

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH; NEW DELHI

OA 271/2005
With
OA 3085/2004

New Delhi this 2nd day of June 2005

HON'BLE JUSTICE SHRI V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

OA 271/2005

Dr. Deepika Govil, W/o Dr. Deepak Govil
R/o G-13/11, 1st Floor, Malviya Nagar,
New Delhi-110017
(By Shri Hemant Arya, Advocate)

...Applicant

VERSUS

1. The Director General,
ESI Corporation
ESI Headquarters, Kotla Road, New Delhi.

2. The Medical Superintendent, ESI Hospital
Basaidarapur, Ring Road, New Delhi.

3. President DNB Board,
National Board of Examinations,
Ansari Nagar, Mahatma Gandhi Road (Ring Road),
New Delhi.

..... Respondents

(By Shri Yakesh Anand, Advocate &
Shri Manish Kohli, Advocate for intervener)

O.A. NO. 3085/2004

Dr. Prashant Sharma,
160-R, Model Town, Sonapat - 130001.
(Haryana)
(By Shri Hemant Arya, Advocate)

.....Applicant

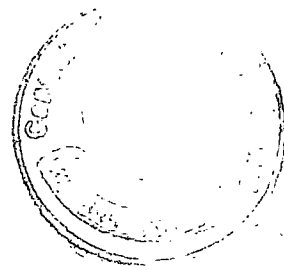
VERSUS

1. The Director General,
E.S.I. Corporation
E.S.I. Headquarters, Kotla Road,
New Delhi.

2. The Medical Superintendent,
ESI Hospital Basaidarapur,
Ring Road, New Delhi.
New Delhi.

.....Respondents

(By Yakesh Anand, Advocate)



ORDER (ORAL)

By Hon'ble Shri S.A. Singh, Member (A)

Both the OAs are being decided by this common order because they deal with a common question. For convenience we take up OA 271/2005 as the main OA.

2. The applicant is working with ESIC since 1991 and is presently CMO at the ESI Hospital Basaidarpur.

3. She applied for the Centralised Entrance Test – National Board of Examination (CET-NBE) and qualified the primary examination held in December 2003. She then applied against advertisement for interview for the post of DNB-PG Anesthesia course and appeared in the interview. However, a person higher in the merit list was selected and joined the DNB Course Training. Due to poor attendance of this selected candidate the candidature of this person was cancelled and the vacant seat was offered to the applicant as an internal student, by memorandum dated 6.12.2004.

4. The applicant is aggrieved by clause (14) of the said Memorandum. The clause requires the selected candidates to submit application for study leave, which shall be governed under the relevant provisions of FR/SR Part-III Leave Rules (Rules 51 to 60 and Rule 63 of CCS Leave Rules 1972) as applicable to ESIC.

5. The applicant applied for the study leave, which was rejected on the ground that as per policy not more than 2.5% of the Medical officers can be on study leave/EOL/Foreign Assignments.

6. The applicant prays for:

- i) Quashing of clause (14) of the Memo dated 6.12.2004 requiring the applicant to submit application for study leave;
- ii) Directions to the respondents to allow the applicant to pursue the DNB-PG course as an internal candidate without requiring the applicant to take study leave as has been done in the case of the similarly placed persons who were also in the employment of the respondents,
- iii) To allow the applicant to join DNB anesthesia as primary candidate for the year 2004 and

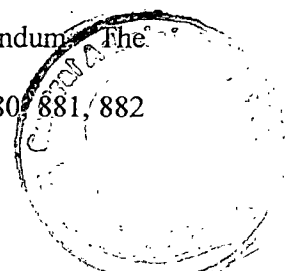
iv) In the alternative, to sanction leave as admissible, including study leave.

7. The main ground of the applicant for seeking these relief is that clause (14) of memorandum dated 6.12.2004 is arbitrary and discriminatory in as much as that for the earlier batch of candidates, there was no such stipulation requiring sanction of study leave before being allowed to join the course. Moreover, as an internal candidate she should not be required to take study leave. The applicant also relied upon the judgement-dated 3.11.2004 of the Tribunal in OAs 880, 881, 882 and 883 of 2003 where the applicants were not required to apply for study leave.

8. The respondents have contested the averments of the applicant. They have pleaded that the applicant was offered the seat as an internal candidate subject to the condition mentioned in clause (14) and was thus required to get the study leave sanctioned before joining the course. She applied for study leave but it was not granted because of the policy of not sending more than 2.5% of its Medical officers on study leave/EOL/Foreign Assignment. Moreover, the applicant was free to join the DNB Course, as sanction of study leave is not a pre requisite. However, for pursuing her studies she needs grant of study leave because without study leave she cannot be given exemption from performing the duty as Medical Officer or immunity from transfer.

9. In the past all applicants, except those who filed OA 880, 881, 882 and 883 of 2004, have applied for study leave and there is no reason to make an exception in the case of applicant. The Private respondents pleaded that they were suffering because they were not being allowed to join for the 2005 seat even though the seat in question in the present OA pertains to 2004.

10. We have heard the counsel for the parties and gone through the documents brought on record. The basic facts are not in dispute. The applicant was offered the training course as an internal candidate and as per the memo dated 6.12.2004 clause (14) she was required to apply for study leave, which she did. After she was refused study leave she has filed the present OA challenging clause (14) of the memorandum. The applicant relies upon the judgment-dated 3.11.2004 of the Tribunal in OA 880, 881, 882 and 883 of 2003 for exemption from study leave before joining the course.



(4)

11. We find that the judgment of the Tribunal dated 3.11.2004 would not come to the rescue of the applicant as it merely states that the respondents should resolved this matter of study leave in consultation with the National Board of Examination and also the Ministry of Health and Family Welfare, Government of India and communicate the decision, to the candidates, through a reasoned and speaking order. And until the matter has been given a very careful consideration and resolved in consultation with the authorities concerned the applicants, of the subject OAs, were not required to apply for study leave.

12. It is clear that the applicant was aware that she would have to apply for study leave before joining the course, which she did. She has filed the present OA after she was refused the study leave. Having once accepted the conditions of study leave, it is too late in the day to challenge clause (14) of the memorandum. We also can not agree with the averment of the applicant that in the past other candidates did not have to apply for study leave because she has not shown any specific case and the respondents have made a categorical statement that all candidates, expect for those who filed OA 880, 881, 882 and 883 of 2003, have applied for leave.

13. In view of the foregoing we find no merit in the OAs and accordingly ~~are~~ dismissed. No costs.

(S.A. Singh)
Member (A)

Patwal/

(V.S. Aggarwal)
Chairman