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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.900/93

New Delhi : August 11, 1995.

HON'BLE MR. S.R.ADIGE , MEMBER(A)

HON'BLE DR. A.VEDAVALLI, MEMBER(J)

Shri Krishna,
s/o Shri Bhima,
r/o Village Tikri Kurd,

P.O.Khas,
Delhi-110040

.....Applicant.

By Advocate Shri Ashok Agarwal.

Versus

1. Delhi Administration,
through Chief Secretary,
5, Alipur Road,
Delhi -110054.

2. The Development Commissioner,
Delhi Administration,
5/9, Under Hill Road,
Delhi -110054

.....Respondents.

By Advocate Shri Sinha for Shri Jog Singh.

JUDGMENT

By Hon'ble Mr. S.R.Adige,

In this application, Shri Krishna has impugned the order dated 17.3.92 (Annexure-A) terminating the applicant's service w.e.f. 18.4.92, and has prayed for reinstatement with full back wages and continuity of service together with regularisation.

2. Admittedly the applicant was employed as a daily rated casual labourer in the respondents office. The applicant contends that this engagement commenced in 1981 and he was working continuously since then, and this fact has not been denied by the respondents. It appears that in compliance ^{with} the Hon'ble Supreme Court's directions in Niader's case (W.P.9609-10/83) a scheme for regularisation of casual labourers was prepared and the applicant was called for the fitness test. He was medically examined in compliance with

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the mandatory fundamental service rules and was declared medically unfit on account of pulmonary TB by the Staff Physician GTB Hospital, Shahdara vide his report dated 9.3.92 (Annexure-E) and accordingly his services were terminated vide impugned order dated 17.3.92 w.e.f. 17.4.92. The impugned order dated 17.3.92 stated that the applicant had been found medically unfit and was given one opportunity to appeal against the above mentioned medical report within one month failing which his service would be terminated. The applicant contends that the medical report was not attached with the impugned order dated 17.3.92, as a result of which he requested the respondents vide his letter dated 21.3.92 to supply him a copy of the same which was eventually supplied vide respondents' letter dated 31.3.92. There is no averment by the applicant that he filed an appeal within the prescribed period, but nearly one year later, on 6.3.93 he filed a representation against his termination from service (Annexure-F) enclosing a copy of a medical certificate dated 5.3.93 said to have been issued by the M.O.I/C PHC Palam New Delhi certifying the applicant to be fit to join as Beldar in the Forest Department. Copies of two other medical certificates dated 9.3.93 and 10.3.93, one from a PHC, and the other from the office of the Medical Superintendent, Safdarjung Hospital certifying the applicant to be medically fit have also been filed (Annexure-H and I).

3. We have heard Shri Ashok for the applicant and Shri S.K.Sinha for the respondents. Shri Ashok has pressed for the applicant's reinstatement; payment of

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back wages and for referral of the applicant's case to the Medical Appellate Board in accordance with the Tribunal's decision dated 4.3.92 in O.A.No.2594/91 Smt. Bhauri Devi Vs. Development Commissioner (Annexure-K) ^{dated in} and 29.10.92 in O.A.No.2963/91 Sat Pal Vs. Delhi Administration & others (Annexure-L); as well as the Hon'ble Supreme Court's decision in Ratan Lal & others Vs. L.G. Delhi & others (W.P.No.98/88 and connected petitions at Annexure-M) which have been cited by him as on all fours with the present case. Anything less according to him will be subjecting the applicant to hostile discrimination, and, therefore, violate Article 14 of the Constitution, as has been ^{Said to have been} held by the Hon'ble Supreme Court in Halls Gowda & others Vs. M.D.KSRTC & another- AIR 1989 SC 1117.

4. We have considered the matter carefully. Bhauri Devi's case (Supra) as well as Satpal's case (Supra) can be distinguished from the present case, because in these cases the medical certificates furnished by the applicants did not expressly comply with Rule SR 4(2)(c), according to which it had to contain a Note that it was being given in full knowledge of the fact that the candidate had already been rejected as unfit for a service by a Medical Board; Civil Surgeon or other Medical Officers. In the present case before us, the applicant did not file any medical certificate ^{in or appeal} at all within the prescribed ⁱⁿ period of one month, ^{in nor even a written prayer for extension of time to official} and has filed a representation against his termination from service together with an M.C. (which incidentally also does not comply with SR 4(2) (c)) after one year. Ratan Lal's case (Supra) does not help the applicant because referring to

the scheme prepared vide directions in Naider's case (Supra) it directs regularisation of those casual labourers who had worked for one year or more if such casual labourer was otherwise fit to be regularised (emphasis added) under the scheme. The words "otherwise fit" include "medically fit" and in the present case, manifestly the applicant was found medically unfit by a competent Medical Board, and it was for that reason that he was not regularised. Hence the applicant cannot find support from ^{in Ratan Lal's} ~~Haji Gowale~~ case (Supra).

5. Shri Asok has also cited certain rulings in support of his contention that a workman whose services have been illegally terminated, would be entitled to full back wages, except to the extent he was gainfully employed during the period of enforced idleness. It does not appear necessary to ^{refer to} ~~cite~~ all those rulings, because the principle is unexceptionable. That principle does not hold good in the present case however, because in the case before us the respondents have not terminated the applicant's services illegally. Every Govt. servant before being regularised has to subject himself to a fitness test and in the applicant's medical examination conducted by the competent authority, the applicant was declared unfit, as he was found to be suffering from pulmonary TB. An opportunity was given to him to file an appeal against that finding within one month, as prescribed under rules, but the applicant did not avail of that opportunity and represented against his termination from service only after one year. For the above reasons, we are unable to direct automatic reinstatement and payment of any back wages in this case. In this connection we would also

referto the Hon'ble Supreme Court's ruling in UPSRTC Vs. M. Ismail & others- AIR 1991 SC 1099 wherein it has been held that the court cannot direct a statutory authority to exercise its discretion in a particular manner not expressly required under law. The court can only command a statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law.

6. Under the circumstances, we direct the respondents that having regard to the medical certificate of March, 1993 produced by the applicant certifying that the applicant is ^{now} fit to resume duty, and subject to the availability of work, the respondents should consider re-engaging the applicant in preference to outsiders and those with overall lesser length of ^{previous} service. Furthermore within one month of such re-engagement, his case should be placed before an Appellate Medical Board to whom the full facts should be presented and the case of the applicant's ~~case~~ for regularisation should be considered in the light of the Medical Appellate Board's recommendations, ^{and the relevant rules/ instructions on the subject.}
7. This O.A. stands disposed of accordingly, ^{in terms of the directions given in paragraph 6 above.}
No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A).

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