

(C)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 467 of 1989

New Delhi, this the 22nd day of February, 1994.

Hon'ble Mr J.P. Sharma, Member (J)
Hon'ble Mr B.N.Dhoundiyal, Member (A)

Dr. B.K.Jha,
Senior Psychiatrist,
R/O A-51, Swasthya Vihar,
Vikas Marg,
New Delhi. Applicant.
(by Advocate Mr K.K.Rai)

Versus

1. Union of India
through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
2. Union Public Service Commission,
through Chairman,
Shah Jahan Road,
New Delhi-110001. Respondents.

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

ORDER

(delivered by Hon'ble Sh. B.N.Dhoundiyal, Member (A))

In this O.A., Dr. B.K.Jha, a retired Senior Psychiatrist has challenged the impugned order dated 2.11.1988, whereby 10% of his monthly pension has been withheld for three years.

2. The applicant retired as a Senior Psychiatrist in the Ram Manohar Lohia Hospital on 31.10.1987. Earlier, while he was working as a Medical Superintendent in the Hospital for Mental Diseases, Shahadra, one Rajni, a chronic patient was due for ECT when she dis-appeared from her Ward during morning hours and re-appeared on the same day at 4.00 P.M. During this period, she was raped and she became pregnant and gave birth to a child, who died just after the birth.

Her pregnancy was detected only on 7.9.1981,

Sub

by the gyanecologist of S.D.N.Hospital. An inquiry was instituted against the applicant as also two others under Rule 14 of the C.C.S(CCA)Rules, 1965.

The charge was as under:

"..... Being the Medical Supdt., he was responsible for welfare of the patients. Dr.Jha was very careless and negligent towards the patient Smt.Gulbir Kaur & Rajni. During her stay in the hospital, she was raped. She because pregnant and gave birth to a child. The child died just after the birth....."

He was found guilty of the charges levelled against him and the impugned order of punishment was passed by the disciplinary authority in consultation with the U.P.S.C.

3. The applicant has challenged the impugned order on the ground that provisions of Rule 14(7) of CCS(CCA) Rules, 1965 require that the inquiry shall begin within 10 days from the date of receipt by him of the articles of charge and the statement of imputations of misconduct. Rule 14(2) of the Rules further provides that the the inquiry authority has to be appointed simultaneously with issuance of charge-sheet. This was not done. The inquiry officer's report mentions that when on 7.9.1981 the patient was declared 26 weeks pregnant by the Gynochoologist Hospital, Dr.Jha only called for a report without showing any alarm and instead of making proper investigation into this, or intimating the police about the incident, the Medical Supdt. only held the staff responsible for raising a false alarm. Without mentioning the fact of pregnancy, he wrote to DCP(WEST) that Rajni should be shifted to Nari Niketan immediately. This

(2)

letter was sent on 19.10.1981, when he was already aware that the patient was pregnant. Even when the death of the newly born child was reported to him, he did not order for post-mortem, knowing fully well that the child was illegitimate. The applicant has contended that though he was Medical Supdt., the Incharge of the Ward was primarily responsible for the welfare of the patient and his work is supervised by the Psychiatrist ~~Dr.~~ XXXXXXXX xx XXXXXXXX. He used to receive information about the patient only through them. As Rajni was a voluntary patient in terms of Section 4(1) of the Indian Lunacy Act, she was free to leave the hospital without much formality. She was supposed to get E.C.T. on that day. Many patients are scared of E.C.T. and hide themselves for fear of getting E.C.T. Neither the patient mentioned about rape nor anybody suspected of it at that time. Medico-Legal examination is done when there is suspicion of rape from the appearance, behaviour or statement of the patient. The question of her possible pregnancy, irregular ante-natal check-up and any complications during pregnancy was never brought to applicant's knowledge by any staff members and thus he was quite ignorant about the possibility of rape and pregnancy in this case. It was for the first time after her examination at S.D.N. Hospital on 7.9.1981 that the applicant learnt about her pregnancy and he immediately ordered an investigation by Dr. Biswas to enquire into the circumstances leading to her pregnancy and rape. Dr. Biswas could not find any one responsible for the rape in his report. Although the case was not lodged with the Police immediately, but the matter was reported to the police afterwards but even after an enquiry by the Vigilance Department of

D
D

Police under D.C.P.(East), no clue was found out. It was the duty and responsibility of the Medical Incharge of the Ward to send her for ante-natal check up regularly. It is risky for such patients to stay in the wards with other patients. Also, there is no arrangement for conducting the delivery. Shri H.S.Sabti, brother of Rajni was requested to take her home but no response was received. There was reluctance on the part of the Nari Niketan and it was in this context, that he wrote to D.C.P(East Delhi) to order for her transfer to such orders in the Union Territory of Delhi. As the inquiry was conducted by DCP(East) it was in his knowledge that Rajni was pregnant, even though this fact was not mentioned in the letter, addressed to D.C.P.(East) by the applicant. Such facts are not highlighted because of social stigma attached. The due date for delivery was 4.12.1981 but she delivered on 22.10.81 prematurely. The staff nurses on duty tried their level best to save the child, ^{died} but the child few minutes after birth. There was no neglect on the part of staff nurses to save the child. There was no foul play in the death of the baby. No suggestion was made by any staff members for the post-mortem of the child, so the applicant did not think that post mortem was necessary. He is not aware that the post-mortem is done invariably in all cases of illegitimate children who die after delivery. The inquiry officer makes a mention that "From these evidences a conclusion is drawn that although Dr.B.K.Jha had no direct lapses in the matter, yet he failed to exercise proper supervisory control when the untoward incident took place in his hospital and when an extra-ordinary circumstance was created

in which a patient required extra medical care." The applicant has also contended that there has been no application of mind by the respondents to the points raised in his representation which is evident from from the perusal of the impugned order as well as the advice given by the U.P.S.C. He has also claimed that since the lapse, if any, does not amount to misconduct or negligence and his pension cannot be withheld under Rule 9 of the CCS(Pension Rules), 1972. The applicant has prayed for quashing of the impugned order dated 2.11.1988, the inquiry report dated 21.1.1988, and the report of the U.P.S.C. dated 9.9.1988 and issuance of direction to the respondents to pay his full pension.

4. The respondents have contended that the punishment was imposed by the disciplinary authority after due consultation with the U.P.S.C. by order and in the name of the President. The applicant being over-all responsible of the patients, as also the actions of his subordinates could have advised the Medical Officer Incharge or the Psychiatrist to report the matter to the police about disappearance and reappearance of Rajni. As regards the delay in appointment of the Inquiry Officer, it is contended that the underlying idea behind rule 14(7) of the CCS(CCA) Rules, 1965 is that the Inquiry Authority will issue a notice to the Government servant to appear before him within ten days from the receipt of the documents of the case or within such further time, not exceeding ten days, as the Inquiry Authority may allow. On receipt of the written statement of defence, the disciplinary authority has to decide whether to inquire into the articles of charge, which are not admitted, or if

it considers it necessary to do so, appoint under sub rule(2) an inquiring authority. Hence, the inquiry officer can be appointed only after receipt of the written statement of defence. The misconduct of the applicant in his capacity as the Medical Superintendent of the Hospital for Mental Diseases, Shahdara is considered 'grave' as he had failed to take note of an untoward incident of disappearance of the female patient in mysterious circumstances on 13.2.1981. Further, he did not ~~exist~~ order ante-natal check up when the fact of Smt. Rajni's pregnancy was detected nor he ordered post-mortem into the death of the child. The disciplinary authority considered the gravity of the negligence of the applicant and ^{rightly} imposed the penalty exercising powers vested in Rule 9 of the CCS(Pension) Rules, 1972.

5. We have gone through the records of the case and heard the learned counsel for the parties. The basis of charge against the applicant is of negligence. He was an overall incharge of the Hospital and cannot escape his responsibility for the untoward incidents. Rule 9 of the CCS(Pension) Rules clearly mentions negligence as one of the grounds for continuation of the inquiry after the government servant has retired. Once it is clear that the applicant in fact was guilty of negligence as an overall supervisor, it cannot be said that the proceedings under Rule 9 of the CCS(Pension) rules are unwarranted. Having held that the inquiry was carried out in a proper manner we would refrain from interfering with the quantum of punishment. The application is, therefore, dismissed.

No costs.

B.N.Dhondiyal
(B.N.Dhondiyal)
(Member-A)

J.P.Sharma
(J.P.Sharma)
(Member-J)