

( OPEN COURT )

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 3rd day November, 1995

Original Application No.1839 of 1992

QUORRUM :-

Hon'ble Mr.S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

R.K. Goswami son of Shri

Pragi Lal Goswami,

Resident of Quarter No.2/1, Zone 6,

Lakeview Camp, P.O. Talbehat,

District-Lalitpur (U.P.)

(By Sri M.P. Gupta, Advocate)

. . . . . Applicant

Versus

1. The Union of India through  
The Secretary Ministry of Defence,  
Government of India, New Delhi.

2. The Commander Works Engineer,  
HEADQUARTERS, Jhansi

(By Km. Sadhna Srivastava)

. . . . . Respondents

*W.L.*

O R D E R (Oral)

Hon'ble Mr. S. Das Gupta, A.M.

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 5-12-1992 by which the service of the Applicant has been terminated. It has been prayed that ~~in~~ the said order be quashed with all consequential benefits, or in the alternative, the Respondents be directed to provide a suitable alternative employment to the Applicant.

2. The brief facts of the case, which are not in dispute, are that the Applicant was working as an electrician. He met with an accident and sustained injuries. Subsequently, the Applicant was subjected to medical examination and the competent medical authority certified that his efficiency had decreased by 70% and therefore he was not fit for employment on the post which he was occupying. The Respondents thereafter issued the impugned order dated 5-12-1992 terminating the services of the Applicant on the ground that he has been declared medically unfit for rendering any service under the Govt. department.

3. The Applicant has challenged this order on the ground that he was not rendered unfit for rendering any service under the Govt. department and this was not the text of the medical certificate. His

*W.C.*

contention is that the medical authority only certified that he was not capable of performing the duties of electrician and, therefore, he could have been considered for an alternative employment.

4. The Respondents have filed a counter affidavit, in which it has been stated that as the Applicant's services were terminated on his medical unfitness, there was no need to give opportunity to the Applicant to show cause. However, taking a pragmatic view of the situation, the department reconsidered the matter and was prepared to offer an alternative appointment, which is, however, lower in rank as compared to the post he was earlier holding. It has also been stated that if such appointment is not acceptable to the Applicant, he may be granted invalid pension under the relevant CCS (Pension) Rules.

5. The Applicant has filed a rejoinder affidavit in which he has enclosed certain letters which indicate that the Applicant was sent for medical examination with regard to his fitness for the post of LDC/Store Keeper. The medical authority has certified that the Applicant is fit for the post of LDC provided he has adequate knowledge of typing, failing which he is fit for appointment as Storeman/Store Keeper.

6. We have heard Learned Counsels for both the parties and perused the record.

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7. It is not the case of the Respondents that there is no liability on the part of the Govt. to offer an alternative employment to the Applicant and his services can be terminated on his being declared ~~on~~ being unfit for the post he was holding. ~~However, owing obligation,~~ The Applicant is being considered for an alternative employment but the posts which ~~has~~ been mentioned in the counter affidavit are lower in rank as compared to the post the Applicant was holding. It is clear from the Annexures to the rejoinder affidavit that the department had also been considering an alternative employment as LDC or Storeman/Store Keeper to the Applicant and for this purpose he was sent for medical examination in which he was found to be fit. There is no averments in the <sup>Supplementary</sup> counter affidavit as regards this fact and there is no averment either that no post of LDC or Storeman/Store Keeper is available on which the Applicant can be accommodated.

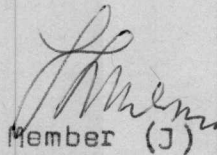
8. In view of the foregoing we dispose of this Application with a direction to the Respondents to consider offering employment to the Applicant on the post of LDC if he is found otherwise fit for this post, failing which he may be considered for the post of Storeman/Store Keeper, provided a vacancy is available in this category to accommodate the Applicant. In case the Applicant is found unsuitable on any

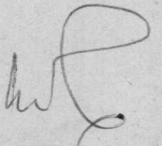
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ground other than medical unfitness for any of these posts or if no vacancy is available in this category, the Respondents may offer an alternative employment in the category mentioned in Para 4(a) of the suppl. counter affidavit and it will be upto the Applicant to accept or reject the same. In case, he rejects such offer, no further action need be taken by the Respondents.

9. However, in case he is offered an alternative employment and he accepts the same, the intervening period shall be covered by grant of leave. This period shall count as qualifying service for the purposes of terminal benefits.

10. There shall be no order as to costs.

  
Member (J)

  
Member (A)

RBD/