CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA No.2949/2003

New Delhi, this the 17th day of January, 2004

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri R.K.Upadhyaya, Member (A)

1. Dr. Abhay Kumar Jha.
S/o Shri R.K. Jha.
R/o Flat No. 99, Pocket-II,
Sector 11, DDA SFS Flats,
Dwarka, New Delhi.

2. Dr. Rajesh Kohli.
S/o Sh. M.L. Kohli.
R/o F-1, Rajouri Garden,
New Delhi - 27. ...Applicants

(By Advocate: Shri A.K. Behra with Sh. Ashish Kumar)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat,
Players Buildling,
New Delhi - 110 002.

2. The Principal Secretary (Health),
Govt. of NCT of Delhi,
Depatment of Health & Family Welfare,
Players Building,
New Delhi - 110 002.

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

(By Advocate: Shri Vijay Pandita)

ORDER

Justice V.S.Aggarwal:-

The Diplomate National Board (for short, DNB) is a Post Graduate Course. At times, it has been

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described as equivalent to Post Graduation qualification. The benefit is granted to serving Medical Officers with a view to enhance their skills. We are informed that it ultimately leads to better services which flow from enhanced skills emanating from those Medical Officers who had done the DNB Course.

2. Applicants seek setting aside of the Memorandum of 27.11.2003 by virtue of which it is claimed that they are supposed to resign as Medical Officers if they intend to join the DNB Course.

3. Some of the other relevant facts would precipitate the question in controversy. Applicants had joined as Medical Officers on contract basis under the Govt. of National Capital Territory of Delhi. In an earlier litigation, a direction has already been issued that such persons should be paid the same pay scale and allowances including the benefits of leave, increments and on completion of one year the other such benefits. It is long standing practice that Medical Officers appointed on contract basis are allowed to join the DNB Course. Applicants contend that while doing so, there is no additional financial liability on the respondents. The applicants had taken the DNB Primary Examination and were eligible to join the DNB course. Deen Dayal Upadhyaya Hospital is a recognised hospital for conducting DNB course. The applicants duly applied for being admitted to the DNB course in

the said hospital on basis of their performance in the DNB Primary Examination.

4. Deen Dayal Upadhyaya Hospital vide Memorandum of 27.11.2003 had offered the applicants to join the said course. The grievance of the applicants is that for the first time clause 5 has been incorporated in the Memorandum that those candidates who are already working as Medical Officers on contact basis will have to exercise an option at the time of joining whether he/she wants to remain as Medical Officer or as a DNB student.

5. The applicants contend that this is an unreasonable restriction which violates their Fundamental Rights and that in many other cases such a restriction had not been imposed. It is also their grievance that, in any case, it does not put the State to any extra financial liability. Hence, the present application.

6. The application has been contested. It has been asserted that the advertisement had been issued in September, 2003 and this condition was very much incorporated. The applicants applied conscious of the said condition. Otherwise also, the applicants were said to be contractual employees. They have no right to insist in this regard. The said condition has been imposed as a result of the decision of the Cabinet

of Government of Delhi which formulated the policy. Since it is a policy matter, it is contended that this Tribunal should not interfere. It is denied that the applicants as such are being discriminated. A plea has also been taken that this decision was so taken in pursuance of the decision rendered by the Delhi High Court in the case of **Dr. Vishal Sehgal & Ors. vs. Secretary (Health) & Ors.,** in Civil Writ No. 3742/2001 dated 18.12.2002.

7. Learned counsel for the applicants at the outset urged that the decision that had been so taken based on the decision of the Delhi High Court is not correct. According to the learned counsel, the Delhi High Court had not gone into the said controversy.

8. To appreciate the said argument, we take liberty in referring to the decision of the Delhi High Court in the case of Dr. Vishal Sehgal (supra). The controversy therein was essentially for payment of salary/honorarium for the practical work they were doing while undertaking the DNB course. At that time, those persons who were selected for the said Course were required to submit an undertaking/bond in the prescribed format that he/she will work on honorary basis/complete the course. It has been mentioned that DNB course was an unpaid course. The Delhi High Court examined the various facets and concluded that such persons cannot get the same stipend as a student who is

doing MD/MS course. The ultimate decision was:-

> "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 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.
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> 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 Bro Io 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."

Perusal of the same indeed reveals that though the controversy was about payment of certain amount to a student who was undergoing DNB course, but as an offshoot it became necessary to consider as to if any other

condition became necessary to be imposed or not. To state, therefore, that the present decision that has been so taken is totally unconnected with the directions of the Delhi High Court in the case of Dr. Vishal Sehgal (Supra) would not be correct. When a decision is rendered by a court, all facets thereto can be examined by the administration.

9. Keeping in view the said decision, on 1.8.2003, the National Capital Territory of Delhi had taken the following policy decisions:-

> "Now following decisions have been taken by the Govt. in this regard:-
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> 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.
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> 2. Arrears in as worked out as above shall also be paid to DNB students as per the judgement of the High Court of Delhi in the above said case.
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> 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."

The said decision had been communicated to the Secretary to the Minister of Health; Dean, Maulana Azad Medical College; Director, Gobind Ballabh Hospital and Medical Superintendents of all hospitals. In pursuance of the

same, an advertisement had been issued in the newspapers while applications were invited for the DNB course. Para No. 7 of the same reads:

> "7. In the event of selection of a candidate who is working as Jr. Resident or Medical Officer on contract basis, he/she will have to resign from the post to join the DNB course."

It is in pursuance of this advertisement that the applicants applied and they contend that they were declared successful. These facts clearly show that the applicants conscious of the fact that they will have to resign if they intend to join the DNB course applied and it is too late in the day in fact now for them to contend that something has been imposed which is not correct subject to their right to challenge the legality of the same with which we shall deal hereinafter.

10. The settled position in law is that normally the courts / this Tribunal will not interfere in policy matters unless they fail in the test of reasonableness. The Supreme Court in the case of **G.B.Mahajan and Others vs. Jalgaon Municipal Council and Others**, (1991)3 SCC 91, had considered the said controversy. The question as to what would be the reasonableness in administrative actions was taken note of and it was held that a thing is not unreasonable in the legal sense merely because the court thinks it

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unwise. The Supreme Court held:

> "The reasonableness in administrative law must, therefore, distinguish between proper use and improper use of power. Nor is the test the court's own standard of reasonableness as it might conceive it in a given situation. This is the essence of Lord Greene's dictum now familiar as the Wednesbury unreasonableness in Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation, (1948) 1 KB 223. It was observed:
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> > "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word unreasonable in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short vs. Poole Corporation, 1926 Ch 66, gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

The same question was again considered by another Bench

of the Apex Court in the case of **Indian Railway Service of Mechanical Engineers Association and Others vs. Indian Railway Traffic Service Association and Anr.,** JT 1993 (3) SC 474. The Supreme Court held that in the facts of that case the Tribunal was in error in interfering with the scheme. The Government has a right to notify the scheme. The policy decision was not to be questioned. We take liberty in reproducing the pertinent findings of the Supreme Court:-

> "18. In the light of this background, when we examine the order of Tribunal, we find it had erred in interfering with a scheme. It is well-settlled in law that the Government has got a right to notify the scheme. It has equally a right to issue amendments. Therefore, it could amend the scheme including the provisions relating to the predominant factor from 6 to 37.5%. This is a matter of policy. This Court had taken the view in Union of India vs. Tejram Parashramji Bombhate (1991 (3) SCC 11) that no court or tribunal could compel the government to change its policy involving expenditure. Again in Asif Hameed v. State of Jammu and Kashmir (AIR 1989 Supreme Court 1899), in paragraph 19, page 1906 this court observed thus:
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> > "When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of

> administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to harmonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."
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> 19. Unfortunately, the Tribunal has transgressed its limits while questioning the correctness of a policy.

Identical was the view expressed by the Supreme Court in the case of **Shiba Kumar Dutta and Others vs. Union of India and Ors.,** (1997) 3 SCC 545 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 .

11. Similarly in the case of **State of Andhra Pradesh vs. V.C. Subbarayudu & Ors..** JT 1998(1)SC 198, it was again reiterated that unless certain basic Fundamental Rights are violated or the policy decision is unreasonable or arbitrary, the court cannot direct to have a different policy than what had been formulated. Similarly, in the case of **Federation of Railway Officers Association and Others vs. Union of India**, (2003) 4 SCC 289, the Supreme Court in para 12 held on similar lines, which reads:-

> "12. In examining a question of this nature where a policy is evolved by the

> Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

On behalf of the applicants,reliance was placed on the decision of the Supreme Court in the case of **Col. A.S. Sangwan vs. Union of India & Ors.,** 1980 (Supp) SCC 559. The Supreme Court in fact had not held otherwise than what we have reproduced above. The findings read:-

> "4.....A policy once formulated is not good forever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it. In this view, we agree with the submissions of the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or

arbitrarily."

It is obvious from the aforesaid that it is for the Government to change the policy, but the policy should not be changed with ulterior criteria or it should not be done arbitrarily.

12. Reliance was further being placed by the learned counsel for the applicants on the decision of the Supreme Court in the case of **Kumari Shrilekha Vidyarathi and Others vs. State of U.P. and Others**, (1991) 1 SCC 212 and the Supreme Court reiterated the earlier view that the policy decisions normally should fall outside the domain of the courts. But if the conclusion is unreasonable or arbitrary, in that event, the law will not be helpless and the court can interfere. In para 36, the Supreme Court held:

> "36. The meaning and true import of arbitrariness is more easily visualize than precisely stated or defined. The question whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men

> to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you . This is what men in power must remember always."

13. From the aforesaid, it is clear that if a decision has been taken which is reasonable and is not arbitrary or illegal or capricious or suffers from any extraneous consideration, in that event, the court would not interfere, but if it is otherwise than what we have referred to above, it would be an appropriate case to interfere.

14. Reverting back to the facts of the present case, it is obvious that it is basically for the Government of National Capital Territory of Delhi to decide that those who intend to join the DNB course like the applicants will have to resign. We are not impressed by the fact that it will or will not cause any financial burden on the State. As a matter of fact when in the exigencies of situations and in the totality of the facts it had been thought appropriate that the persons concerned should not ride in two boats and should resign from the contractual posts which they were holding, there appears to be nothing unreasonable. Based on experience, such decision can always be taken. Our attention has not thereafter been drawn to any other fact that it is extraneous consideration or suffers from malice, ulterior motive or any such situation. Consequently, we have not the least hesitation in repelling the said contention.

15. During the course of submissions as has also been mentioned in the application, it has been pointed that certain other persons had not been asked to resign and they had joined the DNB course before this decision had been taken. Therefore, they cannot be taken to be similarly situated as the applicants.

16. Great stress was laid on the fact that in Gobind Ballabh Hospital such a decision to ask the candidates to resign is not enforced and the applicants are being discriminated. Our attention was drawn towards the advertisement issued by the Gobind Ballabh Hospital in this regard, the relevant portion of which is :-

> "ELIGIBILITY: The Candidates who have cleared DNB primary examination/Diploma in Radio-diagnosis will be eligible for entrance test.
>
> DURATION: Duration on course will be 3 years for the candidates who have cleared primary DNB Examination and 2 years for diploma holders in Radio-diagnosis. Duration of course and proportion of seats of MBBS and DMRD may vary as per directives from DNB.
>
> STIPEND: Rs. 10,000/- consolidated p.m.
>
> HOW TO APPLY: Eligible candidates submit their bio-data along with D.D. of Rs. 200/- in favour of M.S. G.B.P. Hospital, to the Office Superintendent.
>
> CLOSING DATE: 31st October, 2003."

Indeed there is no such mention, but no such candidate

as yet had been admitted in the said course in the said Hospital without insisting upon the condition referred to above as imposed by the Government of National Capital Territory of Delhi.

17. After arguments had been advanced, the applicants submitted an additional affidavit stating that on 30.12.2003, they had approached the Gobind Ballabh Pant Hospital and found that the said hospital is not insisting on the candidates to resign.

18. The facts of the affidavit do not have much influence on the decision. It is vague. It is not known who has informed the applicants in this regard. There is nothing on the record to indicate that without insisting on the resignation any person has been taken in the DNB course. At this stage, no such candidate is before us nor any such insistence is before us. We can only opine that uniformity in this regard necessarily should be maintained and surely the said hospital should also abide by the instructions of the Government of National Capital Territory of Delhi which has control over it.

19. No other argument has been raised.

20. Taking stock of the totality of the facts and circumstances of the case, we are of the opinion

that the application is without merit, it must fail and is dismissed.

21. Since during the pendency of the application, on 8.12.2003 this Tribunal had directed that the respondents will not insist on clause 5 of the letter of 27.11.2003, we direct that necessary option may be permitted to be exercised by the applicants within one week from today. No costs.

(R.K.Upadhyaya)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/