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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.76/1994

NEW DELHI THE 6TH DAY OF JULY, 1994.

MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN  
MR.B.K.SINGH, MEMBER(A)

Shri Mundish Kumar  
S/o Shri Inder Pal  
R/o Kantinagar Extension  
Gali No.9, H.NO.C-122-D,  
Shahdara,  
DELHI-110051

APPLICANT

BY ADVOCATE SHRI M.M.SUDAN.

VS.

1. Govt.of National Capital Territory of Delhi  
through Chief Secretary,  
5, Sham Nath Marg  
Delhi-110054.

2. Development Commissioner  
Govt.of National Capital Territory of Delhi  
5/9 Under Hill Road  
Delhi.

3. Project Officer  
I.A.D.P.  
Govt.National Capital Territory of Delhi  
11th Floor,  
M.S.O.Building, I.P.Estate,  
New Delhi. ....

RESPONDENTS

NONE FOR THE RESPONDENTS.

ORDER(ORAL)

JUSTICE S.K.DHAON:

Affidavits have been exchanged in this original application.

2. The undisputed facts are these. The applicant was working with the respondents as a class-IV labourer with effect from 12.5.1985. He was found fit by the Staff Selection Board. Thereafter, he was sent for medical examination to the L.N.J.P.Hospital which found him medically 'unfit' as he was suffering from Active Pulmonary Tuberculosis .Therefore, his services were terminated with effect from 1.11.1991. He made no representation within 30 days from 1.11.89.

3. The relief claimed is that the respondents may be directed to appoint and regularise the applicant in the pay scale of Rs.750-940 as per the direction

of the Supreme Court and the instructions of the Government of India.

4. The learned counsel for the applicant has very fairly conceded at the Bar that the relief, as claimed, cannot be granted to the applicant. He however relies upon /Memorandum No.37/1/52-DGS dated 10.7.1945 of the Government of India, Ministry of Home Affairs, which runs as follows:

" 3.4.Ex.T.B.patients who were discharged from Central Government service on account of affliction with T.B. but who have subsequently been declared non-infective and medically fit for Government service by a T.B.Specialist or an authorised medical authority,are eligible for re-appointment to the posts previously held by them if vacancies exist or to equivalent posts in their own Departments, the usual condition regarding age-limits not being enforced in their case. Such persons will be eligible for re-appointment by the Ministry/Department concerned without the intervention of Employment Exchanges wherever there are suitable vacancies. If such persons cannot be re-employed in the Ministry/Department concerned for want of vacancies,employment assistance will be rendered to them by Employment Exchanges. For this purpose,as also for the purpose of relaxation of age-limits these persons will be treated as "Retrenched central Government Employees."

5. It is apparent from the aforequoted Office Memorandum that the condition precedent for being given a fresh appointment is the availability of vacancies. In the counter-affidavit filed on behalf of the respondents, it is categorically asserted that there are no vacancies. This fact has not been denied in the rejoinder-affidavit. We have, therefore, to proceed on the assumption that there are no vacancies. This would only mean that for the time-being, the applicant cannot be given a fresh appointment in pursuance of the aforequoted / Memorandum dated 10.7.1945.

6. If and when vacancies arise and the respondents feel the necessity of inducting fresh personnel ,they shall examine the case of the applicant

strictly in accordance with the terms of the Office Memorandum dated 10.7.1945. They shall take a decision strictly on merits and in accordance with law with regard to the applicant.

7. With these directions, this original application is disposed of finally but without any order as to costs.

(B.K.SINGH)  
MEMBER(A)

*Sing*  
(S.K.DHAON)  
ACTING CHAIRMAN(J)

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