

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1348/ 1989.
T.A. No.

DATE OF DECISION August 29, 1989.

Ms. Hem Lata Pant _____ Applicant (s)

Shri R.N. Vatsa _____ Advocate for the Applicant (s)

Union of India & Anr. _____ Respondent (s)

Shri P.P. Khurana _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was recruited in the Indian Posts & Telegraphs Accounts and Finance Service Group 'A' on the results of the Civil Services Examination held in 1974 and was holding the post of Director (Plan, Finance & Capital) in the Department of Tele-communication, Sanchar Bhawan, New Delhi, has prayed for quashing of confidential Memorandum No. 33-30/87-SEA, dated the 30th June, 1989 (Annexure 'A' to the application) whereby, in continuation of Office Memo. of even number dated 30-5-1989/1-6-1989, she was directed, in terms of Rule 2 of CCS (Medical Examination) Rules, 1957, to proceed on leave forthwith pending medical examination by a Board constituted by Dr. Ram Manohar Lohia Hospital and to present herself before that Board on 4-7-1989.

2. The grounds on which the prayer is based are:

- (1) the impugned Memorandum has not been issued by the competent authority;
- (2) it has not been signed by the appropriate authority;
- (3) it has been issued as a result of conspiracy among persons and authorities who have been harassing her;
- (4) she does not suffer either from a contagious disease or any physical or mental disability which can interfere with the efficient discharge of her duties; and
- (5) the Memorandum does not disclose any such disease.

She has, therefore, contended that the impugned Memorandum is against the rules and is illegal.

3. Notice was directed to be issued to the respondents on admission and interim relief. We have heard the learned counsel for both the parties and have carefully perused the application as well as the departmental file which has been made available to us by the respondents. We feel that this case can be disposed of at the admission stage itself.

4. The salient facts, in brief, are that an Office Memo No. 33-30/87-SEA, dated 30-5-89/1.6.89 was issued to the applicant in which it was stated that the President had decided, in accordance with the instructions contained in Rule 2 of the Central Civil Services (Medical Examination) Rules, 1957, that Miss Hemalata Pant, Director (PFC) be examined by a Medical Board to be constituted by the Medical Superintendent of Dr. Ram Manohar Lohia Hospital and that she should present herself before the Medical Board on the date and time to be intimated by the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi. A copy of the same was also forwarded to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi. She received this communication, but returned it with certain remarks which are not being reproduced here as they are not relevant. It may be mentioned that at the time of hearing, she denied that she received this communication.

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The communication in question is on the file of the Department and the remarks with which she returned it are in her own hand-writing. In continuation of the above Memo, another Memorandum was issued on 30.6.1989 (Annexure 'A' to the application) in which she was informed that a Board for her Medical Examination had been constituted as intimated by Dr. Ram Manohar Lohia Hospital, New Delhi vide their letter dated 19.6.1989 and that in terms of Rule 2 of the CCS (Medical Examination) Rules, 1957, she was directed to proceed on leave forthwith pending medical examination and also to present herself before Dr. D. Sengupta, Sr. Physician and H.O.D. (Medicine) in Room No.46, CGHS Wingh, on 4.7.1989 at 10-15 AM. She appeared before the Medical Board on the above date, but in her application she has contended that no medical examination was conducted and no ^{other} date for such examination was communicated to her. The Medical Board met on 4.7.1989, examined her and sent their recommendations to the Department vide Dr. Ram Manohar Lohia Hospital, New Delhi letter No.13-9/89-RMLH(M.II)/14416, dated 17th July, 1989. This report was read out at the bar and the recommendations of the Medical Board are reproduced below: -

"RECOMMENDATIONS:

In present state of mind Miss Hemalata Pant is not fit to discharge her duties as a Government officer.

As per available information she did not get any treatment so far for her psychiatric illness. Hence, Board is of the opinion that she should be admitted in one of the Psychiatric Wards of Government Hospital alongwith a guardian for proper treatment or at Mental Hospital, Shahadara, Delhi or C.I.P. Ranchi. "

After receipt of the opinion of the Medical Board, another communication was issued to the applicant on 21st July, 1989 in which she was directed to get herself admitted in one of the Psychiatric wards of Government Hospital along with a guardian for proper treatment as recommended by the Medical Board. She was also informed that she could resume duty only after

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obtaining a certificate of fitness for discharging her duties as Government Officer from the Medical Board. She refused to receive this communication and the envelopes concerning this matter are available on the file with her remarks on the envelopes in her own hand-writing.

5. Rule 2 of the Central Civil Services (Medical Examination) Rules, 1957 provides that "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." Sub-rule (4) of Rule 2 of the Rules ibid provides that 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. Sub-rule (2) of Rule 1 provides that these rules, inter-alia, shall apply to every person who is a member of a Civil Service of the Union, or who holds a civil post under the Union. It is not disputed that these rules apply to the applicant. The competent authority in this case is the President i.e., the Minister incharge. The file of the Department shows that the Office Memorandum dated 30-5-89/1-6-89 was issued with the approval of the Minister for Communications, Government of India, and the Memorandum dated 30.6.89 was issued after obtaining the approval of Minister of State, Communications. Thus, there is no doubt that both the Office Memoranda had been issued under orders of the competent authority. Both the Memos, referred to above, have been signed by Asstt. Director General (SEA) and the

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applicant has challenged that the impugned Memo:has not been signed by a proper authority. It is not necessary that the competent authority should himself sign the communication which is issued with his approval. All orders and other instruments made and executed in the name of the President could be signed by an officer having regular or ex-officio secretariat status of and above the rank of Under Secretary, or others specifically authorised to authenticate such orders under the Authentication (Orders and Other Instruments) Rules, 1958 made pursuant to Article 77(2) of the Constitution. Article 77(2) of the Constitution provides that orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. It has not been shown that the Assistant Director General (SEA) was not authorised to authenticate orders issued to the applicant. The contention of the applicant to the effect that he being junior to her could not have issued the orders to her is without any substance.

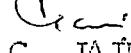
6. The applicant has alleged that Memorandum dated 30.6.1989 was issued because of a conspiracy hatched by a group of officers (Ground VI on page 9 of O.A.). The applicant has not produced any evidence to substantiate this allegation, nor has she impleaded such officers as parties to the Application.

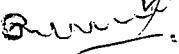
7. From what has been stated above, it is also established that the applicant did appear before the Medical Board on 4.7.1989 and she was examined by the Board and further that the Board has recommended psychiatric treatment for her. With the communication dated 30.5.1989/ 1.6.1989 sent to the Medical Superintendent, Dr. Ram Manohar

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Lohia Hospital, New Delhi, history in brief indicating the behaviour of the applicant and the sequence of events that had led the President to form the opinion for her medical examination was also sent.

8. In view of the above discussion, we hold that there is no legal infirmity in the order dated 30-5-89/ 1.6.89 and the impugned order dated 30.6.1989 and that the applicant is not entitled to the reliefs prayed for in this application, which is accordingly rejected. We would, however, suggest that a copy of the full Medical Report be made available to the applicant and that the disbursement of leave salary to her may also be arranged in time so that she is not put to any financial hardship. There shall be no order as to costs.


(P.C. JAIN)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN