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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.2289 of 1993

New Delhi this the 22nd day of August, 1994

Mr. Justice S.K. Dhaon, Acting Chairman
Mr. B.N. Dhoundiyal, Member

Shri Satya Pal Singh
R/o House No.402,
Karkadooma,
Delhi-92.

...Applicant

By Advocate Shri L.C. Goyal

Versus

1. The Development Commissioner,
Delhi Administration,
5/9, Under Hill Road,
Delhi-110054.
2. The Deputy Conservator of Forests,
Delhi Administration,
Kamla Nehru Ridge,
Delhi-110007. Respondents

None for the respondents'

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman

The respondents in this O.A. have been duly served with the notices issued by this Tribunal. They have neither cared to put in appearance, nor have they filed any counter-affidavit. On 3.6.1994, we passed the following order:-

" Admit.

In spite of repeated chances being given to the respondents and in spite of the fact that they have been duly served, no counter-affidavit has been filed. We, therefore, proceed on the assumption that no counter-affidavit is to be filed. In the absence of the counter-affidavit, the averments made in the body of the OA are to be treated as correct. List the OA for final hearing on 22.08.94 amongst first five cases."

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Even today, no one has cared to appear on their behalf though the case has been called out in the revised list. We have heard the counsel for the applicant and have perused the contents of the record. We are proceeding to dispose of the O.A. finally.

2. The material averments in the O.A. are these.

2. The material averments in the O.A. The applicant has been working as a casual labour with the respondents for the last 6 to 7 years. In pursuance of the directions given by the Supreme Court, he went through a Selection Board. That Board directed him to appear before the Staff Surgeon/ Medical Superintendent(Civil Surgeon) for medical examination. On such a medical examination, he was found unfit. On 24.06.1991 he was informed by the Deputy Conservator of Forests that upon a medical examination, it was found that he was suffering from Pul.T.B. His services were, therefore, terminated. It was also informed that in case he intends to represent against the medical report of the Staff Surgeon, he may do so within 30 days for re-examination by the Medical Board. In that connection, he was required to get himself medically examined by at least two medical officers possessing MBBS qualification and thereafter obtain a certificate from them that he is not suffering from disease as detected by ^{the} staff surgeon. On 06.08.1991, the applicant submitted a medical certificate followed by another medical certificate. In the second certificate it is recited:-

" As a result of his examination, I certify that nothing which may disqualify him from joining the Government duty".

3. On 23.12.1991, the applicant was informed by the Superintendent (Development Headquarter) that

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his representation along with the medical certificates has been considered by the competent authority. Since the medical certificates do not conform to the provisions of SR 4, his representation was considered and rejected by the competent authority. On 25.02.1992 he preferred an appeal to the Development Commissioner, but in vain.

4. We have considered SR 4. The Government of India's orders issued thereunder, inter alia, provides that if any medical certificate is produced by a ~~Central~~ Central Government servant as a piece of evidence about the possibility of an error of judgment in the decision of a Medical Board/Civil Surgeon or other medical officer who had examined him in the first instance, the certificate will not be taken into consideration unless it contains a note by the medical practitioner concerned to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by a Medical Board, a Civil Surgeon or other medical officer.

5. The first certificate issued to the applicant does not make any attempt whatsoever to comply with the aforesaid requirement of the provisions of SR 4. The second certificate, however, does show that a substantial compliance of the requirement of the instructions of the Government of India has been made. The crucial words are: "As a result of his examination I certify that nothing which may disqualify him from joining the Government duty". It is a settled law that pith and substance and not the form matters. We, therefore, take the view that at least one could be taken into account

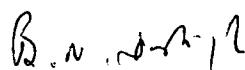
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by the competent authority for referring the case of the applicant to the Medical Board.

6. Two decisions of this Tribunal have been cited by the counsel for the applicant. One is given in OA No.2594 of 1992 decided on 4.3.1992 and the other is given on 4.3.1992 in OA No.2597 of 1992. In both the judgments this Tribunal, it appears, took the view that the requirements of SR 4 aforementioned are not mandatory. Keeping in view the fact that the applicant had rendered service to the respondents for 5 to 6 years therein, it took a lenientview in those cases. Here too, the applicant, according to his showing, has rendered service for more than 6 to 7 years, therefore, we see no reason to take a view different from the one taken in those cases. We, therefore, quash the order passed by the Deputy Conservator of Forests and also the decision of the competent authority conveyed therein. We direct the authority competent to refer the case of the applicant to the Medical Board.

7. There shall be no order as to costs.



(B.N. DHOUDIYAL)
MEMBER (A)



(S.K. DHAON)
ACTING CHAIRMAN

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