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Central Administrative Tribunal  
Principal Bench  
CA-2182/95

New Delhi, the 26 April, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)  
Hon'ble Shri R.K. Ahooja, M(A)

Dr. (Mrs.) Poonam Sharma  
R/o A-1/67, Janakpuri  
New Delhi.

... Applicant

(Advocate: Sh. S.K. Sawhney)

versus

1. Secretary,  
Ministry of Health,  
Nirman Bhawan,  
New Delhi.

2. Chief Administrative Officer,  
Safdarjung Hospital,  
New Delhi.

3. Medical Superintendent  
Safdarjung Hospital  
New Delhi.

... Respondents

(Advocate: Shri V.K. Mehta, )

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant was appointed as a Senior  
Resident in Obstetrics and Gynae Department of the

Safdarjung Hospital, New Delhi w.e.f. 7.11.94.

As per terms of appointment, the post to which

she was appointed was temporary and was for a period

of three years with one year probationary period.

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The applicant after working for some time proceeded on maternity leave w.e.f. 22.2.95 and continued on leave till 18.8.95. She rejoined duty on 19.8.95 but after four days submitted an application on 23.8.95 for leave for a period of six weeks having undergone an abortion. On expiry of this period she reported back for duty on 5.10.95. Thereafter she was asked to appear before the Medical Board to ascertain her fitness. She was declared fit by the Board but she alleges that despite her various representations she was not assigned any job to do. She further alleges that nothing regarding her service has been given to her in writing and no cause or reason has been communicated to her regarding the refusal to assign her duties. In the circumstances she has come before the Tribunal seeking directions to the respondents to permit her to join her duties as Sr. Resident and to grant her all benefits of service in terms of the letter of appointment including payment of salary with all benefits w.e.f. 23.8.95 when she proceeded on leave on account of MTP (Medical Termination of Pregnancy).

2. The respondents in their reply, amongst other by counters, pointed out that/the order dated 30.10.95 (Annexure R-4) the services of the petitioner

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had been terminated w.e.f. 20.10.95. The applicant therefore sought permission to file an amended OA by which she challenged the impugned order of termination dated 30.10.95 and also the order of the respondents whereby the period of three days prior to the beginning of leave for abortion was treated as extra-ordinary leave as she claimed that she was on duty during that period.

3. The respondents have also filed the reply to the amended OA. They submit that after her appointment on 7.11.94, the applicant had been almost continuously on leave from 22.2.95 to 25.5.95 and extended medical leave from 23.5.95 to 22.7.95. 23.7.95 was a Saturday, the applicant having joined on 24.7.95 again went on medical leave from 25.7.95 to 18.8.95. She rejoined duty on 19.8.95 being a Saturday and further proceeded on abortion leave from 21.8.95 to 1.10.95. They admit that on 5.10.95 she was asked to appear before a Medical Board and that on 9.10.95 an intimation was received that she had been found fit to rejoin duty. The respondents contend however that keeping in view the performance report given by the Head.of Deptt.

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of Gynecology vide letter dated 30.10.95 the service of the petitioner was terminated in pursuance of clause 1 and 2 of appointment letter (Annexure R-4) w.e.f. 20.10.95. They also allege that order of termination which was issued on 30.10.95 was sent to the applicant but by Registered AD/was received back with the remarks of the Postman that she had refused to accept it.

4. Shri S.K. Sawhney, Id. counsel for the applicant while arguing the case submitted that the applicant had ~~entirely~~ remained on leave, firstly on account of delivery of a child and subsequently on account of PIP but this was fully authorised under the rules and had been sanctioned and consequently the applicant could not be penalised for this reason.

5. Shri V.K. Mehta, counsel for the respondents on the other hand relied on the terms of the appointment letter and pointed out that the respondents were fully entitled to terminate the service of the applicant without assigning any reason and since no stigma attached to the applicant, there was no requirement to give her any show cause notice.

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6. We have carefully considered the arguments and pleadings of both sides. It is an admitted fact by both sides that the applicant who was appointed and joined her duties w.e.f. 7.11.94 worked continuously upto 21.2.95 and thereafter was continuously on leave but for a gap of one or two days. Thus the respondents had an occasion to judge the efficiency and work of the applicant during this period approximately of 3½ months. On the other hand the respondents submit that the HOD gave an adverse report on the work of the applicant vide her letter dated 5.10.95. But in the counter it has been stated that the applicant proceeded on leave for MTP without waiting for its sanction/though this leave has now been granted for full period. In the circumstances it is clear that the respondents had been satisfied with the performance of the work of the applicant otherwise action should have been taken much earlier since the HOD had no opportunity to see the work of the applicant after 22.2.95. Patently, the dis-satisfaction with the performance of the work of the applicant arises from the fact that she had no occasion to take long leave extending to / over a period

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of Eight months which may have <sup>been</sup> the cause for the dis-satisfaction of HOD and other respondents. It cannot be overlooked that the applicant was perfectly entitled to the leave in question and the same had also been sanctioned by the respondents.


7. Shri Sawhney, Id. counsel for the applicant placed reliance on the paragraph 1 and 2 of the appointment letter which states that the post is temporary and the service of the applicant can be terminated forthwith without giving any notice or indicating any reasons thereof. Nevertheless, it does not mean that the appointing authority cannot act in whimsical manner and without any foundation. If the applicant in the present case remained on leave on perfectly valid grounds and thereafter reported back on duty, this cannot be the cause of termination of her services. The respondents sanctioned the maternity leave and extension thereof on medical grounds and have also sanctioned the MTP leave. Now at the end of leave, termination order has been served upon the applicant. Clearly it is the long leave and not her performance which provides the nexus for respondents action. The reasons advanced by the respondents in their reply that the HOD considered her performance unsatisfactory was no ground since there was no basis for adjudging her work


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for a long period of eight months and no report had been given on her performance for the period of 3½ months when she had actually attended to her duties. In the above circumstances, we are of the opinion that the impugned order terminating the service of the applicant is liable to be set aside.

8. The application is allowed. The respondents are directed to take back the applicant in service with immediate effect. The applicant will however not be entitled to any back wages for the period she has not worked but the intervening period will be counted towards the grant of increment and for fixation of pay. There shall be no order as to costs.

  
( R.K. Ahuja )  
Member (A)

  
( A.V. Haridasan )  
Vice Chairman(J)

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