

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1567/94

(5)

New Delhi, this the 14th day of February, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

Shri Rajesh Kumar Verma,
Ex-Drawing Teacher,
G.(Comp.)(M) BSSS, Patparganj,
Delhi.

R/o C-22, East Baldev Park,
Parvana Road, Delhi.

... Applicant

By advocate: Shri K.K. Puri

Vs.

Govt. of National Capital Territory
of Delhi
through

1. The Director,
Directorate of Education,
Old Secretariat, Delhi.

2. The Deputy Director of Education (East),
Rani Garden, Geeta Colony, Delhi.

3. The Principal, Govt. Composite (M),
Boys Senior Secondary School,
Patparganj, Delhi.

... Respondents

By Advocate: Shri Anoop Bagai

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

After due selection according to rules, the applicant was given an offer of appointment by the memo. dated 15.3.93 whereby it was specifically laid down that since offer should not be taken as letter of appointment as certain conditions before appointment has to be undergone and fulfilled by the applicant. One of them was that he can be appointed subject to be declared fit in the medical examination.

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When the applicant has accepted these conditions, a formal appointment letter dated 2.4.93 was issued.

The applicant was posted as Drawing Teacher in GBSSS, Patparganj in the scale of Rs.1400-2600. The applicant, however, when he joined the post did not submit the required medical fitness certificate. As he was directed to appear before the Civil Surgeon, DDUH, New Delhi by the memo. dated 26.3.93 and the hospital authorities directed him to appear for medical examination on 23.6.93 at 9 A.M. The applicant, however, did not appear on the date fixed, on the earlier date he did not produce his 3 passport size photographs as required by the Civil Surgeon, DDUH.

2. The respondents invoking the provisions of Rule 5(1) of CCS(TS)Rules, 1965 terminated the services of the applicant by the memo. dated 24.3.94. The applicant made a representation against this order, which was rejected by the order dated 12.7.94.

3. The applicant filed this application on 3rd August, 1994 praying for the grant of the reliefs that the impugned order of termination of service dated 24.3.94 and the order passed by the higher authorities on his representation dated 12.7.94 be quashed and the respondents be directed to issue fresh authority for medical examination of the applicant with further direction that the salary of the applicant be paid after his reinstatement from 26.3.94, as the order of termination is void, ab initio.

4. A notice was issued to the respondents, who contested this application and stated that the applicant is himself/at fault in not getting medically examined and

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on one pretext and the other he made certain excuses avoiding the medical examination which is one of the essential condition in the offer of appointment given to the applicant by the memo. dated 15.3.93. The applicant has no case. The termination has been effected by the competent authority and the appellate authority has also considered the representation of the applicant. The applicant has also filed the rejoinder reiterating the facts stated in the application. In the rejoinder, the applicant has further highlighted the appointing authority in his case as Director of Education and not the Deputy Director of Education.

5. We heard the learned counsel for the parties at length and perused the records. The termination of service of a temporary employee is not punitive in nature and as such the provisions of Article 311(2) are not applicable and also in a case where the employee is unfit for his employment or retention in service the principle of 'last come first go' also does not apply. We are fortified in our view by the authority of State of U.P. V. Kaushal Kishore Shukla reported in 1991(16) ATC 498. The same view has been taken by the Hon'ble Supreme Court in the case of Triveni Shankar Saxena Versus U. State of U.P. 1992 Suppl(1) SCC 524. Now the question in this case does not rest with the termination of the service alone. It is to be seen whether the action of the respondent is justified in invoking the provisions of section 5(1) of the CCS(TS) Rules, 1965. The offer of appointment given to the applicant is that his appointment is temporary subject to medical fitness.

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No time limit has been prescribed. The authority given to the applicant for getting himself medically examined at DDUH, New Delhi was duly complied with by the applicant by presenting itself before the Civil Surgeon of the said hospital but for one reason or the other and that the applicant had no 3 passport size photographs, he could not be medically examined on that date and he was called on 23.6.93. The respondents, however, allowed the applicant to join in the Institution on 2.4.93. It was for the respondents to scrutinise whether the documents in respect of giving appointment to the applicant are complete in all respects or not. Direction for joining was issued by the office of Deputy Director, Education and the appointment letter has posted him to an Institution in Patparganj. When the applicant was allowed to join the post and was allowed to work on the post, the applicant thereafter was not serious for getting himself medically examined though the learned counsel has given certain reasons that due to the ailment in the family, he could not comply with the direction. Reasons may not be by itself sufficient for the applicant in not getting him medically examined but at the same time the respondents are equally at fault in allowing him to join. In such a situation, it was mandatory on the part of the respondents to give a clear order to the applicant to get him medically examined with a letter of authority to the Civil Surgeon, DDUH and thereafter they could have taken action if the applicant was not declared fit, or has not filed the medical certificate of fitness inspite of the letter of authority given to him.

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The respondents have not adopted that procedure and that is against the principles of natural justice. When once the appointment has been given, the appointee can continue unless he is found unfit for the job. His physical fitness for the job is to be pre-determined before he joins the service. In any case, the order cannot stand and the appellate authority also without applying its mind rejected the representation of the applicant.

6. The relief has also been prayed for for the award of wages after the termination of services of the applicant. However, here the applicant is equally at fault in not submitting his medical fitness certificate to the respondents. One who seeks equity must do equity. He cannot therefore claim wages for the period when he has been out of job because of the aforesaid order of termination though that may not be legally justified but not invalid.

7. The application therefore is partly allowed and disposed of as follows:

- i) The impugned orders dated 24.3.94 and 12.7.94 are quashed and set aside.
- ii) The applicant shall approach within a period of one month with a copy of the order to the office of the Deputy Director of Education(East), Administrative Branch, Rani Garden, Geeta Colony, Delhi and the respondents shall give an authority letter to the applicant to the specified hospital for medical examination of the applicant.

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The applicant shall place himself at the disposal of the Civil Surgeon of the said hospital and get the appointment for medical examination either on the same day or on a subsequent date to be fixed by the office of the Civil Surgeon taking alongwith him all the requisite documents, photographs etc. The Civil Surgeon of the said hospital shall fix the date if he is not examined on that date and the applicant shall not default to present on the subsequent date. The report of the medical examination of the applicant shall be forwarded in the sealed cover to the office of the Deputy Director (Education) referred to above.

iii) The Deputy Director (Education) after going to the medical report and it is found that the applicant has been declared medically fit for the aforesaid post, he may be allowed to join.

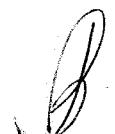
iv) The applicant in case he is allowed to join shall be entitled to wages on the date he joins the service. But he will get the seniority alongwith batch he was selected and the break in the service caused by the impugned order dated 24.3.94 shall be counted for all purposes except for wages and salary i.e. for seniority and qualifying service for pension etc.

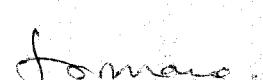
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v) In case the applicant is not found medically fit then the respondents are ~~free~~ fully to discharge him from service taking him as a new recruit without considering his earlier break to the post by the letter dated 15.3.93 and his joining the service w.e.f. 12.4.93 will not give any benefit to the applicant. The Deputy Director(Education) in that event shall issue a speaking order detailing the reasons for non-engagement of the applicant in view of offer of appointment of 15.3.93.

In the circumstances, the parties to bear their own cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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