

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2462/1993

New Delhi, dated the 28th October, 1994

CORAM

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

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Phuley Raj,
R/o E-57/A-397, Sundar Nagar,
Nand Nagri, Delhi-110093

... Applicant

(By Advocate Shri D.S. Jagotra)

v/s

1. Government of National Capital Territory,
Delhi through : The Development
Commissioner, Govt. of National Capital
Territory, 5/9 under Hill Road, Delhi

2. The Deputy Conservator of Forests,
Kamla Nehru Ridge, Delhi-7

... Respondents

ORDER (ORAL)

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

The applicant is aggrieved by the rejection
of his representation regarding the medical certificate
given to him in the context of his regularisation.

2. The brief facts are that the applicant was

U

..

9

working as a Casual Labour from 22.2.1987 under the second respondent (Deputy Conservator of Forests). The applicant having been found fit for regularisation, he was directed on 27.5.1991 to appear before the Medical Supdt. Civil Hospital, Police Lines, Delhi. It would appear that the Medical Supdt. reported on 14-6-1991 that the applicant was medically unfit as he suffered from Pul.T.B. On the basis of this report of the Medical Supdt. the services of the applicant was terminated by the impugned letter dated 24-6-1991 of the second respondent. That Memo. further stated as follows :-

" In case he intend to represent against the medical report of the Staff Surgeon, he/she may do within 30 days for re-examination by the Medical Board. He/she may get himself/herself medically examined by atleast two medical officers possessing MBBS qualification and produce report of not suffering from the disease as contended by the Staff Surgeon."

3. In compliance with that stipulation the applicant submitted a letter dated 9-7-1991 (Ann. II) to the second respondent for remedical examination. He also enclosed medical certificates from two doctors. Both these certificates declared the applicant fit to join the duty.

12

..

4. Inspite of this, the applicant was informed by the impugned order dated 23.12.1991 (Ann.III) of the Development Commissioner, under which the second respondent functions, that the medical certificates furnished by him has not been found to be in accordance with provisions of S.R.4. Therefore, the representation has been considered and rejected.

5. The applicant has, therefore, prayed that the order of termination be quashed and the respondents be directed to re-instate the applicant forth-with.

6. Respondents have filed a reply merely stating what has been mentioned in the impugned orders. They also deny that Pul.T.B. is not an incurable disease.

7. We have heard the learned counsel for the applicant. We notice that the Medical examination was taken at the time of regularisation of the applicant in Govt. service, after he had worked for few years as casual labour. The instructions given to him when his service was terminated by the Ann.A.1 order on the basis of the Medical report has been quoted as above. He was only

W

required to produce two medical certificates which he did. The medical certificates have been rejected because it is stated to be not in accordance with S.R.4. The applicant was not informed what other conditions should be satisfied.

Q

8. We have seen S.R. 4. We are unable to locate any provision therein on the basis of which the certificates could have been rejected. However, we notice that under the Govt. of India order No.(2)(c) "Right of Appeal" against adverse findings" an instructions has been issued on 27-3-1953. That reads as follows:-

(c) " Evidence regarding possible error of judgement must refer to original certificate. - With reference to the instructions contained in Order(b) above, it has been decided that, if any, medical certificate is produced by a candidate of 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.

(emphasis given)

It is this requirement that is, admittedly, not satisfied by the certificates. It would appear that, considering the ease with which any kind of medical certificate can be procured, Govt. found it necessary to stipulate that

the candidate against whom an adverse medical report has been given at the Medical examination should, voluntarily, inform the doctors from whom fresh certificates are taken, about this fact and that he has been rejected as unfit for service, so that the doctors may be warned not to give a certificate in a routine way. These doctors should be made aware that any fitness certificate they give would be a challenge to the medical certificate earlier given by the Govt. doctor and that the matter would be referred to the Medical Board. That is an eminently reasonable requirement.

9. Nevertheless, in our view the applicant should have been specifically told about this requirement, as he is a new entrant... This requirement was not communicated to the applicant. Therefore, he could not have been expected to know that a certificate to this effect should also have been given by the Medical Officers.

If the applicant had been told about this requirement in the Ann.A.I order in the first instance, he would certainly have obtained this additional certificate also from the doctors. We are of the view, that the respondents

(u)

..

ought not to have ~~been~~ rejected the certificates without first informing the applicant of the requirements.

Nevertheless, the applicant is at fault in not ascertaining the exact reason for rejection of the certificate and ~~ought~~ ^{in seeking} a fresh opportunity for compliance of the requirement under the rules or the instruction thereunder.

10. In so far as the averment made by the applicant that Pul.T.B. curable and patients are taken back in service after service is concerned, ^{u is} ld. counsel for the applicant has produced an extract of chapter-IV of Handbook of Personnel Officers. Para 3.4 is relevant. That states the Ex.T.B. patients who have subsequently been declared non-infective and medically fit for re-employment are eligible for reappointment. We do not wish to say anything in this regard, because that is not the issue before us.

11. Therefore, the O.A. is bound to succeed. The only question is what relief can be granted. There are three courses open

i) The respondents can be directed to consider the two certificates produced (Ann. II(a) & II (b) on merit. These certificates have not been given with the knowledge that the applicant has been found medically unfit

u

14

by a Govt. doctor, and if we may say so, have not, therefore, been given with a full ~~sense~~ of responsibility. Therefore, this direction will not be appropriate.

ii) The applicant can be directed to obtain 2 fresh medical certificates after complying with the instruction dated 27.3.1953 referred to in para 7. A certificate of fitness so given now, will be a challenge to the correctness of medical certificate given by the Medical Supdt. as early as on 14.6.1991. Obviously, that medical certificate could have been challenged within 30 days only. Otherwise, mere efflux of time coupled with treatment can render that certificate obsolete. Therefore, such a direction also cannot be given.

iii) The respondents should be directed to have the applicant examined again by the Medical Supdt. This alone will be fair to the Medical Supdt. and at the same time do justice to the applicant.

12. In the circumstances, we dispose of this OJ with the following directions:-

- i) The impugned Ann. I order dated 24.6.91 and the Ann. A. III order are quashed.
- ii) The second respondent is directed to arrange for a fresh medical examination of the applicant by the competent authority with a view to regularize him, in case he is medically found fit, in which case such regularization shall take effect prospectively.
- iii) In case the applicant is not found fit medically, the third respondent shall inform him of that

14

..

decision and the redress open to him, keeping in view our observation herein.

iv) Needless to say it is open to the applicant to seek redress against any adverse final decision, in accordance with law.

Lakshmi Swaminathan

(Lakshmi Swaminathan)
Member (J)

N.V. Krishnan
28/10/94

(N.V. Krishnan)
Vice Chairman (A)

sk