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AS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.2242/90

Date of Decision: 16.10.1992

Shri Hari Kishan Pal

Applicant

Shri A.K. Behra

Counsel for the applicant

Vs.

Union of India through
Secretary, Ministry of
Finance (National Finance) & Ors. Respondents

Mrs. Raj Kumari Chopra Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters, or not, *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed by Shri Hari Kishan Pal, challenging the orders dated 16.7.75 (Annexure 'F'), rejecting his joining report and asking him for a second medical fitness report, and order dated 25.11.75 (Annexure 'B') for constitution of a Medical Board to examine him.

2. According to the applicant, while working as District Savings Officer, Haryana Region, he met with an accident in the month of October 1973 and remained under the treatment in the All India *By*

Institute of Medical Sciences (AIIMS) Hospital, New Delhi, till he was declared medically fit on 6.7.75. He resumed duty on 7.7.75 at Faridabad, Haryana, but his joining report was rejected vide the impugned order dated 16.7.75 on the ground that prior approval of the Commissioner, National Savings, Nagpur was not obtained. As required by the respondents, he subjected himself to the medical examination again and a fitness certificate from AIIMS Hospital, issued on 8.9.75, was submitted by him. However, he was again asked to submit himself to medical examination by the Medical Board vide the impugned order dated 25.11.75. On 4.12.75, he appeared before the Medical Board, which too cleared him as medically fit. It was only thereafter that he was allowed to join duty on 6.1.76. He further contends that the period during which he was being subjected to repeated medical examinations should have been treated 'as on duty' and has prayed that the aforementioned period from 7.7.75 to 6.1.76 be treated as 'spent on duty' and the respondents be directed to pay wages to him for the aforesaid period.

3. The respondents have stated that on advice of the Ministry of Finance, the above period has been treated as a special leave as under:-

(a) 23 days E.L. from 7.7.75 to 29.7.75

(b) 78 days Half Pay Leave from 30.7.75 to 15.10.75

(c) 58 days E.O. Leave from 16.10.75 to 12.12.75

Leave not to
be debited
to the Leave
Account.

Leave under Normal Rules

(d) 23 days E.L. from 13.12.75 to 4.1.76

(e) 2 days Half Pay Leave from 5.1.76 to 6.1.76

They further contended that his case had to be referred to the Medical Board as the work of District Savings Officer involves Field duty.

4. We have gone through the records of the case and heard the learned counsel for both parties. The learned counsel for the respondents raised the preliminary objection regarding limitation on the ground that whereas the cause of action relates to the period from 7.7.75 to 6.1.76, this application was filed only in 1989. They also pointed out that no application for condonation of delay was filed by the applicant.

5. The learned counsel for the applicant cited a number of judgements **, wherein, the courts have held that too technical a view should not be taken on the question of limitation and where the impugned action is arbitrary and the case of the applicant justifies it, the delay should be ignored.

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1989(9) ATC 49; 1989(II) ATC 722-226
AIR 1991 SC 424 1984 (3) SCC 316
1988 (6) ATC 380

6. Having considered all the aspects of the case, we hold that this is a fit case, where, the question of limitation should not be allowed to come in the way of justice. We also feel that the application may be decided at the admission stage itself and we hereby proceed to do so.

7. The reason being given for not allowing the applicant to join his duty on 7.7.75, notwithstanding the fact that he had been declared medically fit by the AIIMS Hospital, appears to be that he did not obtain the prior approval of the Commissioner, National Savings, Nagpur. An employee, can only submit the joining report and fitness certificate to his immediate superior, who, in case of doubt, should have allowed him to join his duties provisionally. If any further medical examinations were found to be necessary, he should have been asked to subject himself to the medical examination while on duty.

8. In the instant case, the subsequent medical examinations held at the instance of the respondents, only confirmed the first medical opinion that the applicant was fit for Government service. In the facts and circumstances, the respondents were not legally justified in not allowing him to join duty on the basis of the

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first medical certificate. The applicant was kept off duty by the respondents ignoring the medical fitness certificate produced by him on 6.7.75.

9. In view of the above, we hold that the applicant is entitled to succeed. The application is disposed of, with the following orders and directions:

1. The impugned orders dated 16.7.75 and 25.11.75 are hereby set aside and quashed.

2. The whole period from 7.7.75 to 6.1.76 shall be treated 'as on duty' with all consequential financial and other benefits. Interest at the rate of 12% shall be payable on ~~this~~ ^{Arw} arrears.

3. The required formal orders for treating ~~this~~ ^{Arw} period 'as on duty' shall be issued, expeditiously and preferably, within a period of two months from the date of receipt of this order.

4. There will be no order as to costs.

B. N. Dholiyal
(B.N. DHOUDIYAL)

MEMBER(A) 16/8/92

PK
(P.K. KARTHA)
VICE CHAIREDMAN(J)

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