

Central Administrative Tribunal
Principal Bench, New Delhi.

DA-2230/89

New Delhi this the 6th Day of May, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member (A)
Hon'ble Ms. Lakshmi Swaminathan, Member (J)

Sh. A.K. Biswas,
Deputy Medical Superintendent,
Hospital for Mental Diseases,
Shahdara, Delhi-54.

Applicant

(By advocate Sh. L.K. Singh)

versus

1. Union of India,
through its Secretary to
the Ministry of Health and
Family Welfare,
New Delhi.
2. Lt. Governor, Delhi,
Raj Niwas, Delhi.
3. Secretary (Medical),
Delhi Administration,
5 Sham Nath Marg,
Delhi.

Respondents

(By advocate Sh. P.H. Ramchandani, Sr. Counsel with
Sh. J.C. Madan, Advocate)

ORDER (ORAL)
delivered by Hon'ble Mr. B.N. Dhoundiyal, Member (A)

This application has been filed by Dr. A.K. Biswas, Deputy Medical Superintendent, Hospital for Mental Diseases, Shahdara, Delhi against the impugned orders dated 2.11.1988 and 1.2.1989. By the order dated 2.11.1988, a penalty of reduction by two stages in the present scale of pay for a period of two years, non accrual of increments of pay during the aforesaid period of reduction and consequent postponement of future increments was imposed upon him. By the order dated 1.2.1989, his appeal for review of this order was rejected.

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The charges against the applicant was as under:-

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"That the said Dr. A. K. Biswas while functioning as D. M. O. Psychiatrist in the Hospital for Mental Diseases, Shahdara, Delhi during the period from 1.10.1978 onwards committed certain acts of omission and commission and negligence and failed to maintain devotion of duty. During the year 1981, Dr. A. K. Biswas was the Psychiatrist Incharge of Female 'B' Block where the patient Smt. Gulbir Kaur alias Rajni was kept u.e.f. 15.2.80 to 27.11.83. Dr. A. K. Biswas also did not care to look after the said patient and thereby caused substantial damage to this patient. The Utter neglect shown by Dr. Biswas is not looking after Smt. Gulbir Kaur is not only against the professional ethic but also misconduct on his part.

Thus the said Dr. A. K. Biswas failed to maintain devotion of his duties and thereby committed misconduct in terms of Rule 3(1) (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964."

He was found guilty of the charges levelled against him and the impugned order was passed by the Disciplinary Authority on the basis of the report of the enquiry officer and in consultation with the UPSC.

Thus the main case against the applicant is that he failed to report to the Police when the patient Smt. Gulbir Kaur alias Rajni was found missing from 9.15 A.M. to 4.30 P.M. on 13.2.1981. He further failed to direct the Medical Officer Incharge Dr. (Smt.) Bimla Bora to take a physical check up of the patient when she was traced. Later, when it was known that the patient was pregnant, he suppressed the fact of pregnancy of the patient in his letters to Nari Niketan and to her father.

We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has argued that the impugned order dated 2.11.1988 is defective inasmuch as the date on which the impugned order was to take

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effect has not been mentioned. He has drawn our attention to Rule 11 of the CCS(CCA) Rules which provides that the date from which it will take effect and the period for which the penalty shall be operative should be communicated. The respondents have clarified that the order is to take effect from the date of order. We do not think that a mere omission of the word 'from the date of order', vitiates these proceedings. It has also been argued that even during the Magisterial enquiry, it was not proved that rape was committed, hence the presumption of rape is unfounded. In any case the applicant as soon as he came to know about the missing patient asked the D.M.O. to look into the circumstances. We find from the enquiry report that during the hearing of the case, 90 prosecution documents and two defence documents were taken on record. 42 prosecution witnesses and two defence witnesses were examined. A Magisterial enquiry was also ordered and the enquiry officer came to the conclusion that there was gross omission by various officials in dealing with the pregnant patient. There was all out effort to hush up the entire matter and at no stage the Police was informed. The enquiry officer reached the conclusion that Dr. Biswas was aware that the patient Rajni was raped that she had become pregnant and given birth to a child and that the child died just after the birth. But he wrote to the patient's father regarding improvement of the mental condition of the patient in order to induce him to take away this daughter. He also approached

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the Nari Niketan for transfer of the patient although the patient was pregnant. These letters have been produced by the respondents as Annexures- 2&3 to the counter. The applicant was given due opportunity to clarify his position and before passing the final order, the disciplinary authority considered the report of the Enquiry Officer. U.P.S.C. was also consulted. It cannot, therefore, be said that the decision of the disciplinary authority was based on no evidence or was taken due to any extraneous circumstances or the prescribed procedure was not followed. We, therefore, hold that this is not a fit case for this Tribunal to interfere and the application is hereby dismissed.

No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

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