

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

Date of decision: 16th March, 2011

+ W.P.(C) 1732/2011 & CM No.3662/2011 (for interim direction)

N.P. KAMALESH

..... Petitioner

Through: Mr. V. Giri, Sr. Advocate with
Mohd. Saddique & Mr. Harshad V.
Hameed, Advocates

Versus

**THE DEPUTY DIRECTOR (MEDICAL) NATIONAL
BOARD OF EXAMINATION & ORS**

..... Respondents

Through: Dr. Rakesh Gosain, Advocate for R-1.

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 petition impugns the letter dated 23rd February, 2011 of the respondent No.1 National Board of Examinations (NBE) refusing registration of the petitioner as a Diplomate of National Board (DNB)

Trainee in the specialty of Gastro-Intestinal Surgery in the respondent No.2 PVS Memorial Hospital Ltd., Cochin, Kerala.

2. The counsel for the respondent No.1 NBE appears on advance notice. Considering the nature of the controversy, need is not felt to issue notice to the respondent No.2 Hospital or to the respondent No.3 on whose complaint registration to the petitioner has been refused or to call for the counter affidavits. The senior counsel for the petitioner and the counsel for the respondent No.1 NBE have been finally heard.

3. The petitioner had appeared in the Common Entrance Test (CET) held in January, 2010 by the respondent No.1 NBE for admission as a DNB Trainee in Super Speciality in Surgical Speciality Group. The said exam is essentially a qualifying exam with all clearing / passing the said exam being eligible for admission. As per the Rules of the respondent No.1 NBE, the petitioner upon being so qualified was entitled to be admitted as a DNB Trainee to any of the accredited hospitals of the respondent No.1 NBE. It is the case of the petitioner, that in pursuance to the applications invited by the respondent No.2 Hospital in January, 2010, the petitioner applied and the respondent No.2 Hospital vide its letter dated

27th February, 2010 informed the petitioner of his selection and asked him to comply with the other formalities; that the petitioner complied with the said formalities and joined the respondent No.2 Hospital as a DNB trainee; the respondent No.2 Hospital vide its letter dated 29th March, 2010 to the respondent No.1 NBE forwarded to the respondent No.1 NBE the duly filled up registration form for registering the petitioner as a DNB Trainee with the respondent No.2 Hospital. No reply / confirmation having been received from the respondent No.1 NBE, a reminder dated 30th June, 2010 was forwarded by the respondent No.2 Hospital.

4. The respondent No.1 NBE ultimately vide its letter dated 13th August, 2010 informed the respondent No.2 Hospital that the documents forwarded showed that the respondent No.2 Hospital had not followed the admission procedure as per Information Bulletin for DNB CET-SS April, 2010 and sought clarification in this regard. The said clarification was furnished by the respondent No.2 Hospital vide its letter dated 24th August, 2010 and upon receiving no reply from the respondent No.1 NBE, another letter dated 25th October, 2010 was sent. Ultimately the respondent No.1 NBE vide its letter dated 23rd November, 2010 informed the respondent

No.2 Hospital that the prescribed procedure for selection having not been followed, the registration of the petitioner could not be accepted. A copy of the said letter was forwarded to the petitioner also. The petitioner vide letter dated 21st December, 2010 represented to the respondent No.1 NBE. The respondent No.1 NBE again maintained quietus and after a reminder dated 29th December, 2010 has vide communicated dated 23rd February, 2011 impugned in this petition rejected the representation of the petitioner.

5. It has been enquired from the counsel for the respondent No.1 NBE as to how the respondent No.2 Hospital was found to be in breach of the procedure for selection. The counsel for the respondent No.1 NBE invites attention to the Information Bulletin for CET-SS January, 2010 and particularly to Clause 8 thereof prescribing the standard procedure to be followed for admission to DNB-SS Trainees. Therefrom, it is pointed out that the accredited Hospitals were required to evolve a merit list of applicant candidates in descending order of marks and required to offer seats on merit-cum-choice basis i.e. the candidates at their respective position of merit were free to exercise their option of available seats. It is contended that notwithstanding the prescribed procedure of admission, on

the basis of position in the merit list in CET, the respondent No.2 Hospital as per its own admission in the letter dated 27th February, 2010 (supra) held an interview and selected the petitioner on the basis of the said interview. It is also pointed out that the reference in the letter dated 13th August, 2010 in respect of Information Bulletin for DNB CET-SS April, 2010 is an error and the reference was intended to the Information Bulletin of January, 2010.

6. Per contra, the senior counsel for the petitioner with reference to the Information Bulletin for January, 2010 has showed that the Time frame / Schedule for enrolment provided for the list of selected candidates to be displayed by the accredited Hospitals “within seven days of holding Aptitude Assessment i.e. 28th February, 2010”. It is contended that the interview referred to is nothing but the aptitude assessment and it cannot be said that the criteria for selection was to be on the basis of the position in the merit list of the CET alone.

7. The counsel for the respondent No.1 NBE in rejoinder contends that the reference to the Aptitude Assessment the time frame could not have misguided the respondent No.2 Hospital in view of the clear position

elsewhere in the Information Bulletin of the selection being on the basis of position in the merit list alone.

8. The senior counsel for the petitioner has further contended that the petitioner has been training as a DNB Trainee since February, 2010 and the respondent No.1 NBE sat over the application for registration and has delayed in taking decision and owing where to the petitioner has missed out the admissions in the subsequent session in July, 2010 & January, 2011.

9. I have enquired from the counsels whether the seat even if were to be vacated by the petitioner can be allocated to the respondent No.3 or to any other who may have been higher in the merit list than the petitioner. The counsel for the respondent No.1 NBE after taking instructions has fairly informed that the said seat would go vacant. The senior counsel for the petitioner also draws attention to Clause 7 of the Information Bulletin aforesaid which also provides that the last date for filling up of the seats was 7th March, 2010 and no admissions could be made thereafter.

10. I may in this regard notice that even though another CET was held in April, 2010 but the date for admission in pursuance thereto has also since long gone. Thus the seat which will fall vacant in the event of the

decision of the respondent No.1 NBE being upheld would remain vacant and as per the rules would not devolve on the subsequent session also. It is also worth mentioning that prior to January, 2010, the respondent No.1 NBE used to follow the procedure of selection by the accredited hospitals on the basis of interviews / aptitude test alone i.e. any of the candidates who had cleared the CET, irrespective of their rank could be selected by the accredited hospitals. It was for the first time in January, 2010 that the Aptitude Test / Interview was sought to be done away with and selection on the basis of merit in the CET alone was prescribed. The discrepancy aforesaid in the Information Bulletin appears to be attributable to the said change. The reference to Aptitude test remained to be removed from the Time Schedule / Frame for admissions.

11. The counsel for the respondent No.1 NBE has further contended that the petitioner has based his case only on the basis of the procedure prescribed in the earlier years and it is not even the case of the respondent No.2 Hospital in the correspondence which has been placed on record that it was misguided by the discrepancy / ambiguity aforesaid in the Information Bulletin. It is thus contended that no benefit of the said

ambiguity can be given to the petitioner.

12. The discrepancy / ambiguity in the Information Bulletin being admittedly there and the medical professionals manning the Hospitals as the respondent No.2 is being not expected to be experts in legalese, it cannot with certainty be said that whether the confusion in the mind of the concerned authorities of the respondent No.2 Hospital was owing to the earlier prescribed procedure or owing to the discrepancy / ambiguity aforesaid in the Information Bulletin.

13. I find that the petitioner is not to be blamed. No reason of *mala fides* or bias in the selection of the petitioner has been cited. Owing to the ambiguity aforesaid in the Information Bulletin and the confusion in the mind of the concerned authorities of respondent No.2 Hospital, the petitioner has missed out on admission in the sessions of June, 2010 and January, 2011. The respondent No.1 NBE has shown considerable laxity in informing its decision on the application for registration of petitioner and in deciding the representation of the petitioner. It is thus felt that the petitioner ought not to be made to suffer.

14. I am of the view that:

- (i) since the petitioner has already spent by now over one year as a DNB Trainee; and,
- (ii) further, since the procedure for admission is in the process of transformation; and,
- (iii) yet further for the reason of it being now not possible to give any benefit to the respondent No.3 or to anyone more eligible than the petitioner.

Equity demands that the petitioner be permitted to continue with the course. It cannot be lost sight of that the procedure under which the petitioner has been admitted by the respondent No.2 Hospital was prevalent since the year 1975.

15. Accordingly, the petition is allowed. The letter dated 23rd February, 2011 of the respondent No.1 NBE rejecting the registration of the petitioner as a DNB Trainee is set aside / quashed. The respondent No.1 NBE is directed to grant registration to the petitioner as a DNB Trainee with respondent No.2 Hospital in the specialization of Gastro-Intestinal

Surgery with effect from February, 2010 in terms of the application of the respondent No.2 Hospital.

No order as to costs.

CM No.3663/2011 (u/S 151 CPC for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16th MARCH, 2011
'gsr'