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oa 410/2020
with oa 412/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A/350/410/2020
O.A/350/412/2020

Date of Order: 15.06.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

1. Dr. Anup Bhattacharya, son of Balaram Bhattacharya, aged about 34 years, by occupation Service in Railway, resident of Village – Patulسانara, PO- Mirgachatra, District Hooghly, State of West Bengal, Pin 712602.
2. Dr Joydeep Ghosh, S/O Shri Biplab Kumar Ghosh, Aged about 34 years, by occupation Service in Railway, Resident of 35/1, Deshbandhu Road, New Barrackpore Ward No. 11, Barrackpore II, District – North 24 Parganas, State of West Bengal, Pin – 700 131.

..... Applicants.

Versus

1. The Union of India,
Service through the General Manager,
Eastern Railway, Fairly Place,
Kolkata – 700 001.
2. The General Manager (GM),
Eastern Railway, Fairly Place,
Kolkata – 700 001.
3. The Principal Chief Medical Director (PCMD),
Eastern Railway, NKG Building, 12th floor,
14 Stand Road, Kolkata – 700 001.
4. The Principal Chief Personnel Officer,
Eastern Railway, 17 Netaji Subhas Road,
Eastern Railway Head quarter, Fairly Place,
Kolkata – 700 001.
5. The Secretary,
Railway Board, Rail Bhawan,
New Delhi, PIN – 110 001.
6. The DNB 2020 Counselling Committee of Railway,
Service through the Chief Specialist/NRCH/NR, office
At Northern Railway Central Hospital, Basant Lane,
New Delhi – 110 055.
7. The Chief Medical Superintendent,
Howrah Orthopedic Hospital, Eastern Railway,
Church Road, Howrah Railway Station,
Howrah, PIN – 711 101.

..... Respondents.

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For The Applicant(s): Mr. R. Halder, counsel

For The Respondent(s): Mr. K. Sarkar, counsel

O R D E R (O R A L)

Per: Dr. Ms. Nandita Chatterjee, Member (A):

Both the applicants in the two instant OAs, being aggrieved with non receipt of NOCs towards DNB counselling, have applied for similar relief; the factual position as well as the points of law taken are also similar. Hence both O.As are being disposed of in a common order.

The applicant in O.A 350/410/2020 has, in particular, prayed for the following relief:

"8.a) An order/orders/ direction/directions upon the Zonal authorities of Eastern railway concerned to issue/give/approve the 'No objection Certificate' as Zonal Recommendation to the applicant/petitioner to appear in DNB In-House Counselling of IRHS candidates the last date of receipt of which is Wednesday, 10th June, 2020 through online as per declared norms of Railway Board Circular No. 2020/H/16/2/DNB dated 13/05/2020 vide appendix 'B' last page of Recommendation/approval by Zonal authority and also allow the petitioner to study in DNB course he will get seat in DNB as per his choice as filled up in the application format as well as the other respondents specially the respondent no. 5 and 6 to allow the applicant to sit in the In-house Counselling of DNB, 2020 of IRHS Doctors and to allot the seat if he is otherwise eligible.

b) An order / orders/ direction/directions directing the authorities to allow the applicant to sit in the In-house Counselling of DNB, 2020 of IRHS Doctors and to allot the seat if he is otherwise eligible.

c) An order to issue, direct the respondents to produce the records of the case before this Hon'ble Tribunal so that conscious able justice may be done.

d) Cost and incidental cost of this application.

e) Such other or further order direction or directions, as your LORDSHIPS deem fit and proper in the interest of justice."

2. The submissions of the applicant, as articulated through the learned counsel, is that he had qualified as MBBS in the year 2011 and joined Railway Service on 13.06.2016. Having completed 4 years of service, the applicant sought permission for appearing in the NEET PG Examination 2020, but, although he had made several representations praying for such permission to appear at the entrance examination, no response was received

from the respondent authorities. Ultimately, the applicant appeared in the said examination on the strength of the timelines laid down for grant of NOC for higher education as circulated by the Railway Board in their Charter of Commitments dated 25.10.2017 (annexure P-2 to the supplementary affidavit). That the applicant reportedly obtained a score of 375 out of 1200, obtained a rank of 77549 in NEET-PG-2020 (annexure A-4 collectively to the O.A), and, thereafter sought permission to appear in DNB Counselling as an in-service Railway candidate. The applicant also sought the recommendations of the concerned Zonal authority towards participation in such DNB Counselling. The relevant date of DNB Counselling had expired on 10.06.2020, but, as the final list is yet to be published after scrutiny, the applicant would claim that he has a scope to appear in such counselling prior to publication of the final list and would pray for an NOC towards the same purpose.

Ld. counsel for the applicant would also vociferously argue, that, apart from the contents of the Charter of Commitments (annexure P-2 collectively to the supplementary affidavit), the applicant is fortified by certain provisions relating to deemed permission to appear at an examination for higher education in case the authorities failed to respond within prescribed timelines.

3. Ld. counsel for the respondents, would, however, robustly argue that the applicant, who is yet to be confirmed in service, appeared for the NEET PG 2020 without obtaining any NOC from the administration which merits disciplinary action for such unauthorised participation. Ld. counsel would also furnish during hearing, a communication dated 01.06.2020 from the respondent authorities in which applicant was cautioned for participating in the NEET-PG 2020 without obtaining prior written permission from the competent authority, an act violative of conduct Rules.

It was also agitated on behalf of the respondents that Study Leave cannot be claimed as a matter of right and only the General Managers of Zonal Railway, in consultation with the PCMDs, are empowered to decide as to how many doctors should be granted study leave and that, as no such recommendation from the PCMD was received in favour of the applicant, no NOC could be granted to the applicant. Ld. counsel would also contend that the last date of counselling being over, the O.A is rendered infructuous.

4. Having heard both the Ld. counsel and having examined the provision of rules on record and those referred to at the time of hearing, we would hereby accord liberty to both the applicants to represent to the competent respondent authority within one week from the date of issue of the copy of this order. The applicants may fortify their submissions with relevant Rules in support.

Once so received, the Respondent No. 2, who is the General Manager, Eastern Railway, in consultation with (if necessary), Respondent no. 3, who is the Principal Chief Medical Director (PCMD), Eastern Railway, or, any other competent authority, shall issue a reasoned and speaking order in accordance with law within a period of 4 weeks from the date of receipt of such representations and/or before the declaration of the full and final list of the selected candidates.

5. With these directions, both the O.As are disposed of. There will be no order as to costs.

6. Ld. counsel for the applicants may communicate the gist of the order to the respondent authorities.

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v
(Nandita Chatterjee)
Member (A)

ss

(Bidisha Banerjee)
Member (J)