certificate, issued by a private hospital nearly 1½ years after the applicant claim to have fallen ill. To us, it appears that consequent to the FIR ^{being} lodged against him, the applicant absented himself from duty.

4. In this connection it appears that the present applicant along with other Sweeper had filed OA No.411/1992 for regularization which was disposed of by Order dated 10.5.1993 in which a direction was given to the respondents to make every effort to regularise those applicants, and not to recruit persons junior to the applicants till the question of their regularisation was decided. The respondents in para 4 (ii) of their reply to the O.A have stated that pursuant to those direction the applicant was interviewed for regularisation on 13.7.1994. Shri Nayyar has stated at the bar that the applicant was not found suitable for regularisation. The applicant has not specifically denied that he was interviewed for the purposes of regularisation.

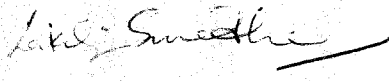
5. In so far as the applicant's prayer for regularisation

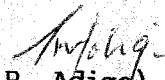
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is, therefore, concerned, we notice that the respondents have already considered the same. No further direction can be issued on this account. As regards the prayer for a direction to the respondents to take him back on duty, we are unable to issue the same in the face of the contents of the FIR instituted against him. If the applicant eventually is acquitted in that case, it will be open to him to file a petition to the respondents for re-engagement, on receipt of which the respondents may examine the same in accordance with the extant rules and instructions on the subject.

6. This O.A. is disposed of in terms of the contents of para 5 above. No costs


(Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Member (A)

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