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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No.371 of 1987

Durga Prasad Gupta Applicant.

Versus

Supdt. Posts, West Dn., Varanasi
and another Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, Durga Prasad Gupta, has challenged the recovery of pay and his retirement benefits from a back date. Briefly stated the facts are that on 5.10.1984 the petitioner advised the respondents that due to retinal detachment he wanted to take retirement on grounds of invalidity though he had only nine months more to serve before superannuation. He was directed to present himself before the Chief Medical Officer for examination. He was declared unsuitable for further service on 12.3.1985 as he was completely and permanently incapacitated. While action was being taken to retire him the applicant obtained a fitness certificate from a private medical practitioner and reported for duty on 1.4.1985. On 22.5.1985 he again applied for leave for three weeks on Medical Certificate. In the meantime orders retiring him with effect from the date he was declared incapacitated, i.e. 12.3.1985 were issued on 19.6.1985 based on DPS, Allahabad's memo dated 7.6.1985. Since he had joined duty on 1.4.1985 and was paid salary upto 30.6.85

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the same was ordered to be recovered from his DCRG in view of the orders of his retirement from 12.3.1985.

2. At the Bar the main contentions advanced by the learned counsel for the petitioner were that since the petitioner had actually worked upto 30.6.1985 he could not be retired retrospectively with effect from 12.3.1985 and the recovery of the salary and leave salary paid to him was incorrect and illegal. This was opposed by the learned counsel for the respondents on the grounds that the petitioner had cheated the administration by getting a fitness certificate from a private medical practitioner and reporting for duty. According to respondents he should have obtained the fitness certificate from CMO. Also in view of the CMO's declaring him unfit the fitness certificate issued by the private medical practitioner had no value. It was also contended on behalf of the respondents that this was done to gain benefits which became applicable to persons retiring after 1.4.1985. We have perused the case file also carefully.

3. It is not under dispute that the petitioner was taken on duty on 1.4.1985 by his incharge and he worked upto 22.5.1985 before he proceeded on leave on medical certificate. It is also not under dispute that he was asked to work when he reported for duty and he was paid the salary and leave salary. It is not respondents' case that during the period 1.4.1985 to 22.5.1985 the petitioner did not work or that there was any complaint against his working due to his incapacity. Thus once a person has been taken back on duty/the respondents and they found nothing wrong with him to arouse any action, they cannot blame the petitioner that he joined duty incorrectly or by cheating them.

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4. We also note that the petitioner's joining duty was also in the knowledge of the respondents. They only told him that he was doing so at his own risk. What such a letter should mean is not clear? If the respondents were relying on the CMO's report which was in their possession and on which they were processing action, their letter of 9.5.1985 (Annexure 'A-I' to the application) was totally uncalled for and they should have stopped the petitioner from joining, and also decided his case quickly. They, however, remained content by just issuing this letter on 9.5.1985 and the petitioner continued to work upto 22.5.1985.

5. On 1.10.1985 the respondents have issued another letter to the petitioner asking him ^{to show} how he resumed duty on 1.4.1985 by producing a fitness certificate from a private medical practitioner which was against the rules as the certificate was to be obtained from the rank of CMO or higher medical authority. If such was the rule why did they accept the fitness certificate produced by the petitioner? As a matter of fact they had been negligent in this case and now they are wanting an explanation from the petitioner on the submission of the medical fitness certificate. This approach is incorrect and questionable.

6. The notice for retirement was sent by a memo of 19.6.1985. The petitioner had worked from 1.4.1985 to 22.5.1985 and went on leave with effect from 23.5.1985. He was paid upto 30.6.1985 by his incharge. This would go to indicate that the petitioner had worked and was allowed to be on the rolls. He can under the circumstances not be denied the wages and is entitled to have the period counted as regular service. An order retiring him from 12.3.1985 would be arbitrary and against natural justice. When the

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respondents allowed him to work this would be a sufficient circumstance to consider and treat the period as legitimately worked for which the petitioner has to be paid. At best the petitioner can be retired with effect from 19.6.1985 the date the memo was issued.

7. Under the circumstances the order of retirement would be effective from 19.6.1985 and the petitioner would be entitled to the refund of the amount recovered from him for the period 13.3.1985 to 19.6.1985. We order accordingly and the application stands disposed of in these terms. Parties will bear their own costs.

Feen
VICE-CHAIRMAN.

Shrikant
MEMBER (A).

Dated: January 8/1, 1988.

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