

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 484/87

DECIDED ON : October 12, 1992

J. N. Jatav

... Applicant

Vs.

Union of India & Another

... Respondents

CCRAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)  
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. B. Raval, Counsel for the Applicant

Shri P. H. Ramchandani, Sr. Counsel for the  
Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed memorandum dated 23.12.1975 (Annexure-II) and memorandum dated 19.11.1986 (Annexure-XII). Both these memoranda relate to the offer to him of a temporary post of Assistant Central Intelligence Officer (ACIO) Grade-II (General) in the Intelligence Bureau which is a post higher than the post of UDC on which he was working at the time this offer was made, and accordingly, he cannot be aggrieved as such by these two impugned memoranda. His grievance is really against his not being allowed to join on the post of ACIO on both the occasions. He has prayed for the following reliefs :-

"(i) To direct the respondents to allow the applicant to join the post of Assistant Central Intelligence Officer Grade.II(General) with effect from 14.1.1976.

(ii) To direct the respondents to send the applicant for training of A.C.I.O. II(G) with the very next batch.

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(iii) To direct the respondents to accord appropriate seniority to the appointment for the post from January, 1976.

(iv) To direct the respondents to pay the applicant the difference of pay and allowances till date with interest and

(v) To award cost of this application."

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. We have carefully perused the material on record and also heard at considerable length the learned counsel for the parties.

3. It is not in dispute that the applicant who was <sup>a</sup>confirmed LDC was working on the post of UDC w.e.f. 5.11.1974 in the Intelligence Bureau and on qualifying in the competitive examination for the post of A.C.I.O Grade-II (General) in the then pay scale of Rs.425-600/- he was offered a temporary post of A.C.I.O vide memorandum dated 23.12.1975. One of the conditions in the offer of appointment to the said post was production of a certificate of fitness from the Civil Surgeon at his own cost and it was specifically stated that he will not be allowed to join unless he produced this certificate or a provisional certificate of medical fitness which he may obtain from the medical authority at the time of his medical examination. He accordingly underwent a medical examination by the Civil Surgeon of Willington Hospital on 31.12.1975 and according to the respondents he failed in the above medical examination due to colour blindness. The medical report as such from the Willington Hospital is said to have been lost in transit and, therefore, a copy of the same is not available on record, but the Willington Hospital in their reply to the Intelligence Bureau

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stated that the applicant had failed. The applicant appeared before Chief Medical Officer, Gurgaon who is said to have found him fit and issued a certificate of physical fitness for the post of ACIO Grade-II (General) on 9.1.1976 which was submitted by the applicant with the respondents on 14.1.1976 along with joining report and bond forms etc. but he was not allowed to join duty on the said post. However, the applicant was referred for medical examination to a medical board constituted in the Safdarjung Hospital, New Delhi and the report of the aforesaid board dated 29.12.1976, as at Annexure R-IV to the reply of the respondents is as below :-

"Colour Vision Test done

1. Ishiharas test

Fail to identify most of the plates

2. Lantern Test

Can differentiate between Red, Green and yellow at 16' in bigger apertures

Candidate possesses lower grade of colour perception

Can qualify for Non Technical jobs not concerned with the safety of public"

Accordingly, by memorandum dated 9.6.1977 (Annexure-VIII), the applicant was informed that according to the report of the Central Standing Medical Board, Safdarjung Hospital, New Delhi, his colour vision was not normal and since normal colour vision is essential for appointment to the post of ACIO.II, it was regretted that he could not be appointed against the said post.

4. From the above facts it is clear that the cause of action in connection with the offer vide memorandum dated 23.12.1975 accrued to the applicant on 9.6.1977 which cannot be agitated through this O.A. which was filed in April, 1987.

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The relief prayed for in this connection is not only hopelessly barred by limitation but is also outside the jurisdiction of the Central Administrative Tribunal. Sub-section (2) of Section 21 of the Administrative Tribunals Act, 1985, stipulates that where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates, and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later. Under clause (a) of sub-section (1) of Section 21, the period of limitation prescribed is one year from the date on which final order has been made, and under clause (b) of sub-section (1) of Section 21 where an appeal or representation has been made and a period of six months has expired thereafter without final order having been made, within one year from the date of expiry of the said period of six months. Thus the Tribunal has no jurisdiction to entertain a grievance in respect of which the cause of action accrued prior to three years of the coming into effect of the Act, i.e., prior to three years from 1.11.1985. This view has been upheld by the Tribunal in a number of judgments some of which are :

- (1) V. K. Mehra vs. Secretary, Ministry of Information and Broadcasting, New Delhi : ATR 1986 (1) (CAT)

(2) Sukumar Dey vs. Union of India : (1987) 3 ACT 427 .  
CAT; and

(3) V. S. Raghavan vs. Secretary to the Ministry of  
Defence : (1987) 3 ATC 602 (CAT).

5. The applicant was again offered a temporary post of AIO Grade-II (General) in the Intelligence Bureau vide memorandum dated 19.11.1986. This time also one of the conditions in the offer of appointment was a certificate of fitness from the Civil Surgeon and he was asked that in case he accepts the offer on the terms and conditions mentioned in the memorandum, he should report to the Assistant Director, D.R.T. Centre, Madhav Vilash Palace, Shivpuri (M.P.) on 28.11.1986, and in case he failed to report for duty by the prescribed date, the offer would be treated as cancelled. The applicant did not report for joining as aforesaid and instead vide a confidential/most immediate letter dated 21.11.1986 requested that his promotion case to the rank of Assistant and appointment as AIO Grade-II (General) from November, 1982 and January, 1976 respectively be settled down first to avoid any further controversy. The case of the respondents is that the applicant had neither accepted the offer of appointment nor reported on the prescribed date for duty after completing all formalities, nor did he seek extension of time for joining, and as such, his representation dated 21.11.1986 referred to above was treated as amounting to refusal to accept the offer and the offer stood automatically cancelled on the expiry of the specified date, viz., 28.11.1986. It is further stated that if the applicant had any intention to join in response to the offer of appointment dated 19.11.1986, he would have got himself relieved from the branch he was serving in and would have

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joined the training centre along with medical fitness certificate in original or with a provisional one. The case of the applicant is that had the respondents rejected his representation dated 21.11.1986, the applicant would have joined by stipulated date, i.e., 28.11.1986 but the respondents admittedly did not reply to the above representation. It is further stated that it was only with the intention to join that he had submitted a representation and even if the representation had been rejected, he would have certainly completed the remaining formalities and reported to the training centre by the due date.

6. We have given our careful consideration to the rival contentions of the parties to the effect<sup>of</sup> the applicant not joining by the prescribed date and the reason given by the applicant for not joining. The fact remains that the applicant could not have reported in pursuance of the above offer of appointment until he could produce a medical fitness certificate from the Wellington Hospital. The applicant has placed on record as Annexure A-17 to his M.P. No. 1714/89 a copy of the medical certificate dated 6.1.1987 from Dr. Ram Manohar Lohia Hospital (earlier this Hospital was known as Wellington Hospital). It is stated in this certificate that the applicant has been examined as per the standard of fitness prescribed by the Intelligence Bureau; that he is fit for out door work at high altitude and he is also willing to go to high altitude; and that he is medically fit. This is not disputed. However, the learned senior counsel for the respondents submitted at the bar that as the aforesaid certificate was not in the prescribed form and as Dr. Ram Manohar Lohia Hospital has not considered their

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earlier medical report in which the applicant was not found fit for the same job, the matter was referred to them and they had requested the department to send the applicant again to the Hospital. However, no further action was taken on this request of the Hospital as by that time the applicant had filed this O.A. As regards the contention that the report of Dr. Ram Manohar Lohia Hospital was not in the prescribed form, it may be stated that we find that it is in the same form which was given to the applicant for his medical examination along with the earlier offer of appointment dated 23.12.1975. However, we do not find any reference in this medical certificate about the applicant's earlier medical examination for this very post. The learned senior counsel for the respondents vehemently stressed that colour blindness is a congenital defect and it cannot be cured with passage of time, and accordingly, it was necessary to have a clear opinion of the competent medical authority on the fitness of the applicant on this point. The earlier history of medical examination of the applicant cannot be stated to be unambiguous. Despite the contentions of the learned counsel for the applicant that the colour vision of the applicant is adequate for the post of ACIO Grade-II (General), we are of the considered view that it is neither feasible nor proper for us to give a finding on the medical suitability of the applicant, in terms of the prescribed norms for the post in question. This can be done only by the competent medical authorities. It would be in the interest of justice that the applicant's case is referred to the standing medical board for a clear cut opinion.

7. Learned counsel for the applicant urged that the applicant having been found medically fit in January, 1937, he should be given all the benefits of his appointment to the

post of ACIO with effect from that date. He had also moved MP No. 1714/89 with that purpose and a Bench of this Tribunal had directed that this M.P. be also heard at the time of final hearing of the O.A. We have kept this in view while disposing of this O.A. as per the succeeding para.

8. In the light of the foregoing discussion, this O.A. is disposed of with the direction to respondent No.2, namely the Director, Intelligence Bureau, to refer the case of medical fitness or otherwise of the applicant to the standing medical board for medical examination of the applicant, within a period of one month from the date of receipt of a copy of this order. While doing so, all the previous medical reports in respect of the applicant shall also be sent. If the applicant is found medically fit, in terms of the norms prescribed by the Intelligence Bureau, for appointment to the post of ACIO Grade-II (General), he shall be appointed to the said post and in such an event he shall be given notional appointment to the said post w.e.f. 15.1.1987, but he will not be entitled to arrears of pay on this account. However, for purposes of seniority in the cadre of ACIO Grade-II (General), the above date will be considered as the relevant date. In case the applicant is not found medically fit as aforesaid, he shall have no right to be appointed to the said post in pursuance of the offer of appointment dated 19.11.1986. No costs.

*(Signature)* 12/11/92  
( P. C. Jain )  
Member (A)

*(Signature)* 12/11/92  
( T. S. Oberoi )  
Member (J)