

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

O.A.No. 348/92

(A)

Date of Decision: 03-04-92

Dr(Mrs) Anita Rajorhia

.. Applicant(s)

Mr.M.M.Sudan

.. Counsel for the applicants

Vs

Delhi Administration through  
Secretary (Medical) and others

.. Respondents

Mr.T.S.Kapoor

.. Counsel for respondent(s)

CORAM

Hon'ble Mr. S.P.Mukerji - Vice Chairman

Hon'ble Mr. J.P.Sharma - Judicial Member

1. Whether Reporters of local papers may be *Ys* allowed to see the Judgment?
2. To be referred to the Reporter or not? *Ys*

JUDGMENT

(Delivered by Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 10.2.92 the applicant has challenged the impugned notice dated 16.1.92 at Annexure A.3 issued under Rule 5(1) of the Central Services (Temporary Services) Rules by which her services as Senior Resident (Gynae & Obst.) were terminated on the expiry of one month from the date of service of the notice.

2. The applicant is an MBBS, MD and was appointed as Senior Resident (Obst. & Gynae) under the residency scheme in Deendayal Upadhyaya Hospital (hereinafter referred to as Hospital), New Delhi under the Delhi Administration on 30.4.91 for a period of three years. Under the scheme she was to be treated as temporary government servant subject to CCS (Temporary Service) Rules. It appears that on 24.7.91 a Staff Nurse of the Hospital was being subjected to diagnostic leproscopy and

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Chromotubation for infertility. The applicant was assisting Dr. S. Misra the specialist in Gynaecology. The applicant was asked the Staff Nurse on duty in the Operation Theatre one Smt. Dhawan to provide Methylene blue dye for Chromotubation. The said Nurse instead of <sup>the said</sup> Dye gave her Gentian violet which has the same colour as Methylene blue dye. The applicant pushed the dye into the Uterine cavity without proper checking. The specialist Gynaecologist Dr. Misra who was doing laparoscopy detected through the laproscope that it was not Methylene blue dye which had been pushed into to the patient. Because of this mistake the patient developed signs of distension of <sup>the</sup> abdomen. On finding the mistake Dr. Misra asked the applicant to push normal saline solution for internal washing. However, the patient developed distension of <sup>the</sup> abdomen for which she was operated and laparotomy was done. When her condition did not improve <sup>she</sup> voluntarily transferred herself to another hospital where after some specialist treatment she got relief after some time. On A preliminary enquiry <sup>was</sup> held by an enquiry committee consisting of Director-cum-Professor and Head of Obst. & Gynae. and Professor, Head of Pharmacology, Moulana Azad Medical College, New Delhi to examine the complaint of the Staff Nurse who suffered due to the aforesaid negligence. On 25.9.91 the applicant was asked to make a statement before the Enquiry Officer. The enquiry report was submitted on 24.7.91 and about six months thereafter by the impugned notice dated 16.1.92 at Annexure A.3 the applicant's services were terminated. The applicant's representation dated 23.1.92 at Annexure A.4 has remained unresponded. The applicant has challenged the impugned notice of termination of her services on punishment inflicted on her in violation of Article 311 of the Constitution of India. She has argued that the allegation of negligence cannot be levelled against her alone as the Staff Nurse and the Specialist Gynaecologist were also

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involved in the whole operation. The colour of Gentian violet and Methylene blue being the same she could not be held guilty as it was for the Staff Nurse to select the correct material. The Senior Residents are only training doctors and are not supposed to take independent decision. According to the applicant she was not given any opportunity to defend her case before the Enquiry Committee and the report of the Enquiry Committee has not been supplied to her. She has referred to a number of rulings of the Hon'ble Supreme Court whereby even an innocuous order of termination simpliciter can be gone into by the Courts and set aside if the foundation of such an order is based on alleged misconduct for which punishment is awarded under the garb of termination simpliciter.

3. In the counter affidavit the respondents have stated that the petitioner was not a trainee but an M.D. in Gynaec and it was her duty to check the Dye provided by the Staff Nurse before pushing it into the patient. The Specialist Gynaecologist Dr. Misra was doing laproscopy and could not be held responsible for the wrong Dye and that she immediately pointed out the mistake through laproscopy. It was a serious lapse of duty on the part of the applicant. They have also stated that the Senior Resident is not a trainee doctor and the applicant cannot absolve herself from the responsibility of the mistake.

4. No new point has been brought out by the applicant in her rejoinder.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents furnished a photo copy of the report of the Enquiry Committee. The Enquiry Committee found

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that "Sr. Resident Dr. Amita failed to recognise the difference in the colour of Gentian violet from Methylene blue and also did not enquire from the Staff Nurse what dye had been provided by her". The Committee found that Dr. Misra had paid adequate attention to look after the patient. Apart from this the Committee did not give any finding so far as the applicant is concerned. The impugned notice of termination dated 16.1.92 reads as follows:

"In pursuance of sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, I (Dr. V.S. Singhal, Medical Superintendent, D.D.U. Hospital, Hari Nagar, New Delhi) hereby gives notice to Dr. (Mrs) Anita Rajorhia, Senior Resident (Gynae & Obst.) that her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on, or as the case may be, tendered to her."

The order does not cast any stigma and is an order of termination simpliciter. For such an order the requirement of Article 311 of the Constitution is not called for unless it is *prima facie* a case of punishment. The provision of Temporary Service Rules can be invoked where a temporary Government employee is not found suitable for the post. In one of the latest Judgments in State of U.P. and another Vs. Kaushalkumar Shukla, (J.T.) 1991(1) SC 103 a three Judge Bench of the Hon'ble Supreme Court ruled that the Services of Temporary Government employees can be terminated ~~for~~ unsatisfactory performance and juniors retained if they are hard working or more suitable. It was further held that a temporary Government Servant has no right to hold that post and his services can be terminated with one month's notice without assigning the reasons, on the ground of unsatisfactory service, in public interest, for misconduct or inefficiency in accordance with the terms of services, ~~or~~ statutory rules or by holding an enquiry ~~as~~ disciplinary proceedings. It was held that the two ~~decisions~~ <sup>criteria</sup> to be kept in view are whether the employee has a right to the post and whether there is an evil consequence. It was held that termination

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of temporary service does not entail an evil consequence. The ruling in Nepal Singh's case (AIR 1980 SC 1459) was overruled as per incurium by a three Judge Bench in R.K.Misra Vs. U.P.State Handloom Corporation, 1998(1) SCR 501 and this ruling was upheld by the another three Judge Bench in Kaushal Kumar Shukla's case.

6. In Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854 it was held that if a preliminary enquiry is held to decide the <sup>course</sup> ~~cause~~ of action it will not ipso facto <sup>lead</sup> leaves to to the conclusion that the action against an employee ~~is~~ amounted to <sup>h</sup> infliction of punishment. In A.G.Benjamin Vs. Union of India, AIR 1967 SC 185 as also in R.K.Misra's case cited above, the Supreme Court held that even where formal departmental enquiries are initiated it is open to the authority to drop further proceedings and take action ~~simpliciter~~.

7. A doctor in an operation theatre has a grave responsibility. <sup>The patient's</sup> ~~all~~ life or death lies in his or <sup>in</sup> her hand. Any negligence whether direct or constructive cannot be condoned. The applicant cannot ~~shirk~~ <sup>similarly</sup> assert by ~~composing~~ <sup>mixing</sup> the colours of two injectible liquids or by depending blindly upon the Staff Nurse. It will not be in the public interest to retain such a doctor in Temporary Service till she is more careful and conscious of her profound responsibilities as a doctor or a surgeon.

8. In the conspectus of facts and circumstances and the clear rulings of the Hon'ble Supreme Court, we see no force in the application and dismiss the same under Section 19(3) of the Administrative Tribunals Act without any order as to costs.

*J.P.Sharma*

(J.P.SHARMA) 3.4.92  
MEMBER (JUDICIAL)

*S.P.Mukerji*

3.4.92  
(S.P.MUKERJI)  
VICE CHAIRMAN

03-04-92

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