

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

TA No. 185/2009

(W.P. (C) No.9573/2009)

Surgeon Lt. Cdr. Hemendra Dange

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh. Lalit Kumar, Advocate.

For respondents: Col. (Retd.) R. Balasubramaniam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

1. Present petition was transferred from Hon'ble High Court on formation of this Tribunal.

2. The petitioner prayed vide this petition for issuance of mandamus directing the respondents to permit the petitioner to join training of Diplomatic National Board Part II (DNB-II). Or as an alternative permit the petitioner to proceed on study leave in order to pursue DNB-II in a Civil Medical Institute.

3. The brief facts which are necessary for the disposal of the present petition are that the petitioner was commissioned in Armed forces Medical Services (AFMS) as a Surgeon Lieutenant as a Short Service Commission Officer. He was granted Permanent Commission on 18th July, 2005 as a Surgeon Lieutenant Commander.

4. The petitioner was issued transfer orders from INS Karwar to INS Rana on October, 2005. The petitioner represented against the posting order, since he wanted to take the Central Admission Test for Post Graduate (CAT-PG) to be held in February, 2006. Since his posting order was not cancelled or deferred, the petitioner joined INS Rana on 31st January, 2006 and also took the exam. He, however, did not qualify the exam.

5. In June, 2007, the petitioner took the DNB Part-I Exam, also known as Combined Entrance Test (CET) conducted by National Board of Examination (NBE) approved by Medical Council of India. On having passed CET DNB Part-I, the applicant applied and requested for suitable posting so that he could pursue DNB Part-II in Obstetrics and Gynaecology.

6. The petitioner's request was turned down as the petitioner had more than 7 years of service and hence he was not eligible for a 'Basic Speciality'.

However, he could apply and take the test for Hospital Administration. The petitioner once again took the CAT-PG Exam in January, 2008 and applied for study leave in September, 2008. This was not granted.

7. In October, 2008, the petitioner, out of frustration applied for retirement/resignation, which has also not accepted by the authorities. The petitioner, however, availed his last chance by taking the CAT-PG exam in January, 2009. He also applied for study leave in March, 2009.

8. The learned counsel for the petitioner brought to our notice three policy letters dated 09th May, 2002, 15th January, 2002 and 12th April, 2007 which give out policy for admission to DNB courses at recognised service hospitals and selection of officers for DNB. He further argued that the petitioner was fulfilling all the criteria listed in the ibid policy letters. Further, as per the policy ibid, permission of the DGAFMS is required to be taken for DNB Part-II.

9. As per the submission of the petitioner, vacancies of DNB Part-II were going abegging in 2007. More than 40 officers who were allotted DNB Course have failed to qualify in the DNB Part-I exam.

10. On the other hand, the petitioner had qualified in the DNB Part-I, but was not being allotted a seat to pursue DNB Part-II, due to vindictiveness. The learned counsel also brought to our notice policy letter of 16th June, 2009, which further indicated that DNB courses are being under subscribed as officers qualified in CET-DNB Part-I were not available. While in this case, the petitioner was already qualified and met the various eligibility criteria laid down, this needs special consideration.

11. The learned counsel for the respondents gave a brief on the system of selection for Post Graduate Courses in the Indian Armed Forces. Selection of Officers for PG courses conducted in selected service Institutes, DNB-PG courses conducted in selected military establishments and in Civil Medical Institutes, all have to be through the CAT-PG exam. Other criteria being that the officer should be in 3 to 6 years of service for basic specialities, and 7 years and beyond for Hospital Administration. In all cases the officers should be less than 37 years of age on 30th April of year the course commences. Learned counsel for the respondents drew our attention to the policy letter of 30th December, 2005, para 2 of the letter reads as under :-

“2. These rules supersede all previous instructions on the subject and will take effect from 01 Jun 2006, unless stated otherwise along with the concerned rule. These rules shall not be amended or revised for next 5 years unless absolutely necessary to ensure stability.”

It is evident from these instructions of 30th December, 2005 that for all PG studies, clearing of CAT-PG exam is a pre-requisite. Allotment of the speciality is a combination of choice offered, vacancies available and merit list of the candidate.

12. In this instant case, the officer did not qualify in the CAT-PG exam of February, 2006. In 2007, the petitioner did not take the CAT-PG exam. While taking the DNB part-I, he did not obtain clearance from DGAFMS as his application is not on record. The petitioner failed to qualify in merit list in the CAT-PG test, taken by him in January, 2008 and again in January, 2009. He also applied for study leave in 2008 and 2009, where he was not selected due to low merit. However, the learned counsel for respondents submitted that the petitioner has now applied for study leave in 2010, his case will be considered as per the laid down policy.

13. The learned counsel for the respondents stated that the averment of the petitioner that 40 officers detailed on DNB Part-II in 2007 had not qualified in CAT-PG exam is wrong. The learned counsel has submitted an affidavit sworn by Lt. Col. K. Sethi, Joint Director (Training) in the office of DGAFMS, Ministry of Defence, New Delhi to certify that all officers detailed on PG courses, be it

through service Institutes, DNB/MCI, or Civil Institutes have qualified CAT-PG and have then been put through the selection process in vogue for allotment of subjects and institutes. The learned counsel amplified that though MCI has allotted several seats to selected Military Hospitals for PG courses through DNB, the Armed Forces are bound by an Agreement to accommodate candidates as per a given priority from Central Government, Para-Military Forces, Short Service Commission officers who have left service or are still in service, State Governments etc. Therefore, the seats for AFMS officers are limited.

14. Having heard the learned counsels of the petitioner and the respondents for over two days, we are of the opinion that the rules/criteria laid down in the policy letter of 30th December, 2005 for 'Training Grading and Classification (TGC) rules for officers of AFMS' are logical and fair. The service criteria and age restriction ensure optimum utilisation to the organisation considering the cost training the officers and post and re-employment. Besides these Rules have been consistently applied for all officers selected for PG courses under various categories. This 'in-house' selection also ensures that the bright medical officers are given a fair chance to enhance this professional expertise. In order to get selected for doing a PG course, passing the CAT-Pg exam becomes a pre-requisite. In addition, the Medical Officer has to emerge in the merit to be selected.

15. In view of the foregoing, we are of the opinion that no exceptions should be made while selecting officers for PG courses. The selection, as per the promulgated criteria, should be fair and transparent.

16. Since the petitioner has applied for study leave in 2010, he should await the result of the selection process. We are not inclined to interfere with the selection process. The petition is dismissed. No costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 4, 2010