

Central Administrative Tribunal
Principal Bench
OA No.2129/2016

Reserved on : 08.12.2016
Pronounced on : 23.05.2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Govind Rawat
s/o Phulchand
Jr. Resident, AIIMS,
Aged about 30 years,
R/o 609, Ward No.16,
Arvind Ward,
Shivpuri 473551.

.... Applicant.

(By Advocate : Shri Piyush Singh)

Versus

1. Union of India
Through Secretary
Ministry of Health and Family Welfare
Nirman Bhawan,
New Delhi 110 001.
2. All India Institute of Medical Sciences
Through its Director
Ansari Nagar East, Gautam Nagar,
New Delhi 110 029.
3. Dr. Sanjeev Lalwani
Registrar (Academics)
All India Institute of Medical Sciences
Ansari Nagar East, Gautam Nagar,
New Delhi 110 029.
4. Dr. Satish Kumar Singh
Administrative Officer (Academics)
All India Institute of Medical Sciences
Ansari Nagar East, Gautam Nagar,
New Delhi 110 029.
5. Dr. Balram Airan
The Dean (Academics)
All India Institute of Medical Sciences
Ansari Nagar East, Gautam Nagar,
New Delhi 110 029.

.... Respondents.

(By Advocate : Shri Vijender Singh for Respondent No.1.
Shri R. K. Gupta for AIIMS).

: O R D E R :**Justice Permod Kohli, Chairman:**

All India Institute of Medical Sciences (AIIMS), New Delhi issued Admission Notice No.2/2015 inviting online applications for admission to AIIMS-PG [MD/MS/M.Ch. (6 years)/MDS] and Post-Doctoral [DM/M.Ch/MHA] Courses/Ph.D Programme for July 2015 session. The said notice also indicated dates for conduct of examinations for different courses and also notified the dates for opening and closing of online registration of applications.

2. The applicant who belongs to non creamy layer of OBC applied for admission to PG MDS in AIIMS. It is a three year full course. A written examination was conducted on 10.05.2015 by AIIMS, New Delhi. The applicant successfully qualified the written test and appeared for counselling held on 11.06.2015. The applicant opted for a seat in Prosthodontics course. He was declared successful securing 15th rank all over India. He was informed by respondent No.3 about his selection for admission to the above mentioned course vide Memorandum dated 11.06.2015. The aforesaid Memorandum also contains a stipulation regarding the nature of course and various conditions for admission to the course and appointment as Junior Resident. The relevant conditions as contained in the letter dated 11.06.2015 are reproduced hereunder:-

“He/She will be on contract service for a period of 3 years and will be designated as Junior Resident. He/She will be paid salary in PB-3 with G.P. of Rs.5400/- plus NPA and other allowances as admissible under the rules in 1st year of the residency. In the event of his/her leaving the course within six months of joining, he/she shall be liable to pay a sum of Rs.1,00,000/- (Rupees one Lakh Only) and those who leave after six months of joining shall be liable to pay a sum of Rs.5,00,000 (Rupees Five Lakh Only) by way of compensation/losses incurred by the AIIMS due to such midstream departure. The salary for the month in which the date of resignation falls will stand forfeited. The “Sponsored” candidates will not be paid any emoluments by the Institute and the responsibility of their payment will be on their respective Government/Organizations.”

3. The applicant joined the said course on 01.07.2015. The applicant vide his letter dated 21.01.2016 submitted his resignation to respondent No.5 expressing his inability to continue with the course due to personal reasons. It is alleged that the father of the applicant is a farmer in Madhya Pradesh having no other source of income apart from farming. It is further alleged that on account of conditions of his family, and with a view to support his family financially, he had no option but to discontinue with the PG course in Prosthodontics at AIIMS, New Delhi. The applicant attended his last class on 04.01.2016. He thereafter joined District Hospital, Bhind, MP, in order to financially support his family. The applicant was informed by respondent No.4 vide letter dated 01.02.2016 that the Dean has accepted his resignation w.e.f. 04.01.2016 subject to condition to deposit a draft of Rs.5 lacs towards penalty for discontinuing of PG course in mid-term. The applicant claims to be

shocked by this letter and responded vide letter dated 08.03.2016 to respondent No.3 and requested for cancellation of acceptance of his resignation letter dated 21.01.2016. It is stated that the respondent No.3 was also requested to continue applicant's PG course as he is unable to pay Rs.5 lacs towards penalty for discontinuing the PG course in the mid-term. Respondent No.4 vide letter dated 30.03.2016 informed the applicant that his request for cancellation of resignation and to continue to PG course has been rejected by the competent authority of AIIMS, New Delhi. The applicant was further informed that he has to deposit a draft of Rs.5 lacs towards penalty for discontinuing the PG course in mid-term. It is stated that the applicant vide his letter dated 24.05.2016 addressed to Dean (Academics), i.e., Respondent No.5 reiterated his submission contained in his earlier letter dated 08.03.2016, and again requested for cancellation of resignation letter dated 21.01.2016 and allow him to continue his PG course.

4. The present Application has been filed seeking following reliefs:-

- "A. declare that the letter dated 30.03.2016 sent by the Respondent No.4 to the applicant as illegal and void;
- B. quash and set aside letter dated 30.03.2016 sent by the Respondent No.4 to the Applicant;
- C. declare that the resignation dated 21.01.2016 sent by the Applicant to the Respondent No.5 is incomplete and not final;

- D. direct the Respondents to allow the Applicant to continue the PG course for Prosthodontics w.e.f. 04.01.2016;
- E. direct the Respondents to allow the Applicant to appear in the Supplementary Examination, if any, conducted by the Respondents for the period of 2015-16.
- F. direct the Respondents to pay salary to the Applicant from the date of first representation vide letter dated 08.03.2016 made by the Applicant to the Respondents;
- G. Other directions and orders, which this Hon'ble Tribunal deems proper in view of the facts and circumstances of the case may kindly be allowed to the applicant;
- H. The cost of litigation may also be awarded in favour of the applicant."

5. This Application has been resisted by filing counter by respondent Nos.2 to 5. A preliminary objection has been raised regarding the maintainability of this Application on the ground that it does not fall within the purview of Section 14 of the Administrative Tribunals Act, 1985. Secondly, that the action has been taken by the respondents in accordance with rules and no direction can be issued in contravention of the rules. Regarding merits of the case it is stated that the applicant was admitted for the course of PG in Prosthodontics and by Memorandum dated 11.06.2015 issued by Registrar, AIIMS, he was informed that he will be on contract service for three years and will be designated as Junior Resident. He will be paid salary in PB-3 with Grade Pay of Rs.5400 plus NPA and other allowances as admissible under the rules in 1st year of the residency. It is further mentioned that the said communication also contain a

stipulation that in the event of leaving the course within six months of joining a sum of Rs.1 lac is payable and leaving the course after six months of joining a sum of Rs.5 lacs become payable by way of compensation/losses incurred by AIIMS due to such mid-term departure. Apart from it, salary for the month in which the date of resignation falls will stand forfeited. When the applicant tendered resignation from the course as he was selected for the post of Dental Surgeon, District Hospital, Bhind, M.P. through an examination conducted by M.P. Public Service Commission, memo of acceptance of resignation dated 01.02.2016 was issued subject to condition that he has to deposit Rs.5 lacs as per Memo dated 11.06.2015 towards penalty for discontinuation of PG course in mid-term. Salary of the applicant for the month of January, 2016 will also forfeit. Respondents have acknowledged the receipt of request of the applicant dated 08.03.2016 for cancellation of his resignation. It is stated that the case was considered by the academic section at the level of Dean (Academics) but the same was not acceded to as the same does not seem to be under the domain of the rules.

6. We have heard learned counsel for the parties.

7. For the purposes of maintainability of this Application, it is imperative to understand the nature of the course and related

employment as Junior Resident to enable this Tribunal to exercise the jurisdiction in the matter.

8. Respondent No.2 (AIIMS) issued a Prospectus for July 2015 Session for admission to Post Graduate Course [MD, MS, M.Ch (6yrs), MDS]. It is necessary to notice some of the conditions of the prospectus, which are as under:-

“2. ELIGIBILITY

a) A candidate must possess MBBS degree for MD/MS and BDS degree for MDS courses of a University recognized by the Medical Council of India/Dental Council of India and must have completed the required period of 12 months compulsory rotating Internship/Practical training on or before 30th July, 2015 [As per DCI endorsement No.DE-130-2011/B-4978, dated 13.12.2011, candidature will be as per DCI Revised BDS Course (4th Amendment) Regulation-2011 published in Gazette notification (Extraordinary) Part-III, Section-4, dated 9.12.2011]. Candidates who complete their internship after 30th July 2015 are not eligible for Registration in this examination.”

4. METHOD OF SELECTION

- * Selection will be made entirely on the basis of merit in the entrance examination and the choice of subject will be allocated on the basis of personal counseling.
- * The entrance test for MD/MS will consist of one paper of 180 Minutes duration containing 200 multiple choice questions covering all the subjects taught at M.B.B.S. level.
- * The entrance test for MDS, will consist of one paper of 90 minutes duration containing 90 multiple choice questions covering all the subjects taught at BDS level.
- * There is 1/3 negative marking for every wrong answer in the test.

✓	X	○	○
CORRECT	WRONG	FOR REVIEW	NOT ANSWERED
+1	-1/3	0	0

5. EMOLUMENTS

Junior Residents/Demonstrators (three years tenure period) will be paid a sum of Rs. 15600 + Rs. 5400 Grade Pay + NPA and other allowances as admissible under the rules in the first year of the residency.

9. ASSESSMENT

At the end of first six months of the admission, each Junior Resident will be assessed and, in case his/her performance is not found satisfactory, his/her registration may be cancelled.

10. SUBMISSION OF PROTOCOL AND THESIS

The Junior Residents/Demonstrators registered for MD/MS/MDS course shall be required to get his/her plan of thesis protocol approved by his/her departmental faculty within 4 months of enrolment, and submit it to Academic Section. If a candidate fails to submit the thesis protocol within the prescribed period, his/her registration will stand cancelled. The last date for submission of thesis for the students registered for MD/MS/MDS degree will be 30th June for those appearing at the December examination and 30th November for those appearing at the May examination.

11. INTERNAL ASSESSMENT

Internal assessment/progress report should be evaluated periodically by the faculty members of the concerned department on the theoretical knowledge and practical skills of a candidate. The Head of the Department should send such a internal assessment/progress report of each candidate on regular basis i.e. six monthly and send to the Academic Section for official records. The weightage of the internal

assessment/progress report i.e. 25% marks of the candidate will be added in his/her final examination.

12 D. **Contract**

1. Each Junior Resident will be on contract service for a period of three years.
2. Original certificates of any candidate who opts for a confirmed seat will be retained in the Academic Section. The same will not be returned to the candidate before completion of the course unless he/she deposits a sum of Rs. 1,00,000/- (Rupees One Lakh only) once seat has been confirmed irrespective of the fact whether he/she joins the course or not. If any candidate who joins the MD/MS/MDS course, leaves the said course within six months of joining, he/she shall be liable to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) and any candidate who joins the PG courses and leaves after six months of joining shall be liable to pay a sum of Rs.5,00,000/- (Rupees Five Lakh only) as compensation for losses incurred by the AIIMS due to such midstream departure. The salary for the month in which his/her resignation from the PG seat becomes effective, shall also stand forfeited."

From the aforesaid conditions of the Prospectus, we notice that the eligibility clause refers to eligibility for admission to a Post Graduate Course and not for any employment or job. The method of selection also deals with examination for evaluating the capability/knowledge of the candidate for admission to the Post Graduate Course. Clause 5 which deals with emoluments also prescribes that these emoluments are for Junior Residents/Demonstrators for a period of three years tenure which is primarily the period of study for Post Graduate Course. Clause 9 deals with assessment of each Junior Resident regarding his performance as to whether to allow him to continue

with the course beyond six months or his registration for the course is to be cancelled. Clause 10 further deals with the Protocol and Thesis which is an academic exercise as a student of the Post Graduate Course. Similarly, clause 11 deals with internal assessment/progress of the academic knowledge of the candidate by the teaching faculty. Clause 12 (D) deals with contractual employment as Junior Resident for a period of three years and sub para 2 thereof stipulates the payment of compensation of Rs.1 lac and 5 lacs respectively in the event the candidate abandon the course within six months and beyond six months respectively.

9. From the entire Scheme and the nature of the course it can be safely concluded that admission to the Post Graduate Course is an academic exercise. The tenure employment as Resident Doctor is incidental to the course. If a candidate is unable to continue the course the employment automatically terminates. The course is a post graduate academic course for three years and the employment is co-terminous with that. The nature of employment is also contractual and incidental to the primary purpose of study of PG course. It is not an employment as such for which the applicant was selected/appointed and thus any dispute relating to admission or otherwise to the academic course will not constitute a service dispute or a service matter as contemplated under Section 14 of the Administrative Tribunals Act, 1985.

10. We have also examined the Medical Council of India Post Graduate Medical Education Regulations, 2000. These regulations are called "The Post Graduate medical Education Regulations 2000 as notified on 22.08.2000. Regulation 9 of it deals with selection of post graduate students. The same reads as under:-

"9. SELECTION OF POSTGRADUATE STUDENTS.

1. Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

The above Clause 9(1) is substituted in terms of Notification published in the Gazette of India on 20.10.2008.

9(1) (a) Students for Post Graduate medical courses shall be selected strictly on the basis of their Inter-se Academic Merit.

b) 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.

In Clause 9(1)(b) after the words "remote and/or difficult areas" and in the proviso to the clause 9(2)(d), the following shall be inserted in terms of Notification published on 16.04.2010.

"As decided by the competent State authorities from time to time."

2. For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses :-

- i. On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same state; or

- ii. On the basis of merit as determined by a centralized competitive test held at the national level; or
- iii. On the basis of the individual cumulative performance at the first, second and their MBBS examination, if such examination have been passed from the same university; or iv.
- iv. Combination of (i) and (iii):

Provided that wherever entrance test for Postgraduate admission is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for candidates belonging to general category and 40 per cent for the candidate belonging to Scheduled Castes, Scheduled Tribes and Other Backward classes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit.

These regulations deal with admission to Post Graduate Courses.

Regulation 9 clearly speaks of selection of students for post graduate medical course on the basis of their academic merit. Thus admission to the post graduate course is neither a recruitment nor appointment to any post. Since the doctors are required to perform clinical duties in the hospital, the contractual engagement as Junior Residents is in the nature of stipend for the services rendered by them in the hospitals. Again the object is to enable them to learn clinical aspect of the medical studies and to gain experience in the practical fields of study.

11. It has also been brought to our notice that Government of India, Ministry of Health and Family Welfare has notified the Residency Scheme in Central Government Hospitals which was circulated vide letter dated 05.06.1992 to all the Health Secretaries of the State Governments and UT Administrations. The Scheme deals with Introduction of the Residency Scheme, mode of selection, emoluments and other related conditions. The relevant conditions of the Scheme are reproduced hereunder:-

“Introduction of the Residency Scheme

On the basis of the recommendations of the Kartar Singh Committee, the Government of India introduced a system of six year Residency Scheme comprising of junior resident doctors and senior resident doctors in place of the then existing system of House Surgeons, postgraduate students and Registrars in all Central institutions/hospitals including statutory/autonomous bodies wholly financed by the Central Government w.e.f. 1.1.1974 vide letter No.S.11014/27/74-ME (PG), dated 22.4.1974, copy of Annexure-I. The scheme will continue to be in operation with necessary modifications as indicated in paragraph following.

3 Selection of residents.

- (ii) The selection of junior residents who are post-graduate students shall be made in accordance with the rules of the University/Institution concerned for admission to the Post-graduate diploma of degree courses.
- (iii) As per the directions of the Supreme Court in its judgment dated 25.9.87 in Writ Petition Nos.348-352, all the Universities are required to amend their Rules and Regulations to introduce a continuous three year post graduate degree course and a continuous two year post graduate diploma course from the Academic year 1993. Accordingly, the period of junior residency shall be either for one year in respect of house jobs for those not undergoing post graduate course or three year junior

residency in respect of post-graduate degree students/two year junior residency for post-graduate Diploma students.

4. Emoluments

(a) Junior Residents

As per the agreement between the Junior Residents and Senior Residents with the Government on 1.7.89, copy at annexure-IV, the Junior Residents are entitled to the following emoluments-namely-

The first year junior resident will get an emolument of Rs.2630 which is 94% of the pay plus NPA of General Duty Medical Officer of Central Health Services (i.e. Rs.2200+600). The same percentage will be kept if in future the pay or NPA of GDMOs is revised.

The second year and third year Junior Residents will draw the emoluments of Rs.2705/- and Rs.2780/- p.m. respectively."

10. Condonation of break in service.

- (i) As the Junior Residents are not treated as Govt. servants but are governed by the terms of their agreement under the Residency Scheme, the period of Junior Residency as a house surgeon or a post graduate student, as the case may be, shall not be eligible to be counted as qualifying service for the purpose of pension and retirement benefits."

From the above scheme meant for Junior Residents it is apparent that engagement of Junior Residents is not against any post or vacancy, nor does it constitute a government service. Under such an arrangement, Junior Residents do not become government employees. They are fundamentally students and their engagement as Junior Residents is inherent and incidental to their admission to an academic course of study. Their engagement as Junior Residents is

not intended to provide employment to the student and is merely an incidental purpose to enable the students to gain practical experience along with the academic studies. Such engagement cannot be termed as a “post” as defined under Section 3 (k) nor the engagement as a Junior Resident constitutes a “service” as defined under Section 3 (p) of The Administrative Tribunals Act, 1985. Such engagement also does not fall within the purview of “service matters” as defined under Section 3 (q), as the nature of duty of the student as Junior Resident do not relate to service as defined under the provisions of Administrative Tribunals Act, 1985. By seeking admission to the post graduate course which is purely an academic exercise and by this engagement as Junior Resident, the applicant does not become member of any service, nor holding a civil post either under Union or State Government.

12. In view of the above circumstances, we are of the considered view that the controversy involved in the present Application does not fall within the provisions of Administrative Tribunals Act, 1985. The Original Application is without merit and is hereby dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/