

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th October, 2010.

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W.P.(C) No.5272/2010

DR. VARUN RAI

..... PETITIONER

Through: Mr. Anil K. Kher, Sr. Advocate with
Mr. D.R. Bhatia & Mr. Rajesh Pandit,
Advocates

Versus

UNION OF INDIA & ORS.

..... RESPONDENTS

Through: Dr. Rakesh Gosain, Advocate for R-2.
Mr. Harish Malhotra, Sr. Advocate
with Mr. Rohit Jain, Advocate for
respondent No.3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not? | No. |
| 3. | Whether the judgment should be reported
in the Digest? | No. |

RAJIV SAHAI ENDLAW, J.

1. The petitioner had appeared for Centralised Entrance Test (CET) for Diplomat of National Board (DNB), 2009 held by the respondent No.2 National Board of Examinations (hereinafter called the Board) and declared "Pass". The petitioner was selected by the respondent No.3 Sir Ganga Ram Hospital (hereinafter called the Hospital) for three years DNB training in the ENT department and admitted to training on 9th February, 2009. The Hospital thereafter sent the papers to the Board for registration of the petitioner. The Board on receipt of an anonymous complaint to the effect that the Hospital in admitting the petitioner had breached the procedure,

investigated and found that the father of the petitioner was working as a Senior Consultant in ENT Department in the Hospital and the petitioner had been admitted for training under the tutelage of his father only. The Hospital had submitted a declaration to the Board *inter alia* to the effect that none of the students admitted to DNB training were related to any promoter, owner or consultant to the Hospital. The Board found the admission of the petitioner for DNB training in the Hospital to be contrary to the said declaration also and accordingly, vide letter dated 28th July, 2009 to the Hospital, rejected the application for registration of the petitioner.

2. The petitioner continued to make representations and upon the same meeting with no success, finally preferred this petition. Notice of the petition was issued notwithstanding this Court being of the opinion that the Hospital in selecting the petitioner had favoured the petitioner on the contention of the senior counsel for the petitioner that as per the Rules of the Board there was no bar to the selection of a candidate by a Hospital in which his father is working as a Consultant and the only bar is to the father being not involved in the selection process, it was contended that the father of the petitioner was not involved in the selection process.

3. The Board has filed a counter affidavit and to which a rejoinder has been filed by the petitioner.

4. The senior counsel for the Hospital, though has not filed an affidavit, but contends that the father of the petitioner was not involved in the selection of the petitioner for DNB training in the Hospital. It is further contended that though the declaration required to be filed only required it to be declared that the owners / promoters / consultants of the Hospital related to any of the applicants were not involved in the selection process but erroneously a declaration to the effect that they were not related to any of the candidates selected, was filed. It is yet further contended that the

petitioner was not under the tutelage of his father and since beginning has been under the tutelage of Dr. Ajay Swaroop Mathur & Dr. Manish Munjal but mistakenly it was recorded that he was under the tutelage of his father.

5. It has at the outset been enquired from the counsel for the Board as to why the Board is following a procedure which permits discretion of the hospitals in admitting candidates for DNB training and which leads to instances as the present one. The counsel for the Board states that the procedure followed till the year 2009 was of only declaring the candidates appearing in the CET as “fail” or “pass” and the candidates who had passed the examination were entitled to approach any of the hospitals accredited to impart training for DNB and it was left to the hospitals to select the candidates. It is informed that though the hospitals were required to conduct an aptitude test but it was found that the hospitals were indulging in malpractices in conducting the said test and were admitting students not necessarily on the basis of merit. It is informed that in view of the same, with effect from the year 2010 the procedure has been changed and now a merit list of CET test is drawn up, counselling conducted and the candidates allocated to the affiliated hospitals in order of their merit.

6. With respect to the selection of the petitioner by the Hospital, attention is invited to the result of the test held by the Hospital and forwarded to the Board and wherefrom it is shown that though the petitioner had obtained only 55% marks in the written test but was given 84% marks in the oral aptitude test held. It is contended that the same shows favouritism meted out to the petitioner owing to his father being a senior faculty member in the Hospital.

7. The senior counsel for the petitioner rebuts the said argument by drawing attention to the rejoinder in which several other instances of

disparity in marks in the written examination and in the oral aptitude tests are given. He also contends that the same does not constitute a ground for rejecting the registration of the petitioner.

8. I have enquired from the counsel for the Board the procedure for the three year training and as to whether the seat vacated on rejection of the registration of the petitioner will be available to any other meritorious candidate even in the ensuing session. The counsel for the Board informs that pursuant to the rejection of the registration of the petitioner, the Hospital had informed the Board that with effect from 1st March, 2010 the name of the petitioner was removed from that of a DNB trainee and he was taken on rolls as a Junior Resident though stated to be performing the same functions as a DNB trainee. He states that even if the petitioner is to be granted the relief by this Court, the petitioner will have to make up for the lost time and his training will have to be proportionately extended. It is also informed that the petitioner misrepresented before this Court that appraisal of trainees was due in August, 2010. It is stated that the appraisal for the DNB registrants of 2009 was conducted in June, 2010. It is also stated the training / tutelage under the father, as was found on enquiry, is not permissible.

9. With respect to the seat vacated by the petitioner, it is informed that the said seat cannot be filled up by any other candidate and would remain vacant for a period of three years for which the petitioner was admitted to training.

10. Though I am not satisfied with the explanations of the petitioner and the Hospital of the selection of the petitioner being on merit and the petitioner having been not under the tutelage of his father but i) considering the fact that the malady in the procedure adopted by the Board has been cured; and, ii) further considering the fact that even if the admission of the

petitioner was not on merits, as required to be, as of today no candidate who may have been entitled to admission in lieu of the petitioner can be given benefit thereof; and, iii) considering yet further that the petitioner as per the Rules of the Board then prevalent was entitled to continue the DNB course, I am inclined to grant relief to the petitioner but subject to payment of heavy costs.

11. The source of funding of the Board has been enquired. The counsel for the Board informs that the Board has been set up by the Ministry of Health & Family Welfare and is a self sustaining Institution dependent upon the fees collected from the students.

12. In the circumstances, the decision of the Board rejecting the request of the Hospital for registration of the petitioner as a DNB trainee in ENT Department in the Hospital is set aside. Resultantly, the petitioner shall be registered as a DNB trainee with the Board within four weeks of today.

13. There is some controversy as to whether the petitioner would be required to undergo extended training or not. The senior counsels for the petitioner and the Hospital contend that though the petitioner was not registered as a DNB trainee with effect from 1st March, 2010 but has been performing the same functions in his capacity as a Junior Resident. It is as such left to the Board to take a decision in this regard within four weeks of today. If the Board is satisfied that the petitioner has during the said period done the same work as a DNB trainee was required to do, the benefit shall be granted to the petitioner, else the period lost shall be added to the training of the petitioner.

14. The petitioner shall comply with such other directions / conditions as may be imposed by the Board.

15. The petitioner to, as a pre-condition for the registration pay costs of ₹1,00,000/- to the Board.

The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

6th October, 2010
'gsr'..