

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1748/2000

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

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New Delhi, this the 18th day of July, 2001

Mrs. Amarjeet Wadhwa
w/o Late Shri Ramlubhaya
resident of G-230/B, Sector
No.22, Noida (UP).

.... Applicant

(By Advocate: Shri T.C.Aggarwal)

Vs.

1. The Union of India, through
The Secretary to Govt. of India,
Ministry of Information &
Broadcasting, Shastri Bhavan
New Delhi - 110 001.

2. The Chief Producer
Films Division
Ministry of Information
& Broadcasting
24, Peddar Road
Mumbai - 26.

3. The Director
Institute of Human Behaviour
& Allied Sciences, Dilshad Garden
Delhi - 110 095.

... Respondents

(By Advocate: Shri R.P.Aggarwal)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

The applicant in this case has assailed an order dated 7.7.1999 whereby she has been relieved after being declared completely and permanently incapacitated for further service by the Standing Medical Board w.e.f. 7.7.1999(AN) in terms of Rule 38 of Central Civil Services (Pension) Rules, 1972. Against which a representation filed by the applicant on 29.11.1999 was also rejected on 30.12.1999 which is also impugned in this OA.

2. In this OA, the applicant has taken various contentions to assail the impugned order. At the outset, by drawing our attention to the Central Civil Services (Medical Examination) Rules, 1957 (hereinafter called as 'Medical Rules') and specifically to the Government of India's decision contained therein at Para 5 where the following guide-lines have been issued:

"5. (1) A Government servant declared by the examining medical authority to be permanently incapacitated for further service shall be retired from service, but before the Government servant is actually retired from service, the authority which directed him to undergo the medical examination shall inform him in writing of the action proposed to be taken in regard to him indicating briefly the grounds on which such action is proposed to be taken-

(2) the Government servant shall also be informed that -

(a) subject to the provisions of Supplementary rule 233 (1) (b) and (2) [of. Rule 20 of CCS (Leave) Rules, 1972], as the case may be, and any orders regarding grant of leave to persons suffering from specified diseases like tuberculosis, his retirement will have effect on expiry of a period of one month from the date of communication unless he so desires to retire from an earlier date;

(b) he may submit, if he so desires, within the period of one month, a request to be examined by Medical Review Board supported by prima facie evidence that good grounds exist for doing so; and

(c)"

3. It is contended that it was incumbent upon the respondents before actually retiring the Government servant on the ground of permanent incapacitation to inform him in writing of the action proposed to be taken and accord him an opportunity to make a request to be examined by Medical Review Board supported by prima facie evidence, within a period of one month. Placing reliance on the decision of the Tribunal in N.Sundararajan Vs. Union of India, (1994) 26 ATC 129, it is contended that in that case also the

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Government servant was declared permanently incapacitated and retired on medical grounds on account of being suffering from schizophrenia. It is also stated that Government of India's instructions contained in Para 5 above are being relied upon and the directions were issued to bring back the applicant therein in service with an opportunity to subject her to a review medical board. In this conspectus it is stated that the case of the applicant is squarely covered under the ratio cited above and as from the facts of the present case the respondents have not issued the orders for retiring the applicant on medical ground after one month from the date of finding of the medical board. Our attention has been drawn to the fact that once the finding of the medical board was issued on 1.7.1999 the applicant has been retired on 7.7.1999, i.e., much before the expiry of one month, denying him an opportunity to be subjected to a review medical examination. The learned counsel for the applicant has further stated that the applicant by his communication made on 20.9.1999 requested the respondents for reconsidering their decision.

4. Rebutting strongly the contentions the learned counsel of the respondents has stated that in pursuance of the order of retirement and by a communication dated 29.7.1999 the applicant has accepted the offer of retirement and requested for the allowances admissible to her which have been subsequently disbursed to her in June, 2000 and the applicant has also encashed the same in August, 2000. The learned counsel of the respondents has also drawn

our attention to Rule (1)(2) sub-rule 2 of the Medical Examination Rules ibid to contend that the Government can retire a person even a permanent employee under the Rules in case he is permanently incapacitated on account of mental disability.

5. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the learned counsel for the respondents that by her communication dated 29.7.1999 the applicant having accepted the offer of appointment and also being paid and received the retiral benefits is estopped from challenging the order of medical retirement after considerable delay is not legally sustainable. In our view there cannot an estoppel against the statutory rules. Having perused the relevant Government of India's decision contained in medical Examination Board Rules ibid, we are of the considered view that the respondents have not followed the guide-lines laid down and the procedure meant for retirement of a Government servant on medical grounds. It was incumbent upon the respondents to have accorded a month's time to the applicant to make a request for review medical Board by assigning the reasons to resort to such an action of the retirement on medical grounds. On this, we are fortified by the ratio of co-ordinate Bench in N.Sundararajan's case supra. In this view of the matter, and the fact that on submission of the medical report on 1.7.1999 the respondents had taken an action to retire the applicant on 7.7.1999 against the procedure laid down is liable to be set aside. The learned counsel for the respondents further objected to that in the event

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the applicant is subjected to review medical examination on her request and found fit the pensionary benefits already paid to her, it would be difficult it to realise the same from her. In this view of the matter and keeping in view the statement made at Bar by Shri T.C. Aggarwal, with the consent of the applicant, that in the event of her being declared fit for service, she would return the pensionary benefits already drawn encashed by her to the respondents except pension, this objection is overruled.

6. Having regard to the reasons recorded and discussion made above, we partly allow this OA. The impugned orders of retirement of the applicant on medical grounds as well the order on representation are quashed and set-aside. The respondents are directed to refer the applicant for a review medical examination. In the event she is declared fit would be reinstated back in service with all consequential benefits except back-wages. As far as the pension already paid to applicant would not be recovered from her. As regards the other pensionary benefits already drawn and encashed the same shall be refunded back by the applicant to the respondents at the time of joining service. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Ram
(SHANKER RAJU)
MEMBER(J)

(GOVINDAN S. TAMPI)
MEMBER(A)

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