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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of order: 23.03.2001.

O.A.NO. 185/96

Narendra Kumar Sharma S/o Shri Ghanshyam Sharma, Sr. Translator
(Hindi), Indian Air Force, Jodhpur, R/o B-9, Sir Pratap
Colony, Jodhpur. Ratanada, Jodhpur

.....Applicant.

VERSUS

1. Union of India through Defence Secretary, Government of India, Delhi.

2. Air Officer Commanding, Air Force Station, Jodhpur (Raj).

.....Respondents.

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CORAM:

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. Harish Purohit, Counsel for the applicant.

Mr. Ravi Bhansali, Counsel for the respondents.

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ORDER

PER MR.A.K.MISRA:

The applicant had filed this O.A. with the prayer that the impugned order dated 10.5.96 (Annex.A/1), passed by the respondent No. 2, be declared illegal and be quashed. The respondents be restrained from terminating the services of the applicant and the applicant be directed to be treated as an employee having permanent status.

2. The applicant had also prayed for interim relief for

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staying the operation of the impugned order dated 10.5.96 (Annex.A/1).

3. On behalf of the respondents, a caveat was filed and, therefore, Shri Ram Narayan Choudhary on behalf of Shri P.P.Choudhary, entered appearance and took notice of the O.A. After hearing the parties, the operation of the impugned order Annex.A/1, dated 10.5.96, was stayed. The interim order so granted was extended from time to time which is continuing upto till now.

4. The respondents filed preliminary objections with a reservation to file a parawise detailed reply as and when occasion arises. However, subsequently no detailed reply was filed by the respondents. The respondents raised preliminary objection that the application is not maintainable as the applicant secured the appointment on a post reserved for handicapped candidate by describing himself as a handicapped candidate being a deaf person.. The applicant concealed the material facts and failed to appear before the Central Standing Medical Board, Safdarjung Military Hospital, New Delhi, inspite of repeated intimations. The applicant is continuing in service due to the stay order granted by the Court in different writ petitions and the original applications against the proposed action of respondents terminating the services of the applicant. The respondents have submitted that the applicant is not entitled to any relief.

5. A rejoinder was filed by the applicant meeting the preliminary objections raised by the respondents to which a reply was also filed by the respondents. Thereafter, the applicant filed an additional affidavit along with certain documents. The respondents filed additional affidavit in answer to the additional affidavit of the applicant. Thereafter again an additional

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affidavit was filed by the applicant alongwith certain medical reports.

6. We have heard the learned counsel for the parties and have gone through the case file. In order to deal with the controversy in hand, the brief history of the previous litigation and facts of the case, are required to be given.

7. The applicant was appointed on the post of Senior Translator (Hindi), in temporary capacity vide order dated 28.6.1982. The appointment of the applicant was made after conducting a written test and interview. He was placed on probation for a period of two years, however, the services of the applicant were terminated vide order dated 28.2.1984. The applicant challenged the said termination order by filing a writ petition before the Hon'ble High Court. The said Writ Petition was transferred to this Tribunal on coming into force of the Administrative Tribunals Act, 1985. The said Transferred Application was accepted by this Tribunal vide its order dated 29.5.1986 and the termination order was quashed. The applicant thereafter, resumed his duties on 17.9.1986. Thereafter, a seniority list of Senior Translators (Hindi), was notified on 12.2.1990. The applicant stood at No.4 but the applicant was denied promotion without any reason in spite of excellent service records. It is alleged by the applicant that again vide Notice dated 18.6.1991 (Annex.A/5), the services of the applicant were ordered to be terminated on expiry of one months notice. The applicant again filed an O.A. which was registered at No.289/91. In this O.A., the operation of the impugned order was stayed and this O.A. came to be decided on 5.8.1993 and the respondents were directed to consider the representation of the applicant and dispose of the same by a reasoned speaking order. It was also

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directed in the same order that in case respondents decide again to terminate the services of the applicant then a fresh notice to the applicant should be issued. The respondents decided the representation of the applicant against the applicant. The applicant again challenged the said order deciding the representation but his O.A. was disposed of as having been filed prematurely. It is also alleged by the applicant that on 18.12.95 there was an order from the Air Headquarters promoting the applicant as Translation Officer (Hindi) but this promotion order was not given effect-to, therefore, the applicant submitted a representation on 19th of March, 1998 requesting the respondent No. 2 to give effect to the promotion order. The applicant was informed that his promotion order has been kept in abeyance and thereafter the applicant was served with the impugned order dated 10.5.1996 (Annex.A/1) informing him that his services shall stand terminated w.e.f. expiry of one months period from the date of service of the notice. Hence, this O.A.

8. The applicant has challenged the impugned transfer order on the ground that the order is without jurisdiction. The applicant had completed more than 14 years of service in the respondent department and has acquired a status of quasi-permanent. The impugned notice is arbitrary, unjust and violative of fundamental rights. It is stigmatic in nature. The services of the applicant cannot be terminated without holding regular disciplinary proceedings. The respondents cannot themselves conclude that applicant is not a deaf person. The applicant has crossed the upper age limit for re-employment, hence, the impugned order is against the principles of natural justice and equity.

9. The contentions of the respondents were described in brief in the earlier part of the order. The main defence of the

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respondents is that the applicant secured employment as a handicapped person and subsequently failed to produce appropriate medical certificate in support of being a handicapped. Even he failed to present himself before the Central Standing Medical Board, Safdarjang Hospital on two occasions on the ground of illness which was nothing but an excuse for not appearing before the Board. The subsequent pleadings i.e. rejoinder additional affidavit, replies etc. are all related to facts and elaboration thereof.

10. The learned counsel for the parties elaborated their arguments on the basis of their pleadings which we have considered.

11. There is no dispute that the applicant had applied for the post of Senior Translator (Hindi) as a deaf candidate in pursuance of a departmental notification dated 7.3.1982, Annex.R/4, in which one such post was kept reserved for a deaf candidate. The applicant supported his application with medical out-door ticket dated 5.4.1982 but that was not accepted by the respondents. The applicant could not produce the medical certificate issued by the S.M.S. Hospital, Jaipur, as alleged by him on the ground that the same was not available with him. Thereafter, the applicant was directed to get himself medically examined by appearing before the Central Standing Medical Board, Safdarjang Hospital, New Delhi, on 31.7.1990 but the applicant did not appear before the said Board on the ground of his illness. He was again directed to be present before the said Board on 7.10.1990 but again the applicant did not present himself before the concerned board on the ground of illness. This fact is admitted by the applicant in his rejoinder. It is clear from the facts as narrated above that the applicant had secured appointment on a reserved vacancy for a deaf candidate, therefore, it was for the applicant to establish that he was a deaf

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candidate and was fully eligible to be appointed on that post. In the letter dated 15.5.1982 (Annex.R/2), it is mentioned as to who could be treated as a deaf candidate, which reads as follows:-

"DEAF— The Deaf are those in whom the sense of hearing is non functional for ordinary purpose of life. They do not hear, understand sounds at all events with amplified speech. The cases included in this category will be those having hearing loss more than 90 decibels in the better ear profound impairment or total loss of hearing in both ears."

This definition is said to be contained in the manual of instructions of placement of physically handicapped as described in para 3 (B) of the same letter.

12. The Out-door ticket dated 5.4.1982 which was produced by the applicant along with the audiogram report was considered by the authorities and in view of the definition as quoted above, the applicant was not found to be totally a deaf person and that is why he was directed to re-appear before the medical board on two occasions on which occasions the applicant failed to appear for his medical examination. Therefore, it is very much clear ^{that} the applicant initially did not produce any certificate that he was a totally deaf person in order to be appointed as a deaf candidate and thereafter avoided medical examination on the pretext of his illness. This is not convincing that on both the occasions when the applicant was directed to appear before the medical board, he fell ill. In our opinion, the so called illness was only an excuse for avoiding medical test relating to his hearing impairment and, therefore, presumption can be drawn that had the applicant being a deaf he would not have avoided ^{app} hearing before the medical board for such examination.

13. It may be mentioned that on 5.2.2001 the applicant produced an additional affidavit along with OPD Ticket and

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Audiometry Report in support of his contention. But from this report also, it is not established that the applicant is absolutely a deaf. In this report, ' Moderate Conductive Hearing Loss' is mentioned. Thus, the contention of the applicant that he is a deaf candidate is difficult to believe. There is a certificate dated 9.5.96 (Annex.R/3), issued by the Flight Lieutenant, Senior Education Officer. In this certificate, it is mentioned that "Shri N.K.Sharma is capable of hearing all my instructions conversation as a normal human being without resorting to any type of hearing aid. He responds to all my conversation normally. Even telephone he is capable of entering into conversation like a normal human being!" If this certificate is read together with the fact of applicant's failure to present himself before a medical board and in context of applicant's own document which he presented along with his additional affidavit dated 5.2.2001 than the only ir-resistable conclusion is that the applicant is not a totally deaf person and had managed to secure appointment on the post meant for deaf only. On discovery of these facts, the services of the applicant could be summarily terminated. We do not find any force in the contentions of the applicant that his services could be terminated only after initiating proper departmental proceedings. It should not be lost sight off that the applicant had been continuing in service all along under the orders of the Court. When his services were sought to be terminated in 1984 he secured an order in his favour and was deemed to be in service in pursuance of his appointment order and thereafter, the applicant is continuing in service either due to stay order granted by the Court or due to time taken by the respondents in initiating proper proceedings relating to termination of his services.

14. Therefore, this period of service which the applicant had spent during the judicial process, cannot confer on him any right

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to claim longevity of his service for initiating any further action as claimed by him.

15. During the course of arguments, it was proposed by the learned counsel for the applicant that the applicant can even now be directed to appear before the medical board for medical examination in respect of his hearing impairment by fixing a date. In this respect it would be useful to mention that as early as 8th of September, 2000, we had ordered the applicant to produce any record to show as to when he appeared before the medical board in Safdarjung Hospital, New Delhi. In reply to which the applicant had filed an additional affidavit on 15.9.2000 stating therein that he could not appear before the medical board on two occasions because of illness. We had considered this prayer of the applicant but could not convince ourselves to accept the prayer of the applicant because we found that after five years of the institution of the present O.A., such prayer on the part of the applicant was not bonafide and has been made to further prolong the present O.A. and, therefore, the same was rejected. In our opinion, the applicant is trying to evolve such grounds so that he may continue in service on one pretext or the other.

16. In view of the above discussions, we are of the opinion that the impugned Notice dated 10.5.1996 (Annex.A/1), issued by the respondent No. 2, is not required to be quashed and the applicant is not entitled to any relief. The O.A. of the applicant deserves to be dismissed.

17. The O.A. of the applicant is, therefore, dismissed with no orders as to cost.

Gopal S
(GOPAL SINGH)

Adm. Member

A.K. Misra
(A.K. MISRA)
Judl. Member

Final copy
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28/3/07

Naval
(Headquarters)
27/3/2007

Part II and III destroyed
in my presence on 26/3/07
under the supervision of
section officer () as per
order dated 19/2/07

Section officer (Recd)