CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2939/2003

New Delhi, this the 23rd day of January, 2004

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

Dr. Bhavna Saxena
Wife of Dr. Kartik Saxena
5/B/1, Tilak Nagar
New Delhi - 110 018. ... Applicant

(By Advocate: Sh. D.D.Singh)

Versus

1. Govt. of NCT of Delhi
represented by Chief Secretary
New Secretariat
Govt. of NCT of Delhi
I.P.Estate
New Delhi - 110 002.

2. Principal Secretary (Health)
Health and Family Welfare Department
Govt. of NCT of Delhi
9th Floor, A Wing, Delhi Secretariat
I.P.Estate
New Delhi - 110 002.

3. Medical Superintendent
Deen Dayal Upadhyaya Hospital
Hari Nagar
New Delhi. ... Respondents

(By Advocate: Sh. Vijay Pandita)

O R D E R

Justice V.S. Aggarwal:-

The applicant joined in Deen Dayal Upadhyay Hospital as Junior Resident Doctor in 1998. In 1999, an advertisement was issued by Respondent No.1 for selection of Medical Officers in Medical Institutions under Respondent No.1 on contract basis. The applicant was selected to the post of Medical Officer in March, 2000. In pursuance of the same, he was taken on the strength of Respondent No.3 on a consolidated salary of Rs.10,000/- purely on contract basis for a period of one year or till regular appointment is made.

2. In January 2001, the applicant qualified the Diploma of National Board Preliminary Examination (DNB-I Examination). In the meantime, the tenure of the applicant was extended till 31.3.2002. It is alleged that by an order dated 25.7.2001, it was decided that all contractual Medical Officers and Junior Specialists would be granted regular pay-scale. In January, 2002, an advertisement was issued by Respondent No.3 (Deen Dayal Upadhyay Hospital) seeking applications for admission to the above said Diploma of National Board Courses Session 2002. The applicant applied for the same and Respondent No.3 intimated to Respondent No.1 that it has no objection if the applicant is permitted to join the said course and that it would not affect her day to day duties.

3. Respondent No.1 also allowed the applicant to pursue the DNB Courses (Part-2) and that this letter has been issued with the approval of the Principal Secretary (Health). The applicant was selected for the said course in Anaesthesia Stream of Respondent No.3 Hospital.

4. Respondent No.1, in the meantime, approved the applicant for appointment as Medical Officer upto 31.3.2003 or till the said time the post is filled up on regular basis.

5. It is alleged that in November, 2002, Respondent No.3 stopped the salary of the applicant without assigning any reason. Thereupon, in March,

2003, Respondent No.1 directed to Respondent No.3 to release salary and allowances along with the benefits to the applicant during her DNB Course.

6. The grievance of the applicant is that circular has been issued on 22.10.2003 requiring the students like DNB to give option as to whether they would like to continue on ad hoc basis or opt for DNB Course.

7. By virtue of the present application, the applicant seeks that the impugned policy Circular of 22.10.2003 and the subsequent letters requiring the applicant to exercise option are illegal, and a direction should be issued to the respondents to release the salary and all consequential benefits to the applicant.

8. The application has been contested. The basic facts were not undisputed. It was pleaded that the whole claim of DNB was reviewed in the light of the Judgement of the Delhi High Court in Civil Writ Petition No.3742/2001 (**Dr. Vishal Sehgal & Ors.** v. **Govt. of Delhi**). The Cabinet of Govt. of Delhi formulated a policy which has been submitted to the Delhi High Court. It is in pursuance of this policy that the options were called. It is contended that since it is a policy matter, this Tribunal should not interfere.

9. Before proceeding further, it would be proper to mention that the policy decision taken reads:

"The issue of payment of stipend to students pursuing DNB course in the hospitals under the control of the Govt. of NCT of Delhi had been under consideration for quite some time. A case had also been filed by the DNB students in this regard in the High Court of Delhi having case no CW No.3742/2001. Now following decisions have been taken by the Govt. in this regard:-

1. The students who are undergoing DNB course in the hospitals under the control of the Govt. of NCT of Delhi shall be paid stipend at rate of Rs.10,000/- per month with effect from date of enrolment of the students in the course, during the duration of the course or till the student continues whichever is earlier.

2. Arrears in as worked out as above shall also be paid to DNB students as per the judgment of the High Court of Delhi in the above said case.

3. In case a DNB student is working as Junior Resident or Medical Officer on contract basis he will be allowed to exercise an option whether he would like to be a DNB student or continue as Junior Resident/Medical Officer on contract basis as the case may be."

10. The said policy decision had been taken in pursuance of the decision of the Delhi High Court in the case of Dr. Vishal Sehgal (supra) wherein Delhi High Court had directed:

"56. Under the circumstances, I am of the view that even though Petitioner No.1 is entitled to receive a stipend from Respondent No.3 yet the amount cannot be the same as is being paid to MD/MS students who are working as Junior Residents. What the amount should be is not within the domain of this Court, and learned counsel rightly did not address any submissions in this regard. The quantum (as also the period for which it has to be paid) has to be worked out by Respondent No.3 in consultation with the NBE. All that can be said is that the amount ought not to be less than Rs.10,000 per month which is the figure suggested in the initial proposal given by the Medical Superintendent of Respondent No.3 in early 2000 and reiterated in the letter of 4th May, 2000.

> 57. To avoid any doubt that may arise, it is made clear that this decision will be applicable to all DNB students who joined the course contemporaneously with Petitioner No.1. The Respondents are directed to take a decision on the amount of stipend payable and the period for which it is payable as early as possible and in any case before the next batch of DNB students are given admission. In Boja Nath Ganguly, the Supreme Court noted that multiplicity of litigation should be avoided. Keeping this in mind, it is directed that the decision taken by the Respondents will be applicable across the board to all institutions that are under the administrative control of Respondents No.1 and 2 and are also accredited to the NBE."

11. It is in pursuance of the same that the impugned order dated 22.10.2003 (Annexure 'A') had been passed which reads as under:

> "Adhoc/contract basis, Medical Officers who are undergoing DNB training are required to give an option whether they would like to continue as adhoc/contract basis Medical Officers opt to be a DNB student. As per order issued by Delhi Government, if a contract/adhoc Medical Officer decides to opt for DNB course have to resign from the post of Medical Officer. Submission of false informations will make the candidate liable to disciplinary action as per rules."

12. On the basis of these facts on behalf of the applicant, it had been urged that the applicant had been pursuing the said course for almost two years with the consent of the respondents. Therefore, the applicant suddenly cannot be called upon to exercise the option to her detriment. While, on the other hand, respondents' learned counsel in the first instance relied upon the decision of this Tribunal in the case of Dr. Abhay Kumar Jha & Another v. Govt. of NCT of Delhi & Others, OA 2949/2003, rendered on 5.1.2004 to contend that the similar petition had

already been dismissed. He further urged that in any event, the decision had been taken by the Cabinet of the Government of National Capital Territory of Delhi in pursuance of the decision of the Delhi High Court. It is a policy matter. This Tribunal should not interfere.

13. So far as the controversy that it is a policy matter and this Tribunal will not interfere, there is no dispute. More often than once, the Supreme Court had held that unless certain basic fundamental rights are violated or the policy decision is unreasonable or arbitrary, the Court cannot direct to formulate policy in a particular manner or interfere in the policy matters.

14. The Supreme Court in the case of G.B.Mahajan and Others v. Jalgaon Municipal Council and Others, (1991) 3 SCC 91 and in the subsequent decision of Indian Railway Service of Mechanical Engineers Association and Others v. Indian Railway Traffic Service Association and Anr., JT 1993 (3) SC 474 has held to that effect. In the case of Shiba Kumar Dutta and Others v. Union of India and Ors., (1997) 3 SCC 545, the Supreme Court held that unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, it would be difficult for the courts to interfere in the policy matters.

15. We do not dispute the said proposition, but if a policy formulated and it affects the right which has been confered on a person concerned, in that

event, the policy once formulated cannot be taken to be good for ever. The Government can change or adjust according to the compulsion of circumstances.

16. So far as the decision of the Delhi High Court, the operative portion of which we have reproduced above, is concerned wherein the case of Dr. Vishal Sehgal & Ors (supra) was discussed, it is obvious that the dispute is essentially for payment of salary/honorarium for the practical work that the applicants were doing while undertaking the DNB Course. At that time, those who were selected for the said Course were required to submit an undertaking in the prescribed format and it had been mentioned that DNB is an unpaid course. The Delhi High Court examined the various facets and concluded that such persons cannot get the same amount as is being paid to MD/MS students who are working as Junior Residents. Therefore, it is obvious that the controversy which would be unfolding itself hereinafter was not before the High Court.

17. As already pointed above, the learned counsel for the applicant had highlighted the fact that the applicant had proceeded with the said course with the consent of the respondents. She has already been in the said course for almost two years, and at this stage asking her to disband the course and exercise the option would be improper.

18. This position becomes clear from the correspondence on record. On 25.1.2002, the applicant addressed a letter to the Principal Secretary

(Health), Govt. of National Capital Territory of Delhi that in the Deen Dayal Upadhyay Hospital certain posts of DNB Course had been advertised. She would like to pursue the same. She was seeking permission to apply for it. On 4.2.2002, the Deputy Medical Superintendent addressed a letter to the Additional Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi gave no objection in this regard. The letter reads:

> "Sir,
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> In continuation of this office letter of even no. dated 28-01-2002 vide which the application of Dr. Bhavna Saxena, N.O. (on contract basis) was forwarded for your necessary permission. It is to inform you that this office has no objection if the doctor is permitted for the same and it is also to inform that this will not affect her day to day duties."

19. On 18.2.2002 an order was issued by the Government of National Capital Territory of Delhi allowing the applicant to pursue the said Course. We reproduce the said letter:

> "Dr. Bhawna Saxena, Medical Officer on contract basis is allowed to pursue DNB Part II course in Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi.
>
> This issues with the approval of Pr. Secretary (Health).
>
> (S. ROY BISWAS)
> OFFICE SUPDT. (HEALTH)"

20. It was followed by a letter dated 20.3.2003 from the Government of National Capital Territory of Delhi addressed to the Medical Superintendent, Deen Dayal Upadhyay Hospital mentioning that the applicant, who was pursuing her DNB Course, shall be given salary and allowances with all the benefits.

21. From the aforesaid, it is clear that the applicant was pursuing the said course with the consent and explicit permission of the respondents. At this stage, the respondents, therefore, when the applicant has almost studied for two years, cannot be allowed to reiterate the steps which would be detrimental to her.

22. The respondents acquiesced to the act of the applicant in pursuing the course while in the hospital.

23. We seek support in this regard from the decision of the Supreme Court in the case of **Shri Krishnan** v. **The Kurukshetra University, Kurukshetra**, (1976) 1 SCC 311. In the said case, Shri Krishnan was pursuing the course of LL.B.. He failed in three subjects in Part-I examination. He was promoted to Part-II with option to clear those subjects. After the examination he demanded that his results be declared. He was informed that since his percentage in Part-I was short his candidature stood cancelled. The Supreme Court held that once the applicant was allowed to appear at the examination, there is an acquiescence on the part of the respondents. The findings read:

> "7. ..... It was neither a case of suggestio falsi or suppressio veri. The applicant never wrote to the university authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the university authorities to have found out the defect. In these circumstances, therefore, if the

university authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I examination in April, 1972, then by force of the university statute the university had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in Premji Bhai Ganesh Bhai Kshatriya v. Vice Chancellor, Ravishankar University, Raipur [AIR 1967 MP 194, 197: 1967 MPLJ 370] where a Division Bench of the High Court of Madhya Pradesh observed as follows:

> From the provisions of Ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No.19 or Ordinance No.48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result.
>
> We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the university to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the university authorities in cancelling the candidature of the appellant."

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.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/