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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2216/89

Date of decision: 17.09.1993.

Miss Usha Gupta

...Petitioner

Versus

Union of India through the
Medical Superintendent,
Safdarjung Hospital, New
Delhi & Another

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri O.N. Moolri, Counsel.

For the respondents

Shri M.L. Verma, Counsel.

1. Whether reporters of local papers may be allowed to
see the judgement? *No*
2. To be referred to the Reporter or not? *Yes*


(I.K. RASGOTRA)
MEMBER(A)

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For the petitioner

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For the respondents

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(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

We have heard Shri O.N. Moolri and Shri M.L. Verma, learned counsel for the petitioner and respondents respectively.

2. The case of the petitioner is that she was appointed as Medical Social Worker in the Safdarjung Hospital on 9.6.1977. She suffered from paranoid schizophrenia. She was treated in the Lady Harding Medical College in 1986 and was admitted in the hospital for 17 days in the month of August, 1986. In this state of mental disorder she submitted a letter addressed to the Head of Department, Rehabilitation Department, Safdarjang Hospital on 18.11.1988 which reads as under:-

"This is 3rd time I am requesting you to accept my resignation from the post I am holding in your office of Rehabilitation department. I really cannot cope up with the job of Medical Social Worker entirely due to my personal reasons. Please accept it by not blocking me to make me free from this duty. No grievance against anyone. Please

[Signature]

don't mind it. I wish for a better Social Worker to join here on the same post.

With thanks,

18.11.88.
Please inform me when
should I come to
hand over the
charge if necessary. "

Yours faithfully,
sd/-
(Miss Usha Gupta)
Medical Social Worker.

This letter is alleged to have been written by her when she was mentally unstable and suffering from schizophrenia. The respondents took this letter as an unconditional resignation and accepted the same on 21.11.88 stating that "With reference to her communication dated 18.11.88 on the subject mentioned above, Miss Usha Gupta is hereby informed that the Medical Superintendent has been pleased to accept her resignation from the post of Medical Social Worker w.e.f. 21.11.88(FN)." It is not disputed that the purported letter of resignation is the only document which the respondents have. The said letter, however, was stated to be the third reminder to the respondents. There is no earlier letter in which the petitioner had tendered her resignation. It is also not disputed that the petitioner was admitted in the Hospital for Mental Diseases, Shahdra on 21.12.1988. She was reexamined in the out patient department on 11.3.89 when she was certified to have improved sufficiently "to the extent that she can join her normal duties forthwith". On 11.3.1989 the mother of the petitioner wrote to the Medical Superintendent, Safdarjung Hospital, New Delhi, explaining that her daughter was suffering from mental disturbance and, therefore, she should be allowed to withdraw the alleged letter of resignation. The principal argument adduced by the learned counsel for the petitioner is that the alleged letter of resignation in fact is not a resignation letter, as there is no previous letter of resignation submitted by the petitioner. The alleged letter

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of 18.11.1988 was only a reminder which only goes to show that the letter was written by the petitioner when she was in a state of mental disorder and when she did not know and did not comprehend the contents of the said letter. This letter, therefore, cannot be taken as a letter of resignation. It was further argued that since the petitioner was suffering from mental disease, the respondents instead of hastily accepting the resignation on 21.11.1988 on the basis of her alleged letter of 18.11.1988 should have sent her to Medical Board and got her examined and proceeded to deal with the case in accordance with law.

3. We have considered the submissions made by the learned counsel for both the parties and considered the material on record. We find substantial merit in the argument of the learned counsel for the petitioner that the letter was written by the petitioner when she was suffered from mental disease. The letter itself first of all is not a complete letter of resignation. It only says that I am for the third time asking you to accept my resignation. There is no previous letter of resignation. Since she was working in the Safdarjung Hospital, it cannot and it is not the case of the respondents that they were not aware that the petitioner was suffering from schizophrenia. Having been aware of the fact that the petitioner was suffering from a mental disease, the fair and just course for the respondents was to proceed in accordance with the provisions made in the Central Civil Services (Medical Examination) Rules, 1957. These rules are made under the proviso to Article 309 and clause (5) of Article 148 of the Constitution. Rule-2 of the said rules provides:

"2. 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

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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. Such leave shall not be debited to the leave account of the Government servant, if the examining medical authority subsequently expressed the opinion that it was unnecessary for the Government servant to have been required to proceed on leave.

(2) On the basis of the opinion expressed by the examining medical authority and subject to the provisions of sub-rule (3), the competent authority may require the Government servant to proceed on leave, or if he is already on leave to continue to remain on leave or may retire him from service if he is a permanent Government servant, or may terminate his services if he is a quasi-permanent Government servant.

(3) The procedure for a medical examination, grant of leave on retirement from service, or termination of service under this rule shall be such as the President may by order prescribe.

(4) For the purpose of this rule, 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 his behalf.

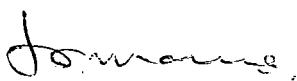



(5) For the avoidance of doubt, it is hereby declared that non-compliance with a direction given under sub-rule (1) or sub-rule (2) of this rule will be considered a good and sufficient reason for the imposition of a penalty in accordance with the rules governing discipline applicable to the Government servant concerned."

The action of the respondents in accepting the resignation of the petitioner on the basis of the letter of 18.11.1988 smacks of unfair practice. In their anxiety to get rid of the petitioner they failed to look into the relevant rules which regulate such cases. In the above circumstances of the case the order of the respondents dated 21.11.1988 and subsequent orders passed upholding the said order cannot be legally sustained and accordingly are set aside and

quashed. The petitioner shall, therefore, be deemed to have ^{and shall be on the roll of the respondents} been in the Government service from 18.11.1988 onwards. The respondents shall direct her to undergo a medical examination during the period of one month from the date of communication of this order in accordance with the rules adverted to above. The respondents shall also pass necessary order after receiving the medical report in regard to the treatment of the period from the date of acceptance of resignation till the date an order is passed on the basis of the medical report, as leave due, leave not due, extraordinary leave, as the case may be in accordance with the relevant rules.

4. The O.A. is disposed of as above. No costs.


(J.P. SHARMA)
Member(J)


(I.K. RASGOTRA)
Member(A)

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