

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.2529/93, 2530/93 and OA.517/94

Dated this the 24th of May, 1995.

Shri N.V. Krishnan, Hon. Vice Chairman(A)
Dr. A. Vedavalli, Hon. Member(J)

OA.2529/93

Ram Dhan Singh,
S/o Shri Bani Singh,
R/o Village & PO Tajpur Kalan,
Delhi 110 036.

...Applicant

versus

1. Govt. of National Capital Territory of Delhi through Chief Secretary, 5, Alipur Road, Delhi 110 054.
2. The Development Commissioner, Govt. of National Capital Territory of Delhi, 5/9, Under Hill Road, Delhi 110 054

...Respondents

OA.2530/94

Iswar Singh,
S/o Shri Bani Singh
R/o Village & P.O. Tajpur Kala,
Delhi 110 054.

...Applicant

versus

1. Govt. of National Capital Territory of Delhi through Chief Secretary, 5, Alipur Road, New Delhi 110 054.
2. The Development Commissioner, Govt. of National Capital Territory of Delhi, 5.9 Under Hill Road, Delhi 110 054.

...Respondents

OA.517/94

Ram Niwas,
S/o Shri Lala Singh,
R/o House No.991/E,
Lohia Gali No.4,
Babarpur, Near Shiv Mandir,
Shahdara, Delhi 110 032.

...Applicant

versus

1. Govt. of National Capital Territory of Delhi through Chief Secretary, 5, Sham Nath Marg, Delhi 110 054.

u

(2)

- 2. The Development Commissioner,
Govt. of National Capital Territory
of Delhi,
5/9, Under Hill Road,
Delhi 110 054.
- 3. The Chairman,
Medical Board,
Lok Nayak Jai Parkash
Narain Hospital, New Delhi...Respondents

Advocate on behalf of all the above applicants: Shri Ashok Aggarwal (but not present).

Advocate on behalf of respondents in OA.2529/93 and OA.2530/93: Shri Vinay Sabharwal (but not present).

Advocate on behalf of respondents in OA.517/94: Shri Virender Mehta (but not present).

O R D E R (Oral)
(By Shri N.V. Krishnan)

These three OAs raised the same issues and hence they are being disposed of by a common order.

2. Firstly, we take for consideration OA.2529/93.

The applicant, Shri Ram Dhan, was a daily rated casual labourer under the respondents. He joined as such on 19.4.84. He appeared before the Staff Selection Commission for regularization. He was asked to appear for a fitness test. He alleges he was found fit yet his services were terminated on 19.7.91 by the impugned Annexure A-1 order issued by the Deputy Conservator of Forests, which reads as follows:-

"Reference letter No.F9(2)/91-CH/Med/790 dated 18.7.91 Staff/Medical Supdt.,Civil Surgeon had declared Sh.Ram Dhan S/o Shri Bani Singh medically unfit. He has been reported to be suffering from Pul.T.B. His service as such are terminated hence forth.

In case he intend to represent against the medical report of the Staff Surgeon, he/she may do so within 30 days for re-examination by the Medical Board. He/She may get

u

(3)

himself/herself medically examined by at least two medical officer possessing M.B.B.S, qualification and produce report of not suffering from the disease as contended by the Staff Surgeon.

No representation shall be entertained after the expiry of 30 days from issue of this memo."

3. The applicant produced a certificate issued by the Chest Clinic and Hospital, Narela of the Municipal Corporation of Delhi and Dr. Jitendra Jagota, certifying that he was not suffering from T.B. These certificates are at Annexure 'C' and Annexure 'D'. He submitted his representation on 23.9.91 with copies of the certificates, but he did not receive any reply.

4. He got another fitness certificate on 1.10.93 from the Chest Clinic and Hospital, Narela, a Government Hospital and again represented on 21.10.93 (Annexure L&M) but in vain.

5. Hence, the applicant has prayed for quashing the impugned Annexure-A order terminating his services and to direct his reinstatement with back wages. He has relied on earlier judgements of this Tribunal.

6. The respondents have filed a reply resisting these claims. It is stated that the Civil Surgeon of the Staff Hospital had declared the applicant medically unfit because he was reported to be suffering from Pul.T.B. as mentioned in Annexure-A memorandum. The subsequent certificates produced by the applicant were not found to be in accordance with

u

(4)

SR-4 (sic). Hence his representation was rejected.

In the circumstances, the application has no merit and is to be dismissed.

7. The applicant has produced with the OA, a judgement of this Tribunal in OA.2594/91 (Annexure-G), in which, in a similar case, a fresh opportunity was given to a similar employee to produce appropriate medical certificate. The applicant therein was also directed to be reinstated. Other judgements (Annexure H, I & J) have followed this decision.

8. We have considered the matter carefully.

9. The applicant can have no grievance that for the purpose of regularisation of his service, after he was cleared by the Staff Selection Commission, he was put through a medical examination. The Civil Surgeon declared that the applicant was suffering from Pul.T.B. and, therefore, his service was terminated. We cannot find fault with this decision.

10. However, we are of the view that, in so far as representation against this decision is concerned, the applicant has not been given a proper opportunity. The Annexure-A letter did not state in what manner he should get certificates from two medical officers to the effect that he was not suffering from the disease for which reason he was disqualified. It is in this regard that the respondents state that the certificates are not in accordance with SR-4. What they obviously refer to, is SR-4(2)(c) to which, a

(5)

reference has been made in the Annexure-H order of the Tribunal. In accordance with this provision, such a certificate will not be taken into consideration unless it contains a note from the medical practitioner concerned to the effect that it is given in full knowledge that the candidate has already been rejected as unfit for service by a medical board or a Civil Surgeon or any other medical officer. In fairness to the applicant, this requirement should have been stated in the Annexure-A memorandum issued to him, in which case, he would have apprised the medical authorities, who gave the certificates at Annexure C and Annexure-D about this requirement.

11. We are, therefore, of the view that in the interest of justice, a fresh opportunity has to be given to the applicant. The question is whether, we should allow him to produce such certificates now i.e. in 1995 or the entire process should be ~~rejected~~ ^{repeated} again. Four years already have passed after the medical certificate was given by the Civil Surgeon. It is quite possible that he has since recovered from that disease and he might be found fit by any private medical practitioner. That finding by itself would not mean that the Civil Surgeon was wrong when he gave that certificates in his letter dated 18.7.91. We are, therefore, of the view that the entire process should be gone through again.

12. Therefore, we allow this OA in part and direct the respondents to refer the case of the applicant to the Staff Surgeon/Medical Superintendent, Civil

u

(6)

Surgeon to medically examine the applicant again after drawing their attention to the earlier certificate given on 18.7.91, as mentioned in the Annexure-A memorandum. If the applicant is found fit, the respondents should offer him appointment as he had already been selected by the Staff Selection Commission. In the circumstances of the case, the applicant will not be entitled to any back wages, but he will be entitled to the benefit of his ^{daily rated} past service before termination, if, in terms of any instructions or any rule, the benefit in respect of such service may be given to him.

13. In case, however, the applicant is still not found fit on medical grounds, he shall be informed about it and also told that he can file a representation within 30 days for reexamination by the Medical Board. In such a case, the applicant should be clearly informed about the specific provision contained in Rule SR-4(2)(c), which should be fully quoted for ^{his} proper guidance. In case, the applicant files a representation, it shall be dealt with in accordance with law and, if ultimately it is decided to appoint him, the directions given above would apply to such appointment.

14. The OAs.2530/93 and 517/94 also raise similar issues, wherein, the respondents have not given any reply. The same directions as above are issued disposing of these two OAs also.

✓

(7)

15. All three OAs are disposed of with the above directions at the admission stage. The original order be placed in OA.2529/93 and authenticated copies be placed in the other two OAs.

(Dr. A. Vedavalli)
Member(J)

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

/kam/

*True Copy
attached
AM - [unclear]
24/7/93*

Court Officer
Central Administrative Tribunal
Principal Secy. Member House
Copenhagen, Denmark - 110001