

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

O.A. No. 61/18/2021

Order reserved on 19.02.2021
Order pronounced on 03.03.2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Dr. Nancy Bharti aged 29 years, D/o Ashok Kumar (W/o Ranjay Kumar) R/o W. No. 8, R.S. Pura, Jammu.

.....Applicant

(Advocate: Mr. Pawan Dev Singh)

Versus

1. Union Territory of Jammu and Kashmir, through Commissioner/Secretary Department of Health and Medical Education, Civil Secretariat, Jammu/Srinagar-180001.
2. Director Health Services, UT of Jammu and Kashmir-180001.
3. Government Medical College, Jammu through its Principal-180001.
4. Government Medical College Kathua, through its Principal-184101.
5. Medical Superintendent Associated Hospitals, Kathua-184101.

.....Respondents

(Advocate: Mr. Sudesh Magotra, Deputy Advocate General)

(ORDER)

Delivered by Hon'ble Mr. Anand Mathur, Member-A

- 1) Limited case of the applicant Dr. Nancy Bharti is that she was given a No-Objection Certificate by the respondents for undergoing Registrarship in Obstetrics and Gynecology from GMC Jammu. However, respondents by way of impugned order No. HD/Legal/G/CT/MR-28/2020 dated 16.12.2020 held that the applicant is not eligible for being relieved to undergo Registrarship at GMC Jammu as she has not completed her mandatory three years of active service in the department and therefore her claim is devoid of merits, and rejected. The rejection of case of applicant by the respondents was based on Circular No. 03-HME of 2019 dated 27.05.2019 and Government Order No. 901-JK(HME) of

2020 dated 16.12.2020 issued by Health & Medical Education Department which lays down that probation or 03 years of service (whichever is later) is mandatory for the doctors to undergo any course viz Registrarship/Demonstratorship etc.

2) Applicant has challenged the impugned order on the ground that the impugned order has been passed arbitrarily since the applicant has completed more than three years of service as Medical Officer, which include two years of posting in Government hospitals and another two years which she spent while undergoing post-graduation in pursuance to the directions of the Hon'ble High Court of Jammu and Kashmir. It has been further averred by the applicant that it is beaten law that the period spent while undergoing higher study courses like Post Graduation for the doctors has to be treated as period of deputation which may commensurate with the period of probation, as such, the applicant even while she was undergoing post-graduation remained the employee of the respondent no. 1 and she has been paid all the allowances, as per, the rules pertaining to the deputation and placed reliance upon Dr. Mohammad Iqbal Wani v/s State of J&K, 2018 (4) JKJ 596 and Sunil Kumar Raina v/s State of J&K, 2012 (2) JKJ 276.

3) During the course of his arguments, learned counsel for applicant placed reliance upon order (Annexure A3 to the O.A.) wherein the Hon'ble High Court had directed that the applicant shall be allowed to complete her Post-Graduate course without prejudice to her appointment as Medical Officer by treating her on deputation. On the basis of this order, learned counsel submitted that applicant had completed her three year of service as contemplated by the rules/circulars and entitled to NOC. Learned counsel for applicant while taking us through the impugned order submitted that the respondents have added the word 'active' which figures nowhere in the rules etc and therefore taken a ground which is conspicuously absent in the rules to reject her case. It is also submitted by learned counsel for applicant that the impugned order is a non-speaking and unreasoned order as it does not spell out as to how and why the applicant has not completed three years of service when the facts, as per, the record show that applicant has





completed three years of service and therefore eligible for a NOC and the impugned order deserves to be set aside on this ground as well. The rejection of the claim of the applicant for getting relieved as Medical Officer in order to join as Registrar in GMC Jammu was done by adopting erroneous reason that the applicant has not completed her mandatory three years of service in the Department whereas in fact, she has completed three years of service.

- 4) We have heard and considered the arguments of the learned counsel for applicant and learned DAG for respondents and gone through the material on record.
- 5) So, the question arises as to whether applicant has completed the prescribed period of probation or three years of service, whichever is later, to make her eligible to undergo Registrarship at GMC, Jammu.
- 6) Learned counsel for applicant submitted that the order dated 16.12.2020 is not in accordance with the law. It is also stated that the impugned order is cryptic, unreasoned and non-speaking. The least respondents could have done before rejecting the case of applicant would have been to put the applicant on notice to know her stand as to how she has completed three years of service and that heavens would not have fallen down, had such a course been adopted by the respondents.
- 7) On the other hand, learned DAG for the respondents while supporting the impugned order submitted that the order has been passed after due consideration of the case of the applicant and in accordance with rules and regulations, as such, the present O.A. being meritless deserves to be dismissed.
- 8) We have perused the impugned order. In the present case the order of the appellate authority is terse and an order spelling out no reason as to how the applicant has not completed her years of service. The impugned order is singularly lacking in giving the reasons as to how the case of applicant was dealt

with by the respondents. It is a settled principle that giving reasons is a hallmark of a fair administration so as to enable the effected person to know as to the manner in which her lis has been dealt with.

9) The only circumstance given in the impugned order is that the applicant has not completed three years of service but again the impugned order is lacking in reasons for coming to the said conclusion. The impugned order seems to have been passed in mechanical manner by one liner that applicant has not completed three years of service without giving reasons.

10) Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240 has in para 8 held as under:-

“8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation”.

11) An identical question came to be decided by Hon'ble Apex Court in the case of M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that “recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on





which the authority has rejected his claim. It was also held that while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.

12) And in Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496, the Hon'ble Supreme Court has held that a quasi judicial authority must record reasons in support of its conclusions. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

“7. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.



- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".



13) In the instant case, it was incumbent upon the respondents to pass a reasoned order observing the principles of natural justice, which are totally lacking in the present case. The impugned order is very brief and sketchy in so far as reasoning is concerned. It is now well settled principle of law that in case a public authority wants to pass an adverse order, it has to follow the principles of natural justice and to pass a speaking order. Therefore, thus, seen from any angle, the impugned order dated 16.12.2020 does not fulfil the legal requirements as laid down by the Hon'ble Apex Court and has no legs to stand in law. Therefore, we hold respondent has not recorded cogent reasons and examined the matter in the right perspective. After analyzing all the points raised by the applicant in this OA, we find that impugned order is wholly cryptic, non-speaking and unreasoned and has been passed in most casual and perfunctory manner and not passed in accordance with the decision of Hon'ble Supreme Court.

14) Accordingly, the O.A. is allowed and the impugned Government order No. 901-JK (HME) of 2020 (HD/Legal/G/CT/MR-28/2020) dated 16.12.2020 (Annexure A-1 to the O.A.) is hereby quashed and set aside. The matter is remitted back to the Financial Commissioner, Health and Medical Education Department, Government of J&K to consider and decide the matter afresh as to whether applicant is entitled to NOC to admitted to Registrarship in GMC, Jammu afresh by a reasoned and speaking order meeting all the grounds raised by the learned counsel for applicant during his arguments and also take into consideration the averments made in the present O.A. and legal precedents relied upon by the applicant within a period of one month from the date of receipt of certified copy of the order in accordance with law and relevant rules on the subject and communicate the decision to the applicant. No order as to costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-