

- 10 -

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1128/2000

New Delhi, this the 19 day of January, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Subhash Chand
S/o Shri Jagpal Singh
R/o M-106, Sunder Nagari
Nand Nagri, Shahdra,
Delhi

New Address:

A-49, Gali No.3, Mandoli Extn.

Delhi : 110 093

(Advocate : Shri K.P. Rajora)

..... Applicant

VERSUS

Govt. of National Capital Territory of
Delhi through
The Executive Engineer,
M.D.III, Office of the Executive Engineer
F.C.d Wing, L.M. Bund Office Complex,
Krishan Kunj,

Delhi : 110 092

(Advocate : Shri Harvir Singh)

..... Respondent

O R D E R

The applicant was appointed as a Khalasi / Chowkidar on 1.2.1987 in the Respondent's set up and continued to work as such in a satisfactory manner. He is aggrieved by the Office Order dated 13.5.1998 issued by the Executive Engineer by which the applicant has been directed to get proper medical treatment and join his duty only after he has been declared medically fit by the G.T.B. Hospital authorities. The aforesaid order has been passed in consequence of the applicant having been declared temporarily unfit for employment in view of the medical examination report dated 20th April, 1998 received in the Office of the Executive Engineer on 1.5.1998. The said medical examination report has been rendered by the GTB Hospital authorities. He is also aggrieved by the Office order dated 14.1.1999 again issued by the Executive Engineer by which he has been

2

removed from the Casual Roll of the Division. The said order is based on the fact that the applicant was declared temporarily unfit and remained so for the last seven years and has ultimately been found unfit. The same order further reveals that the applicant was found temporarily unfit by the LNJP Hospital on 5.9.1991 and on re-medical examination the GTB Hospital authorities also declared him to be temporarily unfit vide their letter of 20th April, 1998 already referred to. The GTB Hospital authorities again declared him to be temporarily unfit vide their letter dated 15.10.1998 and ultimately declared him to be unfit vide their letter dated 16.12.1998.

2. The aforesaid various orders/letters have been placed by the applicant on record. The applicant appears to be suffering from Splenomegaly with Eosimophilia and it is this disease which has apparently rendered him unfit for Govt. service.

3. Heard the learned counsel on either side and have perused the material on record.

4. I find that subsequent to the termination of his service by the aforesaid order dated 14.1.1999, the applicant has served a legal notice on the Executive Engineer in January 2000. The same has been replied to by the Executive Engineer on 16.2.2000. In the aforesaid reply, the Executive Engineer has referred to the various medical certificates etc. already referred

to in the preceding paragraphs. This was followed by yet another legal notice served on the Executive Engineer in March, 2000. The issue raised in the legal notice served on the Executive Engineer is that there is an amount of contradiction between the medical certificates issued by the two Hospitals on various dates and, therefore, it is necessary to refer the applicant for medical examination by a duly constituted Medical Board. I find that this aspect of the matter has been dealt with in a letter dated 1.6.1999 from the GTB Hospital authorities to the Executive Engineer. The relevant paragraph of the letter is reproduced below:

"2. That if any Medical Certificate is produced by the candidate as a piece of evidence about the possibility of an error of judgement in the decision of an examining medical authority who had examined in the first instance, the certificate will not be taken into consideration unless it contains a NOTE by the Medical practitioner who gave the certificate to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by a medical examining authority. In case of Sh. Subhash Chand, the certificate produced by him does not contain such a note and further it bears a date much earlier than the date of his being declared unfit for the relevant post. (MOH O.M. F.7(1)-6-(53)/MII, dated 27.3.1953). Considering the above facts, it is surprising how the appeal of Sh. Subhash Chand has been accepted & forwarded."

It would appear from the above extract that the medical certificates produced by the applicant did not contain the NOTE as referred to in the said extract. It also mentions the fact that the medical certificate produced

by the applicant bore a date much earlier than the date on which he was declared unfit. The aforesaid letter of 1st June, 1999 also mentions that the appeal filed by the applicant is barred by limitation. The period prescribed for filing an appeal is one month, whereas the applicant had filed his appeal on 20th February, 1999 against the communication dated 14.1.1999.

5. After considering the matter carefully, I find that, all said and done, there is no great merit in denying the opportunity asked for by the applicant. He should be re-examined by a Medical Board to be duly constituted by the competent authority and the competent authority should thereafter decide the matter on the basis of the report rendered by the Board.

6. In sum, therefore, the present OA is partly allowed and is disposed of with a direction to the Respondent to constitute a proper Medical Board for examining the applicant as expeditiously as possible and, in any event, within a period of two months from the date of ^{& receipt of} a copy of this order. The Respondent is further directed to consider the possibility of employing the applicant once again in the light of the report rendered by the Medical Board within a month after the report of the Medical Board has been received. The out-come of the decision taken by the Respondent should be made known to the applicant, in writing, soon thereafter.

2

7. The OA is disposed of in the aforestated terms.

No costs.

d

S. A. T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

(pkr)