

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 880/2004
WITH
OA NoS. 881/2004, 882/2004 & 883/2004

New Delhi, this the 3rd day of November, 2004

(b)

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

O.A. NO. 880/2004 :

Dr. Pradip Kumar,
S/o Late Mittan Lal,
R/o 90-A, Shivam Enclave,
Jhilmil, Delhi - 110 032

... Applicant

(By Advocate : Shri Harsh K. Sharma)

Versus

1. Employees' State Insurance Corporation,
Panchdeep Bhavan,
C.I.G. Road, New Delhi
(Service to be effected through its
Director General)
2. Union of India, through
Its Secretary,
Ministry of Labour,
Sharam Shakti Bhawan,
Rafi Marg,
New Delhi
(Service to be effected through its Secretary)

... Respondents

(By Advocate : Shri Bhupesh Narula)

O.A. NO. 881/2004 :

Dr. Charanjit Singh,
S/o Shri Chhabil Dass,
R/o F-137, Prashant Vihar,
Delhi - 110 085
Jhilmil, Delhi - 110 032

... Applicant

(By Advocate : Shri Harsh K. Sharma)

Versus

1. Employees' State Insurance Corporation,
Panchdeep Bhavan,
C.I.G. Road, New Delhi
(Service to be effected through its
Director General)
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Its Secretary,
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Sharam Shakti Bhawan,
Rafi Marg,
New Delhi
(Service to be effected through its Secretary)

... Respondents

(By Advocate : Shri Bhupesh Narula)

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O.A. NO. 882/2004 :

Dr. Mohan Kumar, IMO Gr-II,
S/o Shri B. Singh,
R/o AP-70, Shalimar Bagh,
Delhi - 110 085

Applicant

(By Advocate : Shri Harsh K. Sharma)

Versus

1. Employees' State Insurance Corporation,
Panchdeep Bhavan,
C.I.G. Road, New Delhi
(Service to be effected through its
Director General)
2. Union of India, through
Its Secretary,
Ministry of Labour,
Sharam Shakti Bhawan,
Rafi Marg,
New Delhi
(Service to be effected through its Secretary)

Respondents

(By Advocate : Shri Bhupesh Narula)

O.A. NO. 883/2004 :

Dr. Ram Sunder Pal, CMO(Eye)
S/o Shri Gokul Prasad,
R/o F-485, Vikaspuri,
New Delhi- 110 018

Applicant

(By Advocate : Shri Harsh K. Sharma)

Versus

1. Employees' State Insurance Corporation,
Panchdeep Bhavan,
C.I.G. Road, New Delhi
(Service to be effected through its
Director General)
2. Union of India, through
Its Secretary,
Ministry of Labour,
Sharam Shakti Bhawan,
Rafi Marg,
New Delhi
(Service to be effected through its Secretary)

Respondents

(By Advocate : Shri Bhupesh Narula)

ORDERBy Sarweshwar Jha, A.M. :

As the issue and the relief prayed for in all the above mentioned OAs are identical and similar, these are being disposed of by this common order.

2. The applicants have impugned the orders of the respondents dated the 23rd March, 2004 (Annexure A/1) whereby, among other things, it has been conveyed to the applicants that GDMOs, who have not availed the study leave so far, but are entitled to it, have to apply for study leave for pursuing the course. The other instructions contained in the said

letter of the respondents apply to different categories of candidates who are undergoing DNB Training at ESI Hospital, Basaidarapur, Delhi.

3. The applicants are full time employees of the Employees' State Insurance Corporation (ESIC) (Respondent No.1), posted as CMOs at Indira Gandhi E.S.I. Hospital, Jhilmil, Delhi. They have been selected for pursuing DNB Training Course as primary candidates under the aegis of the National Board of Examination and have been pursuing the same w.e.f. 01.07.2003 at the E.S.I. Hospital, Basaidarapur, which is the only accredited Institute under respondent No.1 in Delhi for imparting the said training. While undertaking the training programme, the applicants continue to work as the Chief Medical Officers at the said Hospital (Ophthalmology), duties of which post they had been performing at the Indira Gandhi E.S.I. Hospital, Jhilmil, Delhi prior to their having joined the course at ESI Hospital, Basaidarapur, Delhi. Accordingly, they have been drawing their salary and other benefits to which they are entitled to as CMOs since July, 2003, the date from which they had been receiving the training as Primary DNB candidates. It is apparent that the applicants have taken the training programme as part of a common service training programme, which can be pursued by them while performing their duties as C.M.Os and they are convinced that they do not have to apply for study leave for pursuing the DNB Course, as has been provided for in the impugned letter of the respondents. In this regard, a reference is made to the letters the applicants had addressed to the Director General, E.S.I.C., New Delhi, dated 7.6.2003 (Annexure A/3) in which they had submitted that they should be given an opportunity to do DNB training in Ophthalmology without being granted study leave by virtue of the fact that they have rendered 14 years of service to the E.S.I. beneficiaries and also that it has not been insisted upon by the National Board of Examination. In the said letter, they had also submitted that they were not required to avail themselves of study leave, as they were not leaving the Corporation for study purposes. They had requested for being posted to E.S.I. Hospital, Basaidarapur for pursuing the Training programme and the same appears to have been acceded to by the respondents and hence their posting at ESI Hospital, Basaidarapur, New Delhi.

4. In support of their contention and prayer for being exempted from applying for study leave in pursuing the course, the learned counsel on behalf of the applicants has submitted a number of papers which include an Office Order dated 14.09.2001 issued in respect of one Dr. Rajni Sachedev, SMO, Hindu Rao Hospital to pursue DNB (ENT) course at the said Hospital and simultaneously to work as SMO in the ENT Department of the said Hospital, a

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Certificate dated 10.7.2002 in respect of one Dr. G.P.S. Kohli, GDMO in the same Hospital on the same lines as in the case of Dr. Sachdeva, and similar Office Orders in respect of Dr. Rakesh Kumar Dogra, DGMO-II, Dr. Sanjay Kumar Gupta, GDMO-I and another Doctor (illegible).

5. The applicants have, in support of their prayer, referred to the decisions of this Tribunal in OA No. 2939/2003 dated 23.01.2004 in the case of Dr. Bhavna Saxena in which, while referring to the findings of the Hon'ble Supreme Court in the case of Shri Krishnan v. The Kurukshetra University, Kurukshetra { (1976) 1 SCC 311 }, the following observations/directions have been made by the Tribunal:-

"24. Identical would be the position herein. We have already referred to above that in the present case so far as the applicant is concerned, it was with the consent of the respondents that she has been pursuing the said course. It is too late in the day now after she studied for two years to ask her to give her option and withdraw the sanction. Necessarily, the decision so taken has to be couched in the manner, when it does not cause injustice/arbitrariness in the administrative action. Any other view point would make the decision to perpetuate unconscionable action against the applicant.

25. So far as the decision rendered in the Dr. Abhay Kumar Jha's case (supra) is concerned, the same on facts was different. They had not undergone the said course for two years at the threshold of controversy and, therefore, the question of the said decision being applicable to the facts of the present case does not arise.

26. No other arguments have been advanced.

27. For these reasons, we allow the present application and direct that qua the applicant who had been pursuing the said course for nearly two years, the impugned order shall not be enforced. The respondents shall release the salary to the applicant and/grant the consequential benefits. No costs."

6. The learned counsel for the respondents has taken me through the reply that has been filed on their behalf and in which a reference has been made to Rule 50 of the CCS (Leave) Rules, 1972 which provides for "Study Leave being granted to a Govt. servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies as specialized training in a professional or a technical subject being in direct and close connection with the sphere of his Department" and it has been contended that there is no reason why the applicants should not apply for Study Leave. The argument given in support of the respondents' insistence on the applicants having to apply for study leave is that any exemption granted in this regard to the applicants shall place their colleagues under dis-advantage inasmuch as the applicants shall be eligible for 24 months of Study Leave for pursuing higher studies which may not be available for other CMOs. They have also referred to the need to

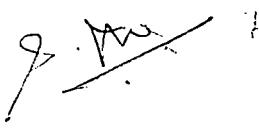
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execute a bond by such trainees to serve the Organization for a period of three years after return to duty. The respondents have argued that the applicants are trying to wriggle out of the requirement of the above mentioned rule and the bond. In their reply, they have also given their reaction to the submissions made by the applicants in regard to the facts of the case including when they applied for the course and how they were required to apply for study leave, etc. On the question of there being no provision under the conditions and objectives of the National Board of Examination to avail study leave to pursue the said training course, the respondents' reply is that this question is irrelevant in the present context and is beside the point. They have maintained that it had been made clear to the applicants while communicating their selection as Primary Candidates for the course that they would have to apply for study leave. They have enclosed a list of doctors in whose cases study leave or leave of the kind due have been granted to pursue the said course

(page 13 of the reply)

7. In the written submissions made by the respondents, they have affirmed some of the things already submitted by them in the counter as referred to above and, in addition, have submitted that they have been sending candidates for training courses on study leave or on leave of the kind due only and that there has been no discrimination among the candidates in the ESIC.

8. The respondents have pleaded that no opportunity has been afforded to them to rebut the submission of the applicants in regard to what is being done by other Hospitals on the subject. They have contended that it has not been a part of the petition and, therefore, they have not reacted to this. In this connection, they have cited the decisions as given in Mukund Limited v. Mukund Staff & Officers Association, 2004 (III) SLT 630, Bonder Singh & Ors v. Nihal Singh & Ors, 2003 4 SCC 161, Dr. Jagjit Singh v. Giani Kartar Singh and Others, AIR 1966 SC 773, and M Chinnaswamy v. K.C. Palaniisamy, 2003 VII SLT 705 in which it has been held that "it is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into." It is obvious that the respondents are not aware of how such cases are being dealt with by other Hospitals under the Government. They have also claimed that ESIC is an autonomous Social Security Organization without being aided or funded by the Government and that it has its own rules, namely, the ESIC (Staff and Conditions of Service) Regulations, 1959 and which are being followed in the management of their affairs without any discrimination. They have pleaded that they have been sending their Officers on DNB Training only on study leave ever since the DNB course

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has been launched. According to them, the applicants cannot claim undue privilege of taking the said training while in service when their predecessors have availed study leave for the same. In paragraph 18 of the written submission, they have talked of the objectives of the ESIC and the fact that they are serving the poor and down trodden working class and that they cannot afford to spend money on the salary and allowances of the doctors, who may claim study leave for some other programmes in future after having availed the DNB programme as a part of service without being on study leave.

9. On a balanced appreciation of the facts of the case as submitted by both the sides, it is observed that the applicants are full time employees of the ESIC and have rendered about 14 years of service to them. They had been selected by the respondents to undergo the DNB training programme as primary candidates. The applicants are required to perform their duties as Chief Medical Officers (Ophthalmology) while pursuing the course. It appears to be quite a peculiar arrangement particularly when seen in the context of study leave being granted in cases where the employees go out of the Institutions to pursue the course and do not perform their duties within the said Institutions. They are allowed salary for the period of study leave as provided under the relevant leave rules. In the present case, making a doctor or an employee of the Corporation perform his duties as a full time doctor/employee of the Corporation and also to allow him to undergo the training programme is relevant only in a Hospital where performance of such duties is part of the training programme. In other words, the training programme in the specific specialty has a relevance to the post which is held by a doctor and the duties which are performed by him. The training and his duties are inter-related to each other. In such a situation, insisting on study leave being sought by a full time doctor, who is an employee of the Corporation, appears to be somewhat not logical or rational. To talk of discrimination being caused to similarly placed old cases at this stage is essentially not quite relevant. A wrong committed in the past can hardly be perpetuated if it is not supported by reason and rationale of the entire scheme. However, as the matter relating to DNB training programme and the study leave to be sought by a regular doctor of the ESI Corporation raises issues which have a bearing on the scheme itself and would have far-reaching ramifications in the nature of policy in regard thereto, it would be appropriate that the authorities concerned, who have launched the DNB training programme, namely, the National Board of Examination, and also the Ministry of Health and Family Welfare, Govt. of India, which is the concerned nodal authority in respect of such matters/Institutions, would

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need to be consulted in the matter so that any decision taken in this regard is based on the correct appreciation of the scheme and the policy related thereto. Incidentally, the decisions of this Tribunal in the case of Dr. Bhavna Saxena (supra) as relied upon by the applicants is not entirely relevant to the case of the applicants, though the principles upheld therein would certainly be significant in the case of the applicants inasmuch as they had been sponsored for the training programme, which has already commenced w.e.f. 1.7.2003, and that it had been done after considering the representation of the applicants seeking exemption from study leave. It also does not appear to be quite relevant for the respondents to plead that it was not a part of the pleas that they give position in the matter with regard to other hospitals, as it will be in the overall interest of justice that the issues raised by the applicant in this application are sorted out based on facts and the scheme as envisaged by the NBE and the Government.

10. The application of the Leave Rules in regard to Study Leave only technically without having any regard to the scheme/policy on the subject may tantamount to modifying the purpose of the scheme/policy itself. The scheme/policy which is relevant to a resident doctor, who is an outside candidate under the training programme, may/should not be carrying the same terms and conditions in regard to full time doctors of the Institutes concerned which are accredited for running the said training programme.

11. Accordingly, I am inclined to dispose of this OA with a direction to the respondents (respondent No.1) to resolve the matter in consultation with the National Board of Examination and also the Ministry of Health and Family Welfare, Government of India. As regards the applicants, they will not be required to apply for study leave till such time that the matter has been given a very careful consideration and resolved in consultation with the authorities concerned as directed above. The decisions in the matter as based on the said consultations, and as and when arrived at, shall be conveyed to the applicants through a reasoned and speaking order.

12. With the above observations/directions, the OA stands disposed of with no order as to costs.

(Sarweshwar Jha)
Member (A)

08/11/2003
SO (J-1)

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