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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1995/1988

New Delhi dated the 15th Feb., 1994

Hon'ble Mr. N.V. Krishnan, Vice Chairman (A)

Hon'ble Mr. C. J. Roy, Member (Judicial)

Shri G.R. Balasubramaniam

Qr. No. 1233, Sector-VIII

R.K. Puram, New Delhi

.... Applicant.

(By Advocate Sh. M.P. Raju, proxy counsel
for Sh. J.P. Verghese)

Versus

1. Delhi Administration
through its Secretary (Services)
Old Secretariate, New Delhi
2. Commissioner,
Food & Supplies Department,
Delhi Administration, Admn. Branch,
Delhi

... Respondents

(None for the respondents)

ORDER (ORAL)

(Hon'ble Mr. N.V. Krishnan, Vice Chairman (A))

Applicant is aggrieved by the Ann.A-5
order dated 8.3.1988 by which his service has been
terminated w.e.f. 25.2.1988 (AN). That order reads as
follows:-

"Consequent upon his having been declared
medically unfit by the Chairman, Medical
Board, Lok Nayak Jai Prakash Narain
Hospital, New Delhi vide letter No. F.10-
MB/Misc./JPH/87/4401 dated 22.2.1988, the
services of Shri Balasubramaniam, GR Grade-IV
(Sub Inspector) are hereby terminated w.e.f.
25.2.1988 (AN) "

2. The facts are not disputed. The applicant was offered appointment as Sub Inspector in the Department of Food and Supplies of the Delhi Administration. i.e. second Respondent by the memo dated 13.5.1985 (Ann.A.1). Para 1 and para 4 of the offer which are relevant for the purpose of this OA, are reproduced below:-

1. " The appointment can be terminated at any time by one month's notice given by either side, viz appointee or the appointing authority, however reserves the right of terminating the services of the appointee forthwith before the expiry of the stipulated notice period by making him payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

4. " The appointment will be subject to his being declared medically fit by the competent authority and the verification of his character and antecedents. "

3. The applicant was then appointed by the order dated 9.12.85 (Ann.A.2) It was made clear therein as follows:-

" His appointment for the post of Grade-IV will be provisional for a period of one year as laid down by the Medical Superintendent, L.N.J.P. Hospital New Delhi vide his letter No.F.10-MB (Misc.) Estt/II/JPH/15725 dated 15.11.85, subject to the condition of formalities with regard to verification of Character and Antecedents etc.

His appointment as Grade-IV on regular basis will be considered after he is declared medically fit by the Medical Superintendent, L.N.J.P.N. Hospital, N/Delhi. "

4. In view of the recommendations of the Chairman, Medical Board of the L.N.J.P.N Hospital regarding the medical fitness of the applicant, the period of appointment was extended for one year from 15.11.1986 to 14.11.1987.

5. On the basis of a subsequent medical examination the applicant was declared medically unfit vide letter dated 22.2.1984 of the Chairman, Medical Board of the same hospital- as mentioned in the impugned order dated 8.3.1988 (Ann.V) reproduced above, the applicant's service was terminated w.e.f. 25.2.1988 (AN). This order has been challenged on the ground that it is violative of Article 311 of the Constitution of India and it is also contended that it has been implemented without giving any notice as required in the Ann.A.1 offer of appointment. It is also contended that this is violative of Rule 5 of the CCS (Medical examination) Rules, 1957. It is also contended that the respondent could have considered the applicant for some alternative job.

6. Respondents have filed their reply in which the facts are not disputed. It is stated that the applicant

was sent for medical examination on 10.7.1985 itself when he was declared medically unfit in the first instance. Therefore, the offer of appointment was cancelled. When he made an appeal, he was directed to be checked up again. On the basis of medical report dated 15.11.1985, ^uHe was provisionally appointed subject to the periodical medical check up. It is for this reason that the Ann.II order dated 9.12.85 refers to the letter dated 15.11.85 of the Medical Superintendent, L.N.J.P.N. Hospital. Such further check up was made on 12.2.1987 and on 22.2.1988. The last report was from the Chairman, Medical Board of the L.N.J.P.N. Hospital which declared him medically unfit.

7. In so far as not considering the applicant for an alternative job is concerned, the respondents have stated that the applicant had given in writing that he was withdrawing the representation made earlier for such consideration. A copy of that letter dated 3.2.1988 is enclosed to that reply.

8. It is contended that the termination of services is legal and is not violative of any rules.

9. We have heard the learned counsel for the applicant. We have perused the CCS(Medical examination) Rules, 1957. When the applicant states that impugned order is violative of rule 5 of these rules, he really means that it is violative of para 5 of Govt. of India's decision under these rules issued by the Ministry of Home Affairs memo. dated 12.9.63. In our view the CCS(Medical Exam.) Rules, 1957 come to play only after a person has been regularly appointed to Govt. service after satisfying the initial medical fitness required of any Govt. employee.. It does not apply to a provisional appointee like the applicant. It also does not apply to the medical examination done at the time of recruitment. In other words, these rules apply after a person, having been declared medically fit and appointed as a Govt. servant, in any capacity is in view of Competent authority/ suffering from some disease which make him incapable of discharging of duties. In that case alone he is to be given a notice before retiring him. The applicant

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was provisionally appointed subject to medical fitness, which is one of the conditions of the offer of appointment (Ann.A.1) as well as the first order of appointment dated 9.12.1985.

Therefore, this plea of violation of the Medical Exam. Rules is without any substance.

10. The next plea is regarding violation of Article 311. The impugned order is not a punishment. This is only a termination in accordance with conditions and terms on which the applicant was appointed. The applicant has been found medically unfit. Hence, he has been terminated from service.

11. Respondents however, have not given any satisfactory reply as to how this impugned order can be sustained when applicants services have been terminated retrospectively without complying with Para-1 of the offer of appointment i.e. by giving one month's notice or by making payment of one months ^{4. or 5 salary} salary ~~for~~ for the period for which the notice falls short. Termination which has retrospective effect even by a few days- is void in law. We are, therefore,

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of the view that on this last ground, the impugned order is liable to be quashed and we order accordingly.

12. The next question is about the relief to which the applicant is entitled. We are of the view that, consequently, applicant should be reinstated in service on the same post from which his service was terminated subject to the same condition as at the time of first appointment viz. that he should be found medically fit. Therefore, it is open to the respondents to direct the applicant to undergo a final medical examination in regard to his fitness to hold the post of Sub Inspector. If he is found fit he should be appointed on a regular basis. No doubt, the applicant ^a has withdrawn his representation about being considered for other alternative job. However, in the changed circumstances, in case he is not found fit for the job of S.I., he should be considered for any other similar post or even a post on a lower scale for which he might be medically fit.

13. In so far as wages are concerned for the period from which he was out of service till he is reinstated, we are of the view that as his services

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was terminated due to his being medic ally found unfit-, though there was an irregularity in the procedure, he is not entitled to any wages till he is reinstated. However, if he is given a regular appointment in terms of the directions in para 12(supra), the service rendered by him before his service was terminated shall count as qualifying service for all purposes.

14. O.A. is disposed of with the direction in para 11 and 12 above.

(C.J. Roy)

Member(J)

(N. V. Krishnan)

Vice Chairman(A)

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