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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1546/92.

New Delhi, the 24th day of Jan.'94.

THE HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

THE HON'BLE SHRI B.S. HEGDE, MEMBER (J)

Dr. Praveen Jain,
r/o B-84, Vivek Vihar,
Delhi-110 095.

... Applicant

versus:

1. Union of India,
Through Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi.

2. Medical Superintendent,
Safdarjang Hospital,
New Delhi.

3. Dr. K.K. Pandey,
Head of Department,
Department of Cancer Surgery,
Safdarjang Hospital,
New Delhi.

... Respondents

ORDER (ORAL)

[Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)]

The applicant was selected for the post of Senior Resident in the Department of Surgery, Safdarjang Hospital. He joined his duties on 10.4.1989. He is aggrieved by the Annexure 'A' Order dated 31.3.1992 which reads as follows :-

" In supersession of this Office Order No.3-1/92-Acad. dated 23.1.1992, the services of Dr. Praveen Jain Senior Resident in Cancer Surgery has been terminated w.e.f. 13.3.92 F.N. due to prolonged absence from duty."

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2. The Respondents have filed a reply and they have stated as below :-

1. The Applicant was appointed as Senior Resident in the Department of Cancer Surgery w.e.f. 10.4.89 F.N. The job of Senior Resident is a tenure job for 3 years. The applicant started absenting himself from duties from January, 1992 without any intimation or sanction of any leave (Copy of the absent report is enclosed). He was called for duty telegraphically on 10.3.92, and the copy of the telegraph was also sent by post. In response to the telegraph, the applicant slipped an application in the chamber of Dr. K.K. Pandey, HOD Cancer Surgery indicating some personnel problems. (Photocopy attached).

2. There are only 2 posts of Senior Resident in the Deptt. of Cancer Surgery. The unauthorised absence of one Senior Resident created lot of problem in the deptt. and adversely affected the patient care services. The applicant did not care to report to his duty and remained absent from the deptt. till March 1992. In view of the prolonged absence of the applicant from duty, the hospital authority has to report to terminate the services of the applicant in public interests.

3. It is thus clear that the reasons for which the

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applicant's services were terminated is his unauthorised absence from a responsible post which created problems for the department.

4. As both the parties are absent, we have perused the pleadings and we proceed to pass final order.

5. The applicant has produced with his rejoinder, the original order dated 23.1.1992 (As Ann.A) referred to in the impugned, Ann.A order. In this earlier order it was stated that the applicant would complete his 3 years tenure on 9.4.1992 and that he would be relieved by his Head of Department on that ^Udated. Before that was done, his service was terminated by the Ann.A order dated 31.3.1992.

6. The circumstances mentioned in the respondents' reply do not give any right to them to terminate the applicant's services in the manner they have done by casting a stigma on him as is evident from the Annexure 'A' Order, which specifically states that he has been terminated due to long absence of his duties. An order of ^{an} this nature has to be construed to be Order

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imposing a penalty. It is, therefore clear that a penalty has been imposed without following the procedure laid down by law.

7. The applicant has prayed for quashing the impugned order and also for declaring that he has successfully completed the tenure on 9.4.1992.

8. For the reasons mentioned above the applicant has a right to get relief on the first court, but his second ^{or} ~~prays~~ _{it} cannot be allowed in view of the reply of the respondents.


9. Accordingly, we quash the Annexure 'A' order and direct the respondents to take him back in service within a period of one month from the date of receipt of this order. The manner in which the period for which he was out of service in pursuance of the Annexure 'A' order up to the date ^{or} _{of} his reinstatement and the pay and allowance ~~is~~ to which he is entitled for this period shall be regulated by the provisions of the CCS(CCA) Rules, 65 and the Fundamental Rules.

10. We make it clear that the order will not stand in the way of the respondents from taking any action against the applicant in accordance with law.

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11. When we had almost come to the end of the judgment Shri Ajay Kumar Agarwal and Shri M.R. Krishnamorthi proxy counsel for Mrs Shyamla Pappu, counsel for the applicant and Shri Jog Singh, counsel for the respondents appeared. They had nothing to add.

12. O.A. disposed of as above.


(B.S. Hegde)

Member (J)


(N.V. Krishnan)

Vice Chairman (A)

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