

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 62/1133/2021



Pronounced on: This the 05th day of October 2021

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

1. Dr. Raies Ahmad Beigh, age 35 years, S/o Bashir Ahmad Begh, R/o Gangipora, B.K. Pora, District Budgam-192121.
2. Dr. Ferkhand Mohi-ud-Din, age 32 years, S/o Ghulam Mohi-ud-Din Regoo, R/o Pampore District Pulwama-191101.
3. Dr. Abdul Hamid Dar, age 40 years, S/o Ghulam Ali Dar, R/o Sholipora Budgam-192121.
4. Dr. Abdul Roof, age 40 years, S/o Gulam Ahmad, R/o Indra Nagar Sonwar Srinagar-190001.
5. Dr. Shabeena, age 39 years, D/o Mohammad Mubarak Shah, R/o Bilal Colony Sour, Srinagar-190011.
6. Dr. Asima Hassan, age 33 years, D/o Ghulam Hassan Kuchey, R/o Hyderpora, Srinagar-190014.

.....Applicants

(Advocate: Mr. Mudasir Bin Hassan)

Versus

1. The Union Territory of Jammu and Kashmir, through its Commissioner cum Secretary to Government, Health & Medical Education Department, Civil Secretariat, Jammu/Srinagar-190001.
2. The Director, Health Services Kashmir Division, Srinagar (Kashmir)-190001
3. The Principal, Government Medical College, Srinagar-190010.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

(ORDER)**(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))**

Case of applicants is that on being found eligible, NOC/permission was granted to them vide order dated 17.02.2021 by the Competent Authority for the tenure posts of Registrar / Senior Residents during the calendar year 2021. The applicants were appointed as Registrars in the Government Medical College, Srinagar by way of order dated 24.03.2021 and 25.03.2021.

2. It is the further case of applicants that by virtue of impugned order No. HD/Gaz/Gen/198/2019 dated 14.06.2021, they have been informed that the NOC granted to them has been cancelled. Applicants have challenged the impugned order on number of grounds delineated in the O.A. Applicants also seek interim relief to stay the operation of the impugned order and reserving post of Registrars in favour of applicants till disposal of the O.A.

3. Affidavit has been filed by the respondents. There is no dispute that the NOC were issued and subsequently withdrawn vide impugned order. It is the case of respondents that applicants no. 1, 2 and 6 while working as Medical Officers were selected for Post Graduation courses in 2017 with the rider that their study leave shall be decided separately and had been



sanctioned study leave for two years. After completion of their PG courses the applicants re-joined Directorate of Health Services, Kashmir. The issuance of NOC was re-visited and finding that 'the period spent by the applicants on undergoing PG/MD courses has remained unsettled and so on recommendation of the designated committee, the NOC stand withdrawn.

4. It was argued by learned counsel for applicants that the impugned order withdrawing the NOCs has been passed without hearing the applicants and consequently the applicants are visited with civil and evil consequences as well as violation of principle of natural justice. It has been further argued by learned counsel that the impugned order does not specify the Rule under which the NOC has been withdrawn. The administration is under a solemn duty to abide by rules and law but in the present case, the respondents without following due process of law have withdrawn the NOCs treating the administrative actions to be in the realm of their personal fiefdom and not realising that they are to govern as per the law. They seem to have forgotten that being administrative officers of the Government, they are expected to set high standards of fairness and not behave in a high handed manner and that State acting through its officers is a model employer to act fairly and not expected to disrespect the rules framed by it and placed reliance on



Bhupendra Nath Hazarika v/s State of Assam, AIR 2013 SC 234. Learned counsel for applicants further submitted that the applicants entered their PG course in 2017. The respondents were supposed to settle their study leave as has been admitted by the respondents in their objection but sadly enough the respondents have slept over the matter and now come with the plea of unsettled question of study leave to withdraw the NOCs which is not tenable under law. Learned counsel submitted that in any case, as per, the law laid down by the Hon'ble High Court in Sunil Kumar Raina v/s State of J&K, 2012 (2) JKJ 276 has held that Government employees who are selected to undergo PG course, are in essence deputed to receive training in the colleges and so, the question of study leave does not arise. He further submits that the post as offered to the applicants have not been filled as yet. Learned counsel for applicants submit that having made out a prima facie case, the applicants are entitled to interim relief as sought by them.

5. On the other hand, learned DAG has very forcefully and vehemently argued that the applicants have no prima facie case in their favour. The impugned order has been passed in accordance with law and there was no necessity to give an opportunity of being heard to the applicants since, notwithstanding the fact that their NOCs have been withdrawn unilaterally,



the applicants have not been visited with adverse civil consequences. It was argued by learned DAG that the unsettled leave case of the applicants pending since 2017 would be settled in due course and of course the leave case is to be settled by the respondents. Learned DAG submitted that applicants have not established a prima facie case in their favour, as such, are not entitled to any interim relief.

6. We have heard and considered the arguments of learned counsel for applicants and learned DAG for respondents and gone through the material on record.

7. Before proceeding further, we may refer to the settled principles of law by the Hon'ble Apex Court regarding administrative orders and civil consequences together with principles of natural justice. For even an administrative order which involves civil consequences must be made in accordance with the rules of natural justice:

I. State of Orissa v/s Dr. (Miss) Binapani, AIR 1967 SC 1269:

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of nature justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an

opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.”



What are civil consequences?

- I. Mohinder Singh Gill v/s The Chief Election Commissioner, New Delhi, AIR 1978 SC 851:

“70. The learned Additional Solicitor General urged that even assuming that under ordinary circumstances a Rearing Should be granted, in the schema of Article 324 and in the situation of or urgency confronting the Election Commission it was not necessary.

71. Here we must demur. Reasons follow. It was argued, based on rulings relating to natural justice, that unless civil consequences ensued Bearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alterant partem rule. This submission was supported by observations in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, and Union of India (UOI) Vs. Col. J.N. Sinha and Another, . Of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognisance of such



consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

8. In the present case, on the basis of the NOCs, applicants got selected in GMC, Srinagar. The NOCs granted to the applicants have been withdrawn unilaterally by the respondents is not disputed. The applicants have obviously been visited with civil consequences and at the same time they had been granted no opportunity to show cause against the withdrawal of the permission. They were not even put on notice before cancellation and the impugned order came to be passed behind their back without following any procedure known to law. There has been a clear violation of the principle of natural justice and the applicants had been made to suffer a violation of their civil right without being heard. Fair play requires, rather demands that no order which has the effect of a citizen suffering civil consequences should be

passed without putting the concerned effected person to notice and giving an opportunity of being heard in the proposed action against him.



9. For the reasons mentioned above and looking to the facts of the case, we are of the opinion that the impugned order deserves to be quashed at this stage itself. Therefore, the O.A. is allowed. The impugned order No. HD/Gaz/Gen/198/2019 dated 14.06.2021 is quashed. The case is remanded back to the respondents to reconsider the question of cancellation of the NOCs/permission granted to the applicants after following principles of natural justice and giving notice to the applicants within a period of 10 days from receipt of certified copy of this order.

10. Before parting, we refer to the arguments of learned counsel for the applicant seeking the relief of a direction to Respondent No. 3 (Principal, Government Medical College, Srinagar) to reserve the post of Registrars/Demonstrators offered to the applicants lest the case becomes infructuous by the time their case of grant/refusal of NOCs/Permission is disposed of by the respondents. We find from the order dated 25.03.2021 and 24.03.2021 of the engagement of the applicants issued by GMC, Srinagar that the applicants are required to join within 21 days from the date



of issuance of the orders failing which the orders shall be deemed to have been cancelled. In these circumstances, it is directed that if the appointment orders have not been cancelled and the said posts have not been filled up as yet, the said posts shall be kept in reserve till disposal of the case for grant of NOC by respondents is considered and disposed of as mentioned above.

11. O.A. is accordingly disposed of. No order as to cost.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)