
(2012) 03 DEL CK 0583

In the Delhi High Court

Case No : Writ Petition (C) No. 1143 of 2011

Lady Cadet Shivanjali Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Constitution of India, 1950 — Article 124(2), 217(1), 56, 67, 90

Citation : (2012) 03 DEL CK 0583

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : K. Ramesh and Ms. R. Archana Ramesh, for the Appellant; Sachin Dutta, Central Government Standing Counsel with Ms. Gayatri Verma, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of resignation letter dated 30th October, 2010 and has also sought directions to the respondents to issue the Joining Instructions for the next ensuing course in accordance with the rules. Brief facts to comprehend the disputes between the parties are that the petitioner, as a Lady Cadet, was undergoing training at the Officers' Training Academy (OTA) for being enlisted as a Commissioned Officer in the Judge Advocate's Department with the Indian Army. She had applied for the said post in the year 2010. Her application was accepted by the respondents and she was intimated by letter dated 29th May, 2010 to appear for the tests before the Service Selection Board, Bangalore. The petitioner appeared for the said tests and qualified the same. However, she was not allowed to join on medical grounds as she was overweight and she had gall bladder stones with evidence of Chronic Cholecystitis. This was intimated to the petitioner pursuant to the letter dated 9th June, 2010 after holding a Special medical Board for her. The letter further stipulated that the petitioner could appeal against the decision of the Special Medical Board, and she was also advised to undergo the treatment, as advised

by the President of the Special Medical Board. She was further instructed to report to the concerned AMB Hospital along with the medical fitness certificate, within the prescribed time limit of 42 days, after getting cured of the disease/disability.

2. As per the petitioner, she therefore, reported to the BLK Memorial Hospital, New Delhi for an opinion on the subject. However, she was advised that Surgical Operation was not required for the removal of Gall Bladder Stones. In order to fulfill the requisite Army medical standards, a surgery was done and the gall bladder was removed. The petitioner also reduced her weight suitably. Consequently, a medical certificate dated 8th July, 2010 was issued by the BLK Memorial Hospital, certifying that the petitioner had undergone a Laparoscopic Cholecystectomy on 30th June, 2010 and that she is fit to join the Armed Forces as per their norms and standards.

3. The petitioner therefore, reported to the Army authorities at the Base Hospital, Delhi Cantonment. After examining her again, the petitioner was declared medically fit, having reduced her weight according to norms and standards of the Army. She was also examined at the RR Hospital, Delhi Cantonment and found to be fit and as she was cured of Chronic Cholecystitis. Therefore, the Army headquarters by letter dated 1st October, 2010, issued joining instructions to the petitioner directing her to report for training at the Officer's Training Academy (OTA), Chennai on 8th October, 2010 as the course had to commence from 11th October, 2010. The petitioner complied with the instructions and joined the Officers' Training Academy.

4. On 16th October, 2010 i.e. on the fifth day of training, the petitioner while going for her morning physical training at 0530 hours, slipped down the stair case, and injured herself. According to the petitioner, due to the fall, down the stairs, she injured her backbone in the last vertebra also called the tailbone. However, even though the petitioner was injured, still she had attended the Physical Training and Drill class. Later on, the petitioner became unconscious and was therefore, taken to the MI Room. After her inspection, she was transferred to the Military Hospital, Chennai. At the Military Hospital only a normal X ray was taken of her backbone. The normal X-ray, according to the respondents, did not reveal anything, nor did it show any injury to her back bone or vertebra. Even though the petitioner had complained that she was suffering from excruciating back pain and was thus unable to do her normal routine work, however, no further probe was done to ascertain the cause of the petitioner's ailment, nor was any CT scan or Ultra sound or MRI Scan was done in order to diagnose the injury suffered by her.

5. Instead of diagnosing the exact injury, surprisingly, the petitioner was to be discharged from the hospital on 26th October, 2010, though she continued to have excruciating back pain and stomach pain and was unable to perform her normal routine chores. Since the petitioner complained about having stomach and back pain during the formal interview, she was advised by the Commandant

of the Military Hospital to rest for three more days. After the expiry of the three days, the petitioner still complained of persisting pain, however, despite her requests for proper diagnosis and treatment of her injury, she was discharged from the hospital on 29th October, 2010. The discharge Slip indicated that the petitioner had been admitted for epigamic pain, and low backache and that she was treated for "H. Pylori Gastritis Infection". Due to the recurring pain in the stomach and the lower back, the petitioner again reported sick to the MI Room at the Officers' Training Academy, Chennai.

6. Though the injury caused to the petitioner was not cured as it was not even diagnosed, the Regimental Officer directed the petitioner to report for training by endorsing the opinion of the Military Hospital, Chennai. According to the petitioner, the Regimental Medical Officer should have advised her to report to the Military Hospital for review, as the pain in her back had persisted and the injury to her back had not been even diagnosed by that time.

7. Since the petitioner continued to suffer from agonizing pain after she had injured herself on falling down the stair case, and also since she had recurring pain in her stomach, her father rushed to the Officers' Training Academy, Chennai. He was not allowed to meet the Doctors and was only permitted to meet the officers in the OTA for requesting them to grant sick leave to the petitioner so that she could be cured of her injury which was sustained by her after her fall from the staircase. Though the pain in the back of the petitioner had subsisted but instead of properly diagnosing the injury or in the very least curing it, she was declared fit and thus the request for sick leave was declined. According to the petitioner, in these circumstances, which were beyond her control and since the respondents had failed to perform their duties in taking adequate measures to diagnose her injury and provide her proper treatment, she was compelled to submit her resignation from the training. Her compulsion while tendering her resignation from training was to get her injury diagnosed and to get the appropriate treatment in order to avoid further aggravation of her injury, as even sick leave was refused to her.

8. The respondents took three days to give all the required clearances for the petitioner to leave OTA, Chennai so that she could go and get her injury diagnosed and get the appropriate treatment, as the pain in her back had persisted and had made her unable to do even basic work. The petitioner was also compelled to pay Rs. 34,915/- for her stay at the OTA and expenses incurred at the Military Hospital. The petitioner contended that making her pay instead of properly diagnosing her injury and curing her was not fair on the part of the respondents and was not in compliance of the OTA Joining Instructions.

9. After leaving the OTA, Chennai the petitioner along with her father came to Delhi and approached the BLK Memorial Hospital for consultation and diagnosis of the injury in her back, on account of fall from the stair case. The petitioner also consulted other medical centers for the diagnosis of her injury. On conducting many tests the BLK Memorial Hospital, Prashant Ortho Clinic, Vrinda

Diagnostics opined that there was a fracture at the last vertebra of her backbone also called the tailbone. The petitioner also disclosed that the doctors at the private hospitals and the nursing home had further opined that after the petitioner's surgery for the removal of the gall bladder, she should not have been given a full dose of Voveron Tablets and injections, which was the direct cause of the recurring stomach ache. In the circumstances, the petitioner urged that it is apparent that the petitioner had genuinely suffered from medical problems which incapacitated her from participating in the grueling training and that the petitioner ought to have been treated more carefully by the respondents instead of creating such circumstances which compelled her to resign from training to get her injury diagnosed and in order to get the appropriate treatment.

10. The petitioner also contended that she had resigned from the training and not from the course and that the resignation was tendered by her for the sole purpose of getting her injury diagnosed and to get herself cured. She could not been given the proper treatment, as the injury suffered by her in the back could not be diagnosed by the respondents, nor she was granted sick leave. In the circumstances, the resignation from the training given by her could not be construed as voluntary and with free will. The petitioner wanted to rejoin the training after getting cured and therefore, she filed a statutory complaint to the Chief of the Army Staff on 16th November, 2010 explaining the circumstances under which she had been compelled to tender her resignation from the training and for requesting that she be detailed for the training in the next course commencing from April, 2011.

11. Thereafter, DGAFMS, i.e. the highest medical authority had called for certain documents pertaining to the facts explained by the petitioner in her letter to the Chief of the Army Staff, by their letter dated 30th November, 2010. Meanwhile, the petitioner had been called once again to report for the SSB Selection Centre at Allahabad from 9th January, 2011 to 14th January, 2011 for the next ensuing course of April, 2011, by letter dated 15th November, 2010.

12. However, thereafter, the ARTRAC Headquarters by letter dated 8th December, 2010 after taking into consideration the medical history of the petitioner, conveyed that the petitioner was unfit to join the training at the OTA even in the next course since she is physically and mentally far below par. It was also noted that the petitioner was an unfit cadet since from the very beginning of the training she had reported sick, once she had experienced the strain in the daily routine at the Academy. The letter further stated that the OTA is a premier institute where the cadets undergo rigorous and intense training for 49 weeks before they are commissioned as Young Officers and therefore, there is no scope to differentiate between the cadets, in terms of the rests allowed to them, as far as the training is concerned. It was also stated that the "young blood" who join the academy are expected to be physically fit and mentally tough to absorb and assimilate the stress and rigors of training. The said facts were brought to the knowledge of the appropriate authorities and it was recommended that the

petitioner's plea to rejoin the training be declined. After exhausting the Departmental Statutory Petition to the Chief of Army Staff, the petitioner was left with no other remedy but to approach this Court invoking its writ jurisdiction.

13. The petitioner referring to the Joining Instructions for the Officer's Training Academy contended that if any Lady Cadet has missed a military training for 28 days, she was to be relegated. Also that in case of relegation the status of the candidate would remain intact except that the concerned Cadet would have to go down to the next batch. The petitioner asserted that she was mentally prepared for it as she had to miss her training on account of the injury to her back, after falling from the stairs in the Officer Training Academy, which injury was neither diagnosed nor properly treated by the respondents. The petitioner, has therefore, prayed for the quashing of her application for resignation from the training and for issuing directions to the respondent to issue the Joining Instructions for the petitioner to join the Officers' Training Academy for the next ensuing course commencing from April, 2011.

14. The petitioner has prayed for the relief on the grounds that since she had suffered fracture in her backbone on account of fall from the stair case in the academy, her missing the training was justified, and that she ought to have been allowed to skip the Services Selection Board Tests again as she had already completed the same and was found to have qualified in all aspects and even declared 5th in the order of merit. The petitioner has also contended that the opinion of a Staff Officer, who is not even medically qualified as a doctor commenting on the petitioner being mentally and physically unfit by letter dated 8th December, 2010 cannot be sustained in light of the petitioner being declared physically fit by the SSB Bangalore and medically fit by the BASE Hospital, as well as the Review Medical Board at the Army (R&R) Hospital, Delhi Cantt.

15. The pleas and contentions of the petitioner are vehemently refuted by the respondents, who filed a counter affidavit on 14th September, 2011. The respondents have contended that the petitioner had falsely stated that she had attended the drill/PT classes despite her injury/fracture in her lower backbone since the petitioner had, in fact, reported to the OTA MI room at 5:30 AM, while the PT/Drill classes were schedule to begin after 5:45 AM as per the routine of the academy. Therefore, the plea of the petitioner that she had attended the training and had thereafter fallen unconscious, is untrue as she was fully conscious and had reported to the MI room of the OTA. In the MI room the petitioner had been examined by the RMO, and no external injuries or bruises were found. The vital statistics and parameters of the petitioner were found to be normal. However, since the petitioner had complained of severe pain, she was advised to be administered a painkiller to provide relief from the pain and she was also sent for admission at the Medical Hospital. The petitioner, however, had refused to receive the painkiller stating that she was allergic to all pain killers including oral pain killers, which she had not divulged as was required by her in the medical ailment declaration column in the "Initial Medical Form" i.e AFMSF 2.

Also it is contended that the petitioner had not revealed anything about her previous stomach illness/gall bladder operation etc. to the RMO on the said day. In any case, the petitioner had been admitted by the RMO to the Medical Hospital, Chennai for treatment of the "Trauma Lower Back

16. As per the respondents, despite the treatment given to the petitioner on 29th October, 2010, at 1530 hours, she again reported to the MI room. The discharge slip of the said date clearly stipulated that the discharge would be effective only after 1800 hours, therefore as per the learned counsel, this clearly demonstrates petitioner's disregard for service norms. The respondents also contended that the discharge slip stipulated that the petitioner was suffering from Nutritional Anaemia and H Pylori induced gastritis, possibly as a consequence of her weight reducing dietary habits and post cholecystectomy induced gastritis, as told to the RMO in the presence of LC Sandhya No. 1871, the petitioner's sick attendant, for which she was advised to take medicines for ten days.

17. However, on examination, the RMO did not find any clinical abnormality and therefore, advised the petitioner to follow the advice of the specialists at the MH, Chennai. The petitioner had requested the RMO to re-admit her at the MH, Chennai. Readmission was, however, denied by the RMO since according to him her condition did not warrant a re-admission. The petitioner then requested to be kept inside the barracks for a month to avoid training and physical exertion and again it was explained to her that it would not be possible to accede to her request, as it wasn't required and she was also assured that the physical training would be gradual and that she would be fit to undergo the gradual training. The petitioner, however, claimed that she be relegated on medical grounds in order to have some rest and get cured of her injury and relieved of her pain, so that she could join the next course without undergoing the procedures of SSB again. According to the respondents, at this point the petitioner was informed in unambiguous terms that in the absence of any valid reasons mentioned in the Regulation for the Medical Services of the Armed Forces and the allied Army Orders and DG MS Memorandums, it would not be possible to either grant sick leave to the petitioner or to relegate her to the next course, though normally a candidate is entitled for relegation from the course twice under the rules.

18. Learned counsel also contended that the petitioner had been thoroughly examined by the RMO, as well as the MH, Chennai and that the petitioner herself had chosen to ignore and intentionally contravene the medical advice given to her and instead insisted on skipping the PT and Drill exercises. Regarding the diagnosis of the fracture in the tailbone by the BLK Memorial Hospital, the respondents have contended that they cannot comment on the veracity of the same and that there is no reason to believe the said diagnosis to be more accurate than the diagnosis of the RMO and the MH, Chennai. The respondents have also contended that sick leave to the petitioner could only be granted by the Medical Authorities and not by the Officers' Training Academy.

19. The learned counsel for the respondents further emphasized that the

resignation from training by letter dated 30th October, 2010 tendered by the petitioner was voluntarily made by her with her parents' consent. It is also urged that the petitioner's resignation from training was duly accepted by the concerned authorities and till date there has been no withdrawal of the same. It is also pointed out that the statutory complaint dated 16th November, 2010 made by the petitioner to the Chief of the Army Staff cannot be deemed to be a withdrawal of her resignation from the training which was submitted by the petitioner with the consent of her parents. According to the respondents, it is a well settled law that withdrawal of a resignation cannot be by implication and that it has to be express. In order to substantiate his pleas, the learned counsel for the respondents has relied on this Court's decision in Major (Retd.) Raj Mohan v. Oil and Natural Gas Corporation Ltd. WPC No. 17284/2006 decided on 29th April, 2011.

20. The learned counsel also contended that the plea of the petitioner regarding relegation could not be acceded to since the petitioner had resigned on 30th October, 2010. Thus the resignation from the training given by the petitioner is binding on her, as it was voluntary and duly accepted by the respondents. It is also contended that relegation cannot be claimed as a matter of right and that a cadet is entitled to be relegated only in the event of missing training for medical reasons or for other justifiable reasons, which was not the case with the petitioner.

21. This Court has heard both the parties in detail and has carefully considered the relevant records pertaining to the present matter. It is a settled law that for a resignation to have binding effect, the resignation should have been tendered by free will i.e. it should not be the consequence of either force, coercion or compulsion and that before it is withdrawn, it should have been accepted by the competent authority.

22. The plea of the petitioner is that the resignation from the training was under compulsion, since at that time she had no other option but to tender the same, in order to have her injury diagnosed and in order to avail appropriate treatment for her ailment and injury and in order to alleviate her pain and discomfort on account of her accident. The treatment given to her at the OTA was ineffective since it was administered without even diagnosing the injury suffered by the petitioner and because despite repeated requests, the petitioner was not allowed any sick leave and the petitioner could not perform normal routine of training academy on account of fracture in her back bone. The treatment given to her did not alleviate her pain in her back and it could not, as her injury somehow did not get diagnosed. On the other hand, the respondents have contended that while tendering the resignation, there was no coercion or force exercised on the petitioner and that she had tendered the same voluntarily on her own free will. The learned counsel for the respondents has further contended that the said resignation has not been withdrawn till date and therefore, the same is binding upon her unequivocally. Therefore, in the facts and circumstances, it is

imperative to ascertain the nature of the resignation from training tendered by the petitioner by letter dated 30th October, 2010 and whether it was withdrawn and if it was withdrawn, whether it was withdrawn before it was accepted by the respondents.

23. Whether a resignation is voluntary or on account of any compulsion can be determined only by taking into consideration the facts and circumstances peculiar to each case. The relevant facts that eventually led to the petitioner tendering her resignation has also been categorically stipulated by her in the Statutory complaint sent to the Chief Army Staff dated 16th November, 2010 the relevant contents of which are as follows:

17. Reported at the OTA. Chennai on 8th October, 2010 as asked for by the letter dated 1st October, 2010.

18. Attended and actively participated in all the activities of the OTA till 16th October, 2010.

19. Had a fall from the staircase at the OTA on 16th October, 2010 and was admitted to the MH at Chennai for severe pain in the lower back. Subsequently I developed severe pain in my stomach also.

20. No doctor visited the MH for three days from 17th to 19th October owing to Holidays.

21. My father reached MH Chennai along with the treatment/medication history on 20th October, 2010 from Delhi and stayed there till 2nd November, 2010.

22. The concerned Surgeon at MH, Lt. Col Deepak informed that from his side the patient, viz myself if fit to resume the training at the OTA.

23. The concerned physician Maj. A Jay Chandra was also apprised of my medical treatment/history at Delhi.

24. Appeared before Brig A. P Kammat (Commandant MH) for medical parade on 26th October, 2010 discharge purpose. However, realizing my painful condition he extended my stay at the MH by another two days.

25. Finally, on 29th October, 2010 I was discharged inspite of continuous service pain in the lower back and stomach. The same day before I was discharged my father met Brig A.P. Kammat (Commandant MH) and made him aware that my daughter is still having pain in the lower back and the stomach upon which he said that his medical specialist has declared her fit therefore, she is being discharged.

26. Reported back at OTA in the afternoon of 29.10.2010. On reaching my barrack I informed about my continuous stomach and low back pain to my CO. Commander Maj. GS Brar and platoon Commander Capt Bhavna Chowksey and reported to the MI Room immediately. Then at around 5:45 P.M. the medical officer on duty Lt. Col. J J Chelladorai examined me and advised me to follow the

MH instructions.

24. In the letter dated 16th November, 2010, the petitioner also clearly stipulated that she was compelled to resign from the OTA, and that her resignation was not at all voluntary but was out of compulsions on account of the hard-line approach of the doctors at the MH, Chennai, who did not diagnose her injury to her back bone and did not examine her properly and instead of giving treatment for fracture she was given pain killers and declared fit to undergo training. An individual having fracture in her back bone cannot undergo training regime in any manner. This fact that if a person has a fracture in his/her back bone then he/she cannot undergo training has not been even refuted by the counsel for the respondents. What is contended is that the petitioner did not have fracture in her back after fall from the stair case.

25. The above mentioned facts have not been denied by the respondents. In fact, their stand from the very beginning has been that the petitioner did make repeated requests for her re-examination and thorough check up on account of the persisting pain in her back after the accident. However, the authorities did not deem it necessary to re-examine her or allow her sick leave as it was their ultimate view that the petitioner was not suffering from any ailment which would necessitate her being given sick leave from the training at the OTA. It was this ultimate view of the respondents which has also been categorically expressed in the communication dated 8th December, 2010 stating that the petitioner is an unfit cadet and that she is physically and medically weak to continue the training which had proved to be too strenuous for her.

26. It is also cannot be denied by the respondents that the petitioner had repeatedly claimed that she was sick and unfit to participate in the training of the OTA and that she had even sought sick leave. However, the respondents had refused to grant her sick leave and therefore, in the circumstances, the petitioner had no other option but to tender her resignation from training. As, at that time, her health was her primary concern which could have further deteriorated under the pressures of training, her actions, at that time, were solely motivated by her concern to get correct diagnosis for her injury after fall from the stair case and proper treatment. In the facts and circumstances, this act of the petitioner cannot be construed to be ploy to callously escape the training. Under the Joining Instructions of the OTA, it is clear that completing the training is a pre-requisite for being enlisted as a Commissioned Officer. Thus the plea of the respondents that the petitioner had deliberately made repeated complaints to give the training a miss cannot be accepted in the facts and circumstances, since missing the training would not have served any purpose for the petitioner. The fact that the petitioner did not intent to avoid the training is also evident from her prayer in the present petition, wherein she categorically claims that all she is seeking are directions to the respondents to issue the Joining Instructions for the petitioner to join the OTA for the next ensuing course commencing on April 2011, whereby she would undergo the training again. As per her admission itself since

the petitioner had attended only 5 days of the OTA after which she had suffered the unfortunate accident, she should have been relegated to the succeeding course of the training and be directed to be slide down in the seniority. Therefore, it cannot be accepted that it was the petitioner's intention to have escaped the strenuous trainings of the OTA and resignation from training was given by the petitioner by her free will without any compulsion of any type from anyone.

27. Though the petitioner had repeatedly requested to be granted sick leave, the authorities did not pay heed to her and dismissed the same as an excuse to miss the training, when clearly the Joining Instructions of the respondents does provide for special leave to be allowed on companionate grounds. In para 30 of the said joining instructions, the conditions under which relegation of a cadet is allowed or permitted have been specified i.e on missing training for more than 42 days for medical reasons or any other reason within a cadets' control. In the case of the Lady Cadets, the period is 28 days, therefore, the petitioner ought to have been relegated in the facts and circumstance. The terms of relegation stipulated in the Joining Instructions are as follows:

Relegations

30. You are liable to be relegated in case of :-

(a) Missing training for more than 42 days for medical reasons or any other reason within your control. For LCs this period is 28 days.

(b) For failing to achieve laid down minimum standards in any discipline/sphere of training activity viz academics/general awareness subjects, physical training, drill, swimming, sports and military/service subjects within the stipulated time frame. The details of those standards and time frame will be explained to you by your Platoon/company commanders and other officers, at the Academy.

(c) On disciplinary grounds or lack of desired character qualities.

31. A second relegation on failing to achieve the minimum laid down standards within the same term or on disciplinary grounds is not permitted. In this case you will be withdrawn.

28. Therefore, in the circumstances, there is nothing on the record to show that the petitioner could not have been allowed leave on account of her health concerns or that there were no consequences for not completing the period of training by her. Had the petitioner been granted leave, it would have resulted in the petitioner not fulfilling the training requirements and then she would have become entitled for relegation in the service as per the Joining Instructions.

29. Therefore, in the circumstances, the respondents ought to have allowed the petitioner the sick leave which she sought in order to get her injury diagnosed and in order to get proper treatment in order to get cured of her injury. If the petitioner was found to have not fulfilled the minimum standards of physical

training within the stipulated time frame, then the respondents ought to have relegated her with the consequences of reduced seniority rather than denying her any medical assistance and presenting her with the only options of either participating in the training or resigning

30. In the circumstances, the resignation of the petitioner cannot be construed to be on her free will. The injury of the petitioner was not diagnosed and therefore, could not be treated and in order to alleviate her pain and problems, as the respondents had not even granted medical leave nor agreed to relegate her, if she tendered resignation from training under these compelling circumstances, it cannot be on her own free will. Since the petitioner's health at the time of training was under threat it was only natural for her to take such an action. Her apprehension about her injury was vindicated on being examined by the BLK Memorial Hospital, Prashant Ortho Clinic, Vrinda Diagnostics as there indeed was a fracture in the last vertebra of her backbone. As per the case summary given by Dr. Devendra Dave, the petitioner had appeared on 3rd November, 2010 and she had been diagnosed with fracture of the coccyx after an x-ray done on 8th November, 2010 and that she was advised rest of about two months to be functionally fit. This endorsement of Dr. Devendra Dave of the BLK Memorial Hospital has not been disproved by the respondents though the respondents have not admitted it. The respondents have rather contended that they cannot comment on the veracity of the same as stipulated in para 7 of the para wise reply of the Counter Affidavit. The respondents have merely stated that there is no reason to reject the diagnosis of the MH, Chennai and the RMO in view of the diagnosis by the BLK Memorial Hospital. This half hearted denial is not sufficient to disbelieve the diagnosis of the BLK Memorial Hospital since not only have the respondents been unsuccessful in pointing out any irregularity in the diagnosis given by the BLK Memorial Hospital, but also since the respondents themselves had failed to properly diagnose the petitioner's injury because of which reason the treatment given to her was ineffective in alleviating her pain. The diagnosis of the petitioner by the MH Chennai was that of "H. Pylori Gastritis Infection" and the treatment given to the petitioner was also for epigamic pain. Therefore, the plea of the petitioner that she was unwell even after being discharged from MH, Chennai is to be accepted and consequently, the plea that she had sought resignation only to avail better treatment cannot be disbelieved.

31. There have been cases of resignation being tendered on account of compelling circumstances. The Apex Court has held that in such circumstances the resignation cannot be said to be voluntary. Reliance can be placed on Dr. Prabha Atri Vs. The State of U.P. and Others, in which the Supreme Court carefully considered the resignation letter tendered by the appellant, who had submitted the same on the eve of disciplinary proceedings being initiated by the respondents. The Court on careful consideration of the facts and circumstances existing at the time the appellant had tendered the alleged resignation letter, had held that since the act of the appellant could not have been construed to convey any spontaneous intention to give up or relinquish her office accompanied by any

act of relinquishment, therefore the same could not be accepted as a valid resignation. The Court had further held that to constitute a "resignation", it must be unconditional and with an intention to operate as such. Reliance can also be placed on P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, where it was observed that the resignation letter at the most could only amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The relevant paras of the observation made by the Court is as under:

7.In Words and Phrases (Permanent Edition) Vol. 37 at page 476, it is found stated that, "To constitute a "resignation", it must be unconditional and with intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act or relinquishment. It is to give back, to give up in a formal manner an office." At page 474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignation." It is also stated therein that "A "resignation" of a public office to be effective must be made with intention of relinquishing the office accompanied by act of relinquishment". In the ordinary dictionary sense, the word "Resignation" was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim: *Resignation est juris proprii spontanea refutatio* [Black's Law Dictionary 6th Edition]. In *Corpus Juris Secundum*. Vol. 77, page 311, it is found stated -- "It has been said that "Resignation" is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position."

8. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and "as such, after showing so much patience in the matter. I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates". In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and "out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer.

32. The Apex Court in *Moti Ram Vs. Param Dev and another*, , had also laid down as under:

As pointed out by this Court "resignation" means the spontaneous relinquishment of one's own right in relation to an office, it can notes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and concomitant act of its relinquishment. It has been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and conditions governing it.

33. Thus it is inevitable to infer that the petitioner had tendered resignation from training not with her free will. Thus, in the circumstances, the only inference that can be inferred is that the resignation of the petitioner was not voluntary or in exercise of her own free will, but instead it was the only under compelling circumstances and on the basis of such a resignation, the petitioner cannot be denied to continue her training after she has recovered from injury, fracture in her back bone.

34. It is also pertinent to note that the said resignation letter had not been accepted by the competent authority before the petitioner had made the statutory complaint to the Chief of Army dated 16th November, 2010 wherein she had specifically stated that she was forced to resign from the OTA and that it was not voluntary but out of compulsion due to the hard-line approach of the doctors at the MH, Chennai, who did not examine her properly. The petitioner, in the circumstances, had resiled from the resignation and had sought induction in the subsequent training program which was also denied to her without any legal basis. In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, , a Constitution Bench of this Court had held as under:

It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. In the case of a Government servant/or functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority.

35. In *Moti Ram Vs. Param Dev and another*, , the Apex Court held at para 15 (p. 1668) as under:

15. As pointed out by this Court, "resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there

must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. (See: Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication.

In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

36. In the above referred case, the Apex Court held that under the Constitution of India there are various offices which can be relinquished by a unilateral act of the holder of the office and acceptance of resignation is not required e.g., President (Article 56(a), Vice President (Article 67(a), Deputy Chairman of Rajya Sabha (Article 90(b), Speaker and Deputy Speaker (Article 94(b), Judge of the Supreme Court (Article 124(2)(a), Judge of a High Court (Article 217(1)(a). However, in the opinion of the Apex Court, the contract of employment stands at a different footing. The Apex Court held at paras 17 and 18 (p. 1668-1669) as under:

17. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the Service rules which require acceptance of the resignation before it becomes effective. In Raj Kumar Vs. Union of India (UOI), , it has been held:

But when a public servant has invited by his letter of resignation determination of his employment, his service normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not

thereafter.

37. The learned counsel for the respondents was asked to produce the relevant records pertaining to the petitioner and show any document that would establish that the resignation had been accepted by the competent authority before the letter revoking the resignation by letter dated 16th November, 2010 had been sent by the petitioner. However, the learned counsel has not produced any document that would reflect the approval of the resignation from training was granted by the competent authority prior to 16th November, 2010. All that is evident from the record is that the petitioner had been allowed to go home on 2nd November, 2010 after the petitioner had tendered her resignation from training on 30th October, 2010. It has also been specifically noted by the Commandant only on 24th November, 2010 who recommended acceptance of resignation and that the resignation was still pending approval of the competent authority when the petitioner had withdrawn the same. Other than this endorsement by the Commandant, there is no noting or document that would establish that the competent authority had accepted the resignation of the petitioner, except for a statement that the said resignation had been accepted by the Headquarters on 13th December, 2010, which is also without the endorsement of any Competent Authority. Even if this plea of the respondents is accepted, still it is inevitable to infer in these circumstances that the resignation from training given by the petitioner under compelling circumstances had also been withdrawn by her, before it was allegedly accepted by the competent authority on 13th December, 2010. Therefore, the resignation from training tendered by the petitioner had been revoked by her and the plea of the respondents that the resignation has not been withdrawn by her until now is without any factual and legal basis and cannot be accepted. In support of this plea, the respondents have relied on the decision of Major (Retd.) Raj Mohan v. Oil and Natural Gas Corporation Ltd., WPC No. 17284/2006 decided on 29th April, 2011. However, the facts of the said case are clearly distinguishable since in the above-mentioned case the petitioner had contended that his resignation letter stood rejected by the letter dated 2nd January, 2006, however the Court on perusing the said letter had held that the same did not imply revocation of the resignation tendered by the petitioner but instead was a revocation of the suspension imposed on him. The Court further held that resignation and suspension are two different matters and that revocation of the suspension could not be deemed to be a withdrawal of the resignation as well. In the present case, the petitioner has categorically stated in her letter dated 16th November, 2010 that the resignation tendered by her was by way of compulsion due to the hard line approach of the concerned authorities and that she was forced to resign and thus it was not voluntary. Therefore, in the facts and circumstances, this Court is of the opinion that by the letter dated 16th November, 2010 the petitioner had withdrawn her resignation from training before it could be accepted by the respondents, and acceptance of resignation which was withdrawn by the petitioner will not be revived on its alleged acceptance later on in December,

2010. In any case as has been held herein above since the resignation itself was not voluntary and was on account of compulsion and frustrations of the petitioner, consequently the resignation by her from the training was not binding on the petitioner and cannot deprive her of her right to undergo training after getting cured of her injury.

38. The respondents have also contended that the relegation could not be claimed by the petitioner as a matter of right. The respondents have not denied that a candidate is entitled for relegation at least once as per para 30 of joining instructions of OTA during the training. Even if the petitioner did not have right to claim the relegation, the respondents were liable to disclose as to in what circumstances a candidate could be relegated. The respondents have not disclosed nor has even averred as to what are the factors or circumstances in the case of petitioner, which would have entitled her for relegation. This also cannot be disputed nor has been disputed that according to joining instructions, if a Lady Cadet misses 28 days, she can be relegated and on relegation the status of such a cadet remains same except that the cadet slides down to the next batch. The petitioner was not claiming relegation on account of her whims and fancies. The reasons of the petitioner appears to be bona fide and in the circumstances, if the respondents for some reasons were not satisfied with the extent of injury suffered by her, they should have investigated her case further before declining her sick leave or relegation. The petitioner had joined the Army on her own volition and there was no justifiable reason for her to run away from the same. This is not disputed by the respondents that the petitioner had fallen from the stairs. If that was the case and if she had complained of persistent pain, the respondents ought to have considered her case for relegation instead of creating such circumstances which compelled her to seek resignation from training. Considering all facts and circumstances and for the foregoing reasons, the pleas raised by the respondents to oppose the prayers of the petitioner cannot be accepted.

39. During the pendency of the case confronted with these facts and circumstances, the learned counsel for the respondents on 28th November, 2011 had stated that in view of arguments already advanced and the observations made by the Court he would seek instructions whether the petitioner can be allowed to join the course commencing from March/April, 2011. Thereafter, the learned counsel sought adjournment on 14th December, 2011; 6th January, 2012; 13th January, 2012; 20th January, 2012; 27th January, 2012 to take instruction. However, on 3rd February, 2012 the learned counsel stated that the respondents had not agreed to allow the petitioner to join the training course commencing from March/April, 2012.

40. In the circumstances for the foregoing reasons, the resignation given by the petitioner under compulsion which was also withdrawn by her before it was accepted, is liable to be set aside and the respondents cannot be allowed to act on the same and deny the petitioner to continue her training. The petitioner has

sought directions to the respondents to allow her to join Officers Training Academy for the next ensuing course commencing from April, 2011. Since the course of April, 2011 has already commenced and the next course will commence in April, 2012, therefore, the petitioner shall be entitled in the facts and circumstances to join Officers Training Academy for the next ensuing course commencing from April, 2012. Consequently for the foregoing reasons, The "Rule" Issued by this Court on 16 March, 2011 is made absolute and the writ petition is allowed and the resignation from the training given by the petitioner under compulsion on account of her injuries, which was also withdrawn by her before it was accepted by the competent authority, is set aside and the respondents are directed to allow the petitioner to join the Officers Training Academy, Chennai for the next ensuing course commencing from April, 2012. The respondents are directed to comply with the order forthwith so that the petitioner is able to join the next ensuing course for training. With these directions the writ petition is allowed. Considering the facts and circumstances, the respondents shall also be liable to pay a cost of Rs. 20,000 to the petitioner. Cost be paid within two weeks.