

IN THE HIGH COURT OF DELHI AT NEW DELHI

+LPA No.1279/2007

Date of Decision: 04.07.2008

#Dr. Puja Dewan
!

....Appellant
Through: Mr.K.K. Rai, Senior Advocate
With Mr.Tarkeshwar Nath, Mr.V.P. Singh
and Mr.P.K. Mishra

Versus

\$National Board of Examinations
& Others
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.....Respondents
Through Mr.N.K. Kaul, Senior Advocate with
Mr.Rajesh Gosain and Mr.Bhuvan for
Respondent.

CORAM:

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE J.R. MIDHA

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. National Board of Examinations, the respondent No.1 herein, has introduced 'Fellowship of the National Board' (for short 'the FNB'), which is treated, by any standards, as a prestigious fellowship for medical students. Each year these fellowships are given. Having regard to its prestige and importance, thousands of persons aspire to be its recipient. In order to select suitable

students for the FNB, the respondent No.1 every year conducts All-India Entrance Examination. Coming out victorious in a tough competitive examination like this one is a tall order. When the appellant herein was declared successful in the entrance examination for FNB-2006, in the subject 'Speciality of Reproductive Medicine', she was on the top of the world, as not only it was a recognition of her merit, she considered herself lucky enough to get this prestigious fellowship. After all, she was selected through the said All-India written examination conducted on 9.12.2006 followed by an Interview-cum-Aptitude Test on 15.2.2007. Notwithstanding this selection of hers, she has suffered the cancellation of the said FNB. She pleaded for revocation, which request was not acceded to. She was forced to file the writ petition in this Court challenging the action of the respondent No.1. She has remained unsuccessful in that attempt as a learned Single Judge of this Court has dismissed the writ petition vide impugned judgment dated 3.9.2007 holding her responsible for the mess created and blaming her for the state of affairs. Not satisfied, she has filed the present appeal (LPA) challenging the impugned judgment.

2. In order to understand as to why the respondent No.1 cancelled her fellowship; whether the fault thereof entirely lies on the appellant or a

contributory negligence/fault; or whether the action of the respondent No.1 is valid under the law, some background factual narration would be necessary.

3. As already noted above, the appellant appeared in All-India Written Examination for FNB on 9.12.2006. She cleared this test and whereafter she was called for interview-cum-aptitude test on 15.2.2007. On the basis of the written test and interview-cum-aptitude test she was declared selected for FNB for doing the course in reproductive medicine. She was given admission by the respondent No.2, i.e., Institute of Reproductive Medicine (in short 'the IRM') on the directions of the respondent No.1. The course is of two years' duration which normally starts in February each year. However, this year there was delay in conducting the entrance examination. The plea of the appellant is that while awaiting the result of this examination, with the desire to pursue the said course, if selected, she also applied for a specialized course in Reproductive Medicine and Gynaecological Endoscopic Surgery from Kiel School, University Hospital, Kiel, Germany in September 2006. She was selected for that course also, which was to commence on 1.2.2007. As by that time result of FNB had not been declared, she left to join the specialized course in Germany on 31.1.2007 as the said course was to commence on 1.2.2007. All that time, she was also informed about the date of interview, to be conducted by the respondent No.1, fixed on 15.2.2007. She came back to

India from Germany to appear in the said interview and after the interview, the respondent No.1 instructed the appellant to report to the Director/Medical Superintendent of the respondent No.2/IRM within 15 days of the receipt of letter dated 15.2.2007 given by the respondent No.2/IRM to the appellant. The appellant accordingly reported to the respondent No.2/IRM on 16.2.2007 and submitted her joining report. She was accepted as Trainee-cum-Resident Medical Officer (RMO) under the post Doctoral Fellowship Programme of National Board of Examinations in the subject 'Speciality of Reproductive Medicine'. She was issued a letter dated 16.2.2007 intimating about the terms of her course and stipend.

4. As she had already joined the University School, Kiel and was undergoing the studies which had commenced on 1.2.2007, the desire of the appellant was to complete that course as well. Therefore, on 16.2.2007 itself, the day she gave joining report to the respondent No.2/IRM, she also applied for grant of her study leave vide application dated 16.2.2007 seeking leave from 19.2.2007 to 30.6.2007. The Director of the respondent No.2/IRM sanctioned the said leave for the aforesaid period without pay by making the following endorsement "Granted leave without pay and she has to complete her tenure of training after coming from Germany." On sanctioning of this leave, she left for Germany on the same day. However, after some time she received an e-mail

dated 12.3.2007 from the respondent No.2/IRM that her leave for training in Germany was not accepted by the respondent No.1. Along with this e-mail, letter dated 6.3.2007 of the respondent No.1 to the respondent No.2/IRM was attached stating that leave could not be granted as it was against "Board Rules". The appellant vide her e-mail dated 16.3.2007 to the Director of the respondent No.2/IRM requested him to reconsider her case and treat the said period, which she was going to spend in Germany, as part of FNB Course tenure as she was pursuing training in the same course in Germany as well. Copy of the said e-mail was sent to the respondent No.1 and the respondent No.2/IRM through courier as well. In the meantime, Dr. B.N. Chakravarty, Director of the respondent No.2/IRM, sent the registration form dated 16.2.2007 of the appellant to the respondent No.1, which was forwarded by Dr. R.N. Ghosh, Medical Superintendent of the respondent No.2/IRM. It was forwarded on 24.3.2007. On 26.3.2007, the respondent No.2/IRM also intimated the appellant that her representation in support of leave application had been forwarded to the respondent No.1 for consideration.

5. While she was awaiting further response on her leave application from the respondents, it transpires that on 3.4.2007 Dr.R.N. Ghosh, Medical Superintendent of the respondent No.2/IRM intimated the respondent No.1 that the appellant had left for training abroad and her seat was lying vacant.

On this basis, the respondent No.1 posted another candidate Dr. Samita Malhotra alias Samita Jain to the respondent No.2/IRM vide letter dated 16.4.2007. She, however, did not join. According to the appellant she was unaware of these developments and as far as she is concerned, vide e-mail dated 16.4.2007 the respondent No.2/IRM suggested the appellant for the topic of studies. She, thus, remained under the impression that her Fellowship and posting with the respondent No.2/IRM continued, as even at that time she was not apprised of her replacement by a new candidate. On 28.4.2007, she intimated the respondent No.1 that she would report at the respondent No.2/IRM on 1.5.2007 and also requested the respondent No.2/IRM that no other candidate should be allowed to join the duties against her place. However, respondent No.2/IRM had already posted Dr. Jayeeta Samanta (respondent No.3) vide letter dated 23.4.2007, who joined the respondent No.2/IRM on 30.4.2007. Thus, when the appellant wanted to resume her course on 1.5.2007 and for this purpose when she approached the respondent No.2/IRM, she was not allowed to join the duties as her slot had already been filled by another candidate.

6. It was, on these averments, that she filed writ petition challenging the aforesaid action of the respondent Nos. 1 and 2 seeking direction that she be permitted to resume studies in the FNB in the respondent No.2/IRM. After

taking note of the aforesaid facts, the learned Single Judge concluded that the appellant was not entitled to any relief because the situation in which she finds herself today was of her own making. The reading of the judgment would reveal that the following factors influenced the mind of the learned Single Judge in forming the said opinion:-

- a) The authority for approving or sanctioning leave was the respondent No.1 and the application for leave was to be dealt with by the leave regulations which stipulated that no leave beyond 15 days in the entire course of two years was permissible. Therefore, the leave granted by the respondent No.2 was of no avail as it was subject to the approval of the respondent No.1.
- b) The respondent No.1 had rejected the application for leave about which the appellant was informed on 12.3.2007. However, she failed to come back and join her course.
- c) The Fellowship Programme, to which the appellant was selected, was not only prestigious but rigorous as to attendance norms. If candidates are permitted to go on leave at their whim, the discipline of the course would be undermined.
- d) The object of the programme is intensive training. Subjective determination of desirability of another course cannot be the

basis of individual candidate's leaving programme at any point, at their convenience.

- e) The plea of the appellant that she had gone back to Germany on a bona fide belief after her leave was sanctioned by the respondent No.2/IRM, which was aware of the appellant's intentions, has not been accepted by the learned Single Judge. Finding is recorded that she never informed the respondent No.1/NBE about her admission at the Kiel School, University Hospital, Kiel, Germany and NBE was unaware of impending absence of four months at the time of her interview, which took place on 15.2.2007.
- f) The NBE is the regulatory and expert body, which design the course as well as the Fellowship Programme. It has an overriding interest in the manner in which candidates have to conduct themselves in the course. Attendance and other academic stipulations, whether embodied in the statutory rules or not, are meaningful; designed to attain specific objectives. The fellowship programme in question is of two years. The overriding concern of the NBE, while stipulating a 14 day cap on leave, is to ensure attendance in the programme. If individuals, howsoever brilliant, are permitted to leave the course at any point of time (in this

case, at the commencement) and return in the fellowship on the basis of their assessments of the worth of other courses and programmes, that would be injurious to the larger discipline of the course.

g) Such attendance conditions cannot, in judicial review, be examined on merits by the Courts. Being part of standards evolved by an expert body, the Court cannot don the hat of a super executive and explore its wisdom.

h) Plea of the appellant that due to lapses and omissions of the NBE in commencing the course late was of no avail inasmuch as, having chosen to accept the fellowship, it was not proper for her to blame the NBE for alleged delay in conducting the admission procedure. She did not find any difficulty in appearing in the test or the interview, which is clear from her unconditional participation.

7. Mr.K.K. Rai, learned senior counsel, appearing for the appellant reiterated the submission made before the learned Single Judge, which were howsoever not accepted by the learned Single Judge. He reiterated that normally such courses commence in the month of July and therefore, selection process should have been completed at least by June. But in that particular year, the

exam was held in December 2006 and interview conducted only in mid February 2007. On account of this indecision and delay, the appellant had also applied for and got admission in the prestigious course in Kiel School, Germany. It was also submitted that she had apprise the respondent No.2 of this fact and was duly sanctioned the leave by the respondent No.2. She was not aware as to whether leave is to be ultimately sanctioned by the respondent No.2 and on the strength of sanction of the respondent No.2, she left for Germany in a bona fide belief that she would be allowed to resume the course on her return. It is further submitted that though she was informed vide e-mail dated 12.3.2007 that her leave for training in Germany had not been accepted by the NBE, she had made representation for sanction of leave and reconsideration of the matter not only no outcome thereof was communicated, in the meantime, the respondent No.2 had processed her registration form and also forwarded her joining report to NBE and from these acts she gather bona fide impression that she would be allowed to rejoin the said course. It was also submitted that other candidate joined on 30.4.2007 whereas before that on 20.4.2007 she had written e-mail that she would be joining the course on 1.5.2007. Therefore, it was not a bona fide act on the part of the respondents No.1 and 2 to allow the respondent No.3 to join in her place when she was coming on the very first day. Mr.Rai also pointed out that

the respondent No.2 in the counter affidavit filed in the writ petition had categorically stated that it had no objection if the appellant was allowed to join even at that stage and therefore, there was no impediment at all. Further, queried the learned counsel, she could not be refused to join the course on 1.5.2007 when there was no order for cancellation of her candidature.

8. We have given our due consideration to the aforesaid submissions in the light of the reply given to these submissions by Mr. Neeraj Kaul, Senior Advocate, who appeared for the respondents. We express our inability to agree with these submissions as we do not find any fault with the judgment of the learned Single Judge. The learned Single Judge is correct in his observations that the situation in which the appellant is landed today is her own doing. Whether there was any delay in starting the course by the NBE or not, would be of no consequence and the appellant cannot draw any mileage therefrom. The moot question is that if there was delay in conducting the exam and starting the course and in the meantime, the appellant was selected for undertaking a specialized course in Reproductive Medicine and Gynaecological Endoscopic Surgery from Kiel School, University Hospital, Kiel, Germany, could she claim that it is now her right to undertake both the courses at the same time? No doubt, when she was selected for pursuing the aforesaid course from Kiel School, Germany, which was to commence on 1.2.2007, the selection

process of the course in question by the NBE had not concluded. Therefore, as on that date she was not sure as to whether she would get the admission in NBE and it appears that she did not want to miss the opportunity of joining the training course in Germany. However, when she was given a call for the interview-cum-aptitude test, scheduled for 15.2.2007, she knew that she could be selected in the fellowship course of NBE. It was for her to make a choice at that time as to whether she wanted to complete the training in Germany or prefer the fellowship of NBE. Even if she carried an impression that it was possible to do both the courses at the same time as training course in Germany was for six months duration only whereafter she would be in a position to join the IRM, she should have disclosed this fact to NBE at the time of her interview on 15.2.2007. She did not do so. Instead she informed the respondent No.2/IRM on 16.2.2007 and moved application for leave with the IRM only.

9. Even if she is to be given the benefit of doubt up to this stage, at least on 12.3.2007 when she was informed that her leave application was not approved by the NBE, she should have at that time made her choice, inasmuch as this information that her leave is not sanctioned was with obvious consequence, namely, if she does not join, she may lose her fellowship. However, she cannot have her cake and eat it too. Her intention was to have best of both

worlds. She wanted to complete her training course in Germany as she thought that it was very prestigious and at the same time was nursing erroneous belief that her attendance for all this period from IRM will be excused. It was an ostrich like approach where even knowing the obvious the appellant was trying to turn a blind eye in a faint hope that her default would be condoned. However, the respondents are bound by their attendance regulations. It was not possible for the respondents to help the appellant in these circumstances, which was possible only by bending the rules.

10. Though the appellant states that she was not informed about the fate of her request for reconsideration of leave application, it is strange that she wrote e-mail on 28.4.2007 stating therein that she was joining on 1.5.2007 and requesting that nobody else should be allowed to join in her place. It is manifest that she had come to know about her replacement and in these circumstances, when almost driven to wall, she adopted the aforesaid course of action. However, it was too late by that time as the respondent No.3 was given letter dated 23.4.2007 to join the respondent No.2/IRM, i.e., much before her e-mail dated 28.4.2007. Therefore, neither in law nor in equity the appellant can claim any remedy. No doubt, she has academic brilliance and her ouster from the said fellowship is somewhat harsh to her, however, the respondents are also bound by the rules and regulations and if NBE decided

that in the interest of discipline, it is not possible to help the appellant, it becomes difficult for this Court to come to the rescue of the appellant. We may record that the learned counsel for the IRM had made a statement before us that it was not possible to adhere to the statement in the counter affidavit giving offer to the appellant to join the course even at this stage, as it is realized that the same would be contrary to rules. The quota of the said institute is of two seats and if the appellant is accommodated, it would be breach of that quota.

11. In these circumstances, we agree with the reasoning of the learned Single Judge, as stated above by us in summarized form. For all these reasons we affirm the judgment of the learned Single Judge and dismiss this appeal. There shall, however, be no orders as to costs.

(A.K. SIKRI)
JUDGE

July 04, 2008
HP.

(J.R. MIDHA)
JUDGE