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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.717/2004

New Delhi this the ^{7th} day of March, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Khamman Singh,
S/o Shri Govind Ram,
R/o Village Sameri, Post Office Chhata,
District Mathura (UP).

-Applicant

(By Advocate Shri D.N. Sharma)

-Versus-

1. Union of India, through
the Director General of Medical Services (Army),
DGMS-3 (B), Army Medical Corps,
Army Headquarters, Sena Bhawan,
'L' Block, D.H.Q. Post Office,
New Delhi-110 001.
2. The Deputy Director of Medical Services (Army),
Headquarters Uttar Bharat Area,
Army Medical Corps,
Bareilly (UP).
3. The Commandant,
Military Hospital,
Mathura-Cantt.

Respondents

(By Advocate Shri J.B. Mudgil)

ORDER

Applicant in this OA has sought a direction to treat the period from 6.12.1996 to 22.2.2003 as duty and continuous service for all purposes.

2. Applicant was sponsored through Employment Exchange for the post of messenger (civil) at Military Hospital, Mathura. He was selected in interview but on medical examination was found unfit on account of 'Spleemomegaly' vide certificate dated 6.11.1996. Applicant got himself medically examined with Chief Medical Superintendent, District Hospital, Mathura who declared him fit. As applicant was not appointed he filed OA-706/1997. By an order dated 2.12.1997 representation of applicant

was directed to be considered on a request for second medical examination.

3. Applicant was thereafter medically examined twice in the Military Hospital but was declared medically unfit. CP-317/199 filed by applicant which by order dated 2.8.2000, observing that respondents' contention that applicant was re-examined but not found fit cannot be disbelieved but with liberty to assail findings in the medical examination, was dismissed.

4. Applicant filed OA-752/2001 which was disposed of on 15.3.2002 by directing respondents to constitute a medical board in any Central Government Hospital on the basis that one Rajbir Singh who produced certificate of Chief Medical Superintendent, Agra was appointed on regular basis. In pursuance of the directions when nothing has been complied with led to filing of CP No.20/2002, in compliance of which applicant was medically examined in Dr. Ram Manohar Lohia Hospital and was appointed by a letter dated 16.2.2003 and had joined duties on 22.2.2003.

5. A representation made by applicant for treating the period from 16.2.1996 till he was appointed as continuous service was rejected, gives rise to the present OA.

6. Shri D.N. Sharma, learned counsel of applicant relying upon a decision of this Tribunal in **V.G. Sreedharan Nair v. The Post Master General, Kerala Circle, Trivedrum and another**, 1991 (2) SLJ 35, contended that if one is prevented from joining duties he is to be entitled to the arrears and continuous service.

7. On the other hand, learned counsel of respondents Shri J.B. Mudgil vehemently opposed the contentions and stated that on medical

examination of applicant under SR 4 (1) he was found unfit and on production of a certificate of fitness by the CMO, Mathura applicant was referred in pursuance of the directions of the Tribunal to a classified specialist where he was medically examined twice but was found unfit. It is in this background stated that applicant had failed to sign his medical examination report as after the direction in OA-752/2001 (supra) applicant was examined in Dr. Ram Manohar Lohia Hospital on 6.6.2002 and on being declared fit had joined duties.

8. It is also stated that delay in appointment of applicant was attributable to him.

9. I have carefully considered the rival contentions of the parties and perused the material on record.

10. From the record it is no more res integra that certificate of CMO declaring applicant unfit was verified by respondents and was found genuine. SR-4, as a condition precedent for appointment in service of Government as well as FR-10 provide a certificate signed by the District Medical Officer or a Civil Surgeon or Medical Officer of equivalent status in case of a non-gazetted government servant other than class IV, for class IV government servant the medical certificate has to be signed by the authorized medical attendant possessing the medical qualification as per Indian Medical Council Act of 1956.

11. Compendium on Medical Examination on first appointment by Swamy's Manual on Establishment and Administration, 2003 Edition provides vide OM No.5(1)-E-V (B)63 dated 30.3.1963 that for appointment to a Group 'D' post in case of a male candidate authorized medical attendant possessing medical qualification is the competent authority.



12. FR-10 provides that no person may be appointed to a post in Government service without a medical certificate of health. However, vide OM dated 24.8.66 on delegation of powers by the President to the administrative Ministry under FR 10 fresh recruits are allowed to join service for drawl of pay and allowances for a period not exceeding two months without medical certificate of health by the concerned competent authority and during this period they have to produce the medical record.

13. In the present case the competent medical authority to certify health of applicant and his fitness to the Government service being appointed to a civil post and a civilian in Army was the competent medical authorized as qualified for Medical Council of India. Applicant was subjected to a medical examination by the concerned Doctor of Military Hospital but on production of his medical certificate which was found to be genuine by the Chief Medical Superintendent, District Hospital Mathura which is the condition precedent and valid certificate for the purposes of appointment denial of appointment to applicant which after hectic persuasions by him he managed his examination in the Government Hospital and was declared fit clearly shows that the respondents have not followed rules and had not accepted the medical certificate of Chief Medical Superintendent, Mathura which is as per FR-10 and SR 4 (1). The delay in accord of appointment to applicant is not at all attributable to him but has been an outcome of some sort of bias of the authorities towards applicant as he has been each time directed by the Tribunal was not subjected to the Medical Board at Government Hospital but was declared unfit by the Board of specialist of Military Hospital. A civilian getting employment in defence medical certificate of Chief Medical Superintendent of District Hospital is admissible and legal.

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14. Applicant had run pillar to post from 1996 till 2003 when he has been appointed by the respondents, that too belatedly, demonstrates that applicant was also medically fit when he submitted certificate of Medical Superintendent of Civil Hospital, Mathura but the delay in his appointment is attributable to respondents.

15. By delayed appointment after seven years applicant has not only lost his seniority but also other attendant benefits, which has deprived him to add the above period towards his qualifying service as well.

16. In the result, OA is allowed. Appointment of applicant shall be antedated from 6.12.1996 when others have been appointed. In that event he shall be entitled to all consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)
11/3/05

'San.'