

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH :ALLAHABAD**

ORIGINAL APPLICATION NO.721 OF 2004

ALLAHABAD THIS THE 30th DAY OF APRIL, 2007

HON'BLE DR. K.B.S. RAJAN, J.M.

1. Smt. Guddi Bai, W/o late Lakhan Lal.
 2. Sushil Kumar, S/o late Lakhan Lal.
 3. Sunil Kumar, S/o late Lakhan Lal.
 4. Shudhir Kumar, S/o late Lakhan Lal.
 5. Sonu Kumar, S/o late Lakhan Lal.
 6. Km. Baby, D/o late Lakhan Lal
- All residents of 7 old Laskar Line, Old
Bairahna, Allahabad

. Applicants

By Advocate: Shri S. Lal.

Versus

1. Union of India
through Secretary, Government of Defence,
New Delhi.
2. Director General E.M.E (EME-Cir), Army
Headquarters, DHQPO, New Delhi.
3. Commandant & M.D. 508 Army Base Workshop,
Allahabad, Fort.

. Respondents

By Advocate : Shri S. Singh

ORDER

The claim of the applicant is petty but appears prima facie justified. The applicant, Fitter by trade, was, in 1998, due for recommendation for fitness for retention in service under FR 56(J) for the quarter ending June 1998. For this purpose, he had to undergo medical examination and in the course of the same, the applicant had to present himself

before the Medical Board on a few occasions, i.e. 13-11-1999, 17-11-1999, 25-11-1999, 30-11-1999 and from 26-12-1999 to 16th May 2000, but when he presented himself after subjecting himself to the Medical Board, he was not allowed to join duty without a fitness certificate from the Board of medical Doctors. Annexure A-8 gives the details of the entire case of the applicant while Annexure A-17 gives the rule position. The said Rule reads as under:-

"2.(1) Where the Competent Authority has reason to believe that a Government servant to whom these rules apply is suffering from-

- (a) a contagious disease, or
- (b) a physical or mental disability which in its opinion interferes with the efficient discharge of his duties.

that authority may direct the Government servant to undergo a medical examination within such period not exceeding one month as may be specified by it and may, if it considers it essential to do so, also direct the Government servant to proceed on leave forthwith pending medical examination. Such leave shall not be debited to the leave account of the Government servant, if the examining Medical Authority subsequently expressed the opinion that it was unnecessary for the Government servant to have been required to proceed on leave.

(2) On the basis of the opinion expressed by the examining medical authority and subject to the provisions of sub-rule (3), the Competent authority may require the Government servant to proceed on leave or, if he is already on leave to continue to remain on leave or may retire him from service if he is a permanent Government servant, or may terminate his services if he is a quasi-permanent Government servant.

(3) The procedure for a medical examination, grant of leave on retirement from service, or termination of service under this rule shall be such as the President may by order prescribe.

(4) For the purpose of this rule, competent authority in relation to a Government servant means the authority competent to dismiss him and includes such other authority as the President may by order specify in this behalf.

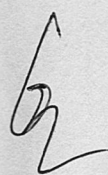
(5) For the avoidance of doubt, it is hereby declared that non-compliance with a direction given under sub-rule (1) or sub-rule (2), of this rule will be considered a good and sufficient reason for the imposition of a penalty in accordance with the rules governing discipline applicable to the Government servant concerned."

2. Respondents, however, refused to treat the aforesaid period of absence of the applicant as covered under the above stated medical rules and consequently, pay for the above period had not been given to the applicant. Hence this OA praying inter-alia for a direction to the respondents to pay the pay and allowances for the period 13-11, 17-11, 23-11, 25-11, 30-11-1999 and from 26-12-1999 to 16-05-2000.

3. Respondents have contested the OA. Their contention is as under:-

"D. That the applicant vide his application dated 26.11.1999 claimed that on 13.11.1999, 17.11.1999, 23.11.1999 and 24.11.1999 he reported for medical checkup and hence he should be treated on duty. Whereas on asking regarding production of proof of medical checkup on the dates vide this unit letter no. 20208/Est-Ind dated 1.12.1999, the applicant failed to produce any documents in support of the dates to substantiate the claim. Thus, the above dates were treated as absent.

E. That the applicant vide his another application dated 31.7.2000 claimed that he should be treated on duty on 13.11.1999, 17.11.1999, 22.11.1999, 25.11.1999, 30.11.1999 and from 26.12.1999 to 16.5.2000 and pay and allowance for the above dates i.e. 13.11.1999, 17.11.1999, 22.11.1999, 25.11.1999, 30.11.1999 that he



was detained by the CMO/Medical Board, Allahabad for his medical checkup, the absence of the applicant from duty could not be regularized. Further, based on MD Eye Hospital letter dated 6.3.2003 wherein it has been stated that the applicant insisted for mature contract operation, the absent period w.e.f. 26.12.1999 to 16.5.2000 could not be regularized to be treated on duty as the applicant was only directed for medical checkup and not for administering treatment."

4. Counsel for the applicant submitted that there is no separate detention letter that would be given by the medical board. The details as contained in Annexure CA 1 to CA 4 are concrete proof that the applicant had to appear before the medical Board on a number of occasions. The fact further remains that the applicant had undergone the operation for his cataract and the details as furnished in the CA would vouch that the applicant was to attend the Medical Board on the above days.

5. Arguments were heard and documents perused. The records as available in the pleadings, substantially go to prove that the applicant had presented himself on the dates mentioned above and for operation on cataract, he was also admitted in the Hospital. There is no reason whatsoever to disbelieve the statement of the applicant and insistence upon the production of detention certificate is not one contemplated in the Rules as such. Even if one such certificate could be given by the Board, the other documents CA-1 to CA 4 are sufficient to believe the words of the applicant.

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6. In view of the above, the **OA succeeds**. It is declared that the applicant is entitled to pay and allowances for the period 13-11, 17-11, 23-11, 25-11, 30-11-1999 and from 26-12-1999 to 16-05-2000. Respondents are directed to work out the same and make the payment to the applicant within a period of 3 months from the date of communication of this order. Should they fail to make the payment within the aforesaid time frame, payment made thereafter shall be incremented by interest calculated @ 9% per annum for the period from the date of expiry of three months till the date of actual payment.

7. Under the circumstances, there shall be no order as to cost.



MEMBER-J

GIRISH/-