

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 262, 257, 258, 259 and 260 of 2010

Maj. Brijpal Upadhyay
Ex.Major Ranjit Pal Singh Bhogal
Ex.Major(Mrs.) Amrita Datla
Ex.Major Sunil Bhardwaj
Ex.Major Lt.Col.(Mrs.)Seema Prasad Pandey ...Petitioners

Versus

Union of India & Ors. ...Respondent

For the Petitioner : Sh. K.Ramesh, Advocate

For the Respondents: Sh. R. Balasubramaniam, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGMENT
(23.09.2011)

BY CHAIRPERSON:

1. All the above five petitions involved similar question of law, therefore, they are disposed of by a common order.

2. For convenient disposal of all the five petitions, the facts given in the case of Major Brijpal Upadhyay are taken into consideration.
3. Petitioner is a doctor seeking admission for Post-Graduate course of MD/MS in Army Hospital (R&R), New Delhi. He was granted Short Service Commission as a Doctor in Army Medical Corps on 18.2.2003 and his initial appointment was for 5 years, extendable initially for 5 years with an option for a further extension of 4 years. He applied for admission to the R&R Medical Hospital for the Post-Graduate course and also applied for release from the Army on 20.2.2011. The grievance of the petitioner is that after selection 56 doctors qualified for the admission course, however, only 42 doctors have been given admission and the balance were shown the door on the ground of lack of teaching faculty. The petitioner is one of them who was not granted admission despite being in qualified panel of 56 doctors. It is alleged that there are 70 professors in different disciplines available for

teaching students for Post Graduation and Diploma Courses. The Medical Council of India (MCI) sanctioned 70 vacancies of which 56 are for MD/MS and balance for Diploma and DNB Courses. The 56 Doctors who qualified and were in the order of merit, had a legitimate expectation to be admitted against the 56 vacancies for Post-Graduation Course of MD/MS. But only 42 Doctors were called and the balance 14 Doctors have been left out.

4. Applications were invited for PG Degree/Diploma course in Armed Forces Medical Services institutions (2011 Session) vide Prospectus & Application Form by a special brochure. The priority and category for admission which has been mentioned in this brochure reads as under:

Priority-IV - Ex SSC AMC Officers released from service after completion of contractual service within three years after their release from service.

- (i) *The date of release should not be after 30.4.2011 for admission started from May, 2011*
- (ii) *SSC-AMC Officers in their last year of contractual service are also eligible to apply for this category. They will be permitted to appear in the entrance test only with the permission of DGAFMS. They will apply through proper channel through their units and respective DGsMS for the above permission. However, on the date of counseling they should produce documentary proof of their*

attaining EX-SSC status by 30 April 11 without which they will not be considered for counselling.

- (iii) *Officers who have resigned their commission or not completed their contractual service are not eligible to appear under this category.*
- (iv) *The upper age limit for this category shall remain 40 years as on 30 April, 2011.*

5. The various Post-Graduate courses have been enumerated in para -6, while in para-7 it is clearly mentioned that actual number of seats available in each subject shall be subject to vacancies available after fulfilling the training requirements of AFMS and sponsored candidates subject to MCI and relevant University regulations. The number of seats available for non-service candidates, after approval of DGAFMS, shall be displayed by Army Hospital (R&R) Delhi Cantt before commencement of counseling. The main criteria with which we are concerned is clause (g) which reads as under:

- (g) *"the number of candidates to be admitted in any discipline during a particular session will be determined by the number of post-graduate teachers available, the student-teacher ratio and any other criteria laid down by the Medical Council of India and Delhi University from time to time. However, the exact number of available seats, after approval of the*

DGAFMS, will be displayed on the notice board of the institution only before the start of counseling session."

6. Therefore, the contention is that the faculty should have requisite number of teachers to teach the students as per the ratio laid down by the Medical Council of India as well as Delhi University from time to time. As per the criteria laid down by the MCI the ratio of recognized PG teacher to the number of students to be admitted for degree course shall be 1:2 for a Professor and 1:1 for Associate Professor, in each unit per year provided a complement of 10 teaching beds per candidate is available. Therefore, for the purposes of PG teaching there should be a qualified professor or Associate Professor and they should be approved by the Delhi University as R&R Hospital is attached with the Delhi University. Therefore, each teacher has to qualify in terms and conditions laid down by MCI as well as terms and conditions laid down by the Delhi University.
7. Delhi University has laid down qualifications for teaching the Post-Graduate students and para 13.1 of the regulation

says that the clinical department or its unit training candidates for broad or Super-specialities, shall have a minimum of three full time Faculty members belonging to the concerned discipline of whom one shall be a Professor, one Associate Professor/ Reader and, one Assistant Professor/Lecturer, possessing the qualifications and experience as prescribed by the Medical Council of India. Of these faculty members only those who possess a total of eight years teaching experience out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining Postgraduate degree, shall be recognized as Postgraduate Teachers/ Supervisors. Therefore in order to constitute a teaching faculty for purposes of imparting training to the Post-Graduate students, the DGAFMS has to see whether the faculty is qualified as per the eligibility criteria laid down by the MCI and person has been recognized as a professor by the University of Delhi as Supervisor.

8. In this background, the grievance of the petitioner is that he appeared for the examination and he was among the persons who were shortlisted but on account of the fact that number of vacancies were reduced by the respondent, therefore, he could not be admitted for the Post-Graduate course and as such he has challenged the decision of the respondent in reducing of seats by their impugned order dated 11.4.2011, which reads as under:

Integrated HQ to MoD (Army)
Adjutant General's Branch
Dte Gen of Med Services (Army)
DGMS-3A, Room No.117
'L' Block, New Delhi-110001
PIN-908709

B/71117/DGMS-#A

11 April 2011

Army Hospital (R&R)
Delhi Cantt-10

COUNSELLING FOR PG COURSES - 2011: ARMY HOSPITAL (R&R)

1. Refer your hospital letter No.1116/PG/Adm/2011 dated 01 April, 2011
2. In view of scarcity of resources it has been decided that a maximum of nine(09) seats will be offered to priority 3,4, and 5 candidates subject to availability of teaching faculty and teaching beds.
3. It may kindly be noted that priority of admissions will be strictly in accordance with Govt. Of India letter No.F.PC-8510/DGAFMS/DG-1D/2278/2001/D(Med) dated 05 Nov. 2001 as amended.

(Anupam Chatteraj)
Col.
Dir MS (T&C)
For DGMC (Army)

Copy to:-

CH(EC)
Kolkata - 27

1. Refer your Sig No.A-8098 dt 07 Apr 2011
2. In view of scarcity resources it has been decided that a maximum of nine(09) seats will be offered to priority 3, 4 and 5 candidates subject to availability of teaching faculty and teaching beds.
3. The above seats include those to be reserved for in service candidates of Deptt. Of Health and Family Welfare, Govt. Of West Bengal.

9. By this order respondent has stated that in view of the scarcity of the resources it has been decided that a maximum of nine(09) seats will be offered to priority 3, 4 and 5 candidates, subject to availability of teaching faculty and teaching beds. It has also been mentioned that in view of the scarcity of resources, maximum of nine seats will be offered to candidates, which has been challenged by the petitioner. Petitioner has pointed out that infact R&R hospital has already sought permission from the University to increase the number of seats in the various faculties and the total number of seats have been increased to 70. It was further submitted that if there is shortage of teaching faculty or lack of resources then why has sanction of MCI been sought to increase the number for admission to the post-graduate course? It was pointed out that the RR Hospital sought an increase of seats in various faculties from the Post-Graduate Committee of MCI, after taking into consideration the availability of faculty staff. The list furnished by the R&R Hospital is as given below:

(i)	MD-Anaesthesiology	-	3 to 9
(ii)	MD- General Medicine	-	5 to 11
(iii)	MD-Microbiology	-	1 to 2
(iv)	MD-Paediatics	-	2 to 5
(v)	MD- Pathology	-	2 to 4
(vi)	MD- Radio	-	2 to 4
(vii)	MD- ENT	-	2 to 4
(viii)	MD-General Surgery	-	5 to 11
(ix)	MD-Ophthalmology	-	2 to 4

Therefore, it is submitted that if necessary teaching faculty was not there, why was an increase in the number of candidates / seats for the Post-Graduates sought? It is submitted that the reduction of the seats as decided by the respondent has resulted in frustration of the career of the students & that the decision was arbitrary & illegal.

10. A reply has been filed by the Respondent and it was pointed out that while it was correct that the R&R hospital has asked for increasing the number of seats in Post-Graduate course, but that does not mean that petitioner has right to seek admission.

11. The number of seats was not mentioned in the prospectus, wherein it was clearly mentioned that it was subject to the availability of faculty members and other

resources, and that a final decision would be taken at the time of counselling. They have also challenged the eligibility of the petitioner that as a serving Short Service Commissioned officer he is not eligible to appear for the examination as he had not yet been released. So far as the question of eligibility is concerned we are not going to examine that aspect because the fact is that the petitioner has rightly or wrongly appeared in the written test and has qualified. Therefore, the main issue we are concerned with is as to whether the reduction of seats is justified or not.

12. The reply filed by the respondent is that they do not have teaching faculty, sufficient beds & financial resources as a result of this petitioner could not be admitted. They produced the chart showing the various faculty and teachers who are available with them as qualified supervisors. As an example, as per Annexure VIII, the Post Graduate teaching faculty as given in the year 2010-2011, for the Medicine department has 10 allotted seats

and one seat is vacant/unutilised. It is mentioned that 3 Professors are recognised as supervisors as well as 4 Associate Professors. Each Professor recognised as a Supervisor can teach 2 students and each recognised Associate Professor as Supervisor can teach 1 student. Accordingly, they have tried to justify the lack of faculty in various speciality. They have produced chart showing existing position in each speciality.

POST-GRADUATE TEACHING FACULTY POSTED IN THE YEAR 2010-2011

S.No.	Name	Teaching Faculty	Status of Recognition	No. Of Students	Remarks	Summary
MEDICINE						
1.	Maj. Gen. PP Verma, SM	Professor	Recognised	2		Total seats authorised-11 Total allotted-10 Seat Vacant-1 Remarks-Recognised PG Teacher /Supervisor not available
2.	Brig. A.K. Nagpal	Professor	Recognised	2		
3.	Brig. Ak Dhar	Professor			Medical Oncology	
4.	Brig. Sharat Joshi	Professor	Recognised	2	Nephrology	
5.	Brig. UK Sharma	Professor			Rheumatology	
6.	Brig. DS Bhakuni	Professor				
7.	Col Ajay Sharma	Assoc Professor				
8.	Col P Bharadwaj	Assoc Professor	Not Recognised	1		
9.	GP Capt Hemant Madan	Assoc Professor	Recognised	1		
10.	Gp Capt. B Nandi	Assoc Professor	Recognised	1		
11.	Col A K Rajput	Assoc Professor	Recognised	1		
12.	Col MK Garg	Assoc Professor			Endocrinology	
13.	Col Rajat Datta	Asst. Professor	Not Recognised			
14.	Col. Sunil Sofat	Asst. Professor	Not Recognised			
15.	Surg Capt. S Das	Asst. Professor	Not Recognised			
16.	Lt. Col. Sanjeevan Sharma	Asst. Professor	Not Recognised			

17.	Lt. Col. Ranjit K Nair	Asst. Professor	Not Recognised			
18.	Col. Shanmuganandan	Asst. Professor				
19.	Lt. Col. Vikas Marwah	Asst. Professor	Not Recognised			
20.	Col. Dharmesh	Asst. Professor	Not Recognised			
21.	Lt. Col. Amul Kapoor	Asst. Professor	Not Recognised			
SURGERY						
1.	Brig. Anumap Saha	Professor		2	Posted out	Total seats authorised-11 Total allotted-9 Seat Vacant-2 Remarks-Recognised PG Teacher / Supervisor not available for 2 vacancies
2.	Brig HC Pathak	Professor	Recognised	2		
3.	Brig. DV Singh	Professor	Recognised	2		
4.	Surg Capt. VS Bedi	Professor			Vascular surgery	
5.	Col. Surinder Singh	Professor	Recognised	2		
6.	Col. SS Siodhu	Assoc Professor	Recognised	1		
7.	Surg. Capt. CS Naidu	Assoc Professor	Recognised	1		
8.	Col. MS Gill	Assoc Professor	Recognised	1		
9.	Co; N Kannan	Assoc Professor			Oncosurgery	
10.	Col. SK Gupta	Assoc Professor	Not Recognised			
11.	Col. M Arora	Assoc Professor			Paediatric Surgery	
12.	Col. SK Jha	Asst. Professor	Not Recognised			
13.	Col. M Arora	Asst. Professor	Not Recognised			
14.	Lt.Col. Jaswinder Singh	Asst. Professor	Not Recognised			
15.	Lt. Col. P Takkar	Asst. Professor	Not Recognised			
16.	Lt. Col. MA Panwaz	Asst. Professor	Not Recognised			
17.	Lt. Col. Sameer Kumar	Asst. Professor	Not Recognised			
ANAESTHESIOLOGY						
1.	Brig. GS Ramesh	Professor	Recognised	2		Total seats authorised-9 Total allotted-7 Seat Vacant-2 Recognised PG Teacher / Supervisor not available for 2 vacancies *Already recognised teacher of other university awaiting recognition of Delhi University
2.	Col. Rahsmi Dutta	Professor	Recognised	2		
3.	Col. GC Satapathy	Professor	Recognised		Posted out	
4.	Col. NS Lamba	Assoc Professor	Recognised	1		
5.	Col. SK Singh	Assoc Professor	Recognised	1*		
6.	Co; R Sethiur	Assoc Professor	Recognised	1*		
7.	Lt. Col. Naresh Dhawan	Asst. Professor	Not Recognised			
8.	Lt. Col. Rajeev Nair	Asst. Professor	Not Recognised			

MICROBIOLOGY						
1.	Col. AH Sahni	Professor	Recognised	2		Total seats authorised-2 Total allotted-1 Seat Vacant-1 Remarks-Only one Supervisor available and is due for posting out
PATHOLOGY						
1.	Col. Reena Bharadwaj	Professor	Recognised	2		Total seats authorised-4 Total allotted-3 Seat Vacant-1 Remarks-Extra Supervisor available due for posting out
2.	Col. T. Chatterjee	Professor			Haematology	
3.	Gp Capt Renu Madan	Assoc Professor	Recognised	1		
4.	Lt. Col. Jasmeet Kaur	Assoc Professor	Recognised		Due for posting out	
5.	Lt. Col. P Nath	Asst. Professor	Not Recognised			
6.	Lt. Col. P Senguupta	Asst. Professor	Not Recognised			
7.	Lt. Col. P Ganguli	Asst. Professor	Not Recognised			
PAEDIATRICS						
1.	Col. K S Rana	Professor	Recognised	2		Total seats authorised-5 Total allotted-2 Seat Vacant-3 Remarks-Supervisor not available
2.	Col. R Ghuani	Assoc Professor	Not Recognised			
3.	Col. Vandana negi	Asstt. Professor	Not Recognised			
OBST & GYNAE						
1.	Col. BS Duggal	Professor	Recognised	2		Total seats authorised-2 Total allotted-2 Seat Vacant-Nil
2.	Col TS Jose	Assoc Professor	Not Recognised			
3.	Maj. N Nivedi	Asstt. Professor	Not Recognised			
RADIOLOGY						
1.	Col. R Ravi Kumar	Professor	Not Recognised			Total seats authorised-4 Total allotted-2 Seat Vacant-2 Remarks-Supervisor not available
2.	Co. Giriraj Singh	Professor	Recognised	2		
3.	Col. Pankaj Sharma	Assoc Professor	Not Recognised			
4.	Lt. Col. Mukesh Chandra	Asst. Professor	Not Recognised			
OPHTHALMOLOGY						
1.	Brig. JKS Parihar	Professor	Recognised	2		Total seats authorised-4 Total allotted-3 Seat Vacant-1 Remarks-Supervisor not available
2.	Lt. Col. Mukherjee	Assoc Professor	Not Recognised			
3.	Wg Cdr HS Trehan	Asst. Professor	Not Recognised			
ENT						
1.	Col. AV Ramesh	Professor	Not Recognised			Total seats authorised-4 Total allotted-3 Seat Vacant-1 Remarks-Supervisor not available
2.	Lt. Col. Satish Nair	Assoc Professor	Not Recognised			
3.	Lt. Col. Poonam Raj	Asstt Professor	Not Recognised			

It was mentioned that Professors/Associate Professors and Assistant Professors posted at Delhi, but not to R&R Hospital, have also been taken as available for teaching so as to increase utilisation of seats.

13. Keeping in view the requirement of teachers for Post-Graduate faculty, the DGAFMS could not have taken the decision against the Statue of the Delhi University. As the requirement of the Delhi University, with which RR hospital is affiliated, is that they should have proper teaching faculty for Post-Graduate students. Delhi University is alone competent to certify qualified supervisor for teaching post graduate students. The Respondents in their reply have shown that because of the lack of Supervisors which has to be certified by the Delhi University, they could not admit all the students who have qualified in the aforesaid test. After going through the detailed chart which has been produced by the Respondents, we are satisfied that because of lack of Supervisors the number of students admitted was reduced

and this act of the Respondents cannot be said to be malafide or arbitrary. The other ground which has been taken by the Respondent are not of much relevance, i.e. lack of beds and finances. But important fact is that lack of teaching faculty cannot be compromised.

14. After going through the details which have been given by the Respondent, we are satisfied that decision of the Respondent of not admitting the students beyond the admissible limit was fully justified and there cannot be any compromise on the question of faculty. We are satisfied that the action of the Respondents is correct and it does not amount to any malafide or arbitrariness.
15. Since we have decided the cases on merit, therefore, the objection raised by the Respondent regarding maintainability of the other four petitions as mentioned has no relevance and we do not want to express any opinion on that aspect.

16. Consequently, all the petitions as mentioned above are dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
23rd September, 2011