

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6666/2013**

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Reserved on: 09.09.2015
Decided on: 21.09.2015

DR. JAIMEET KAUR MEHAR Petitioner

Through: **Mr.Ankur Chhibber, Advocate**

versus

UNION OF INDIA & ORS. Respondents

Through: **Dr.Ashwini Bhardwaj, Advocate**
Mr.Piyush Kumar, Rep. of
ADG (Medical), CRPF
Mr.S.S.Sejwal, Law Officer,
CRPF
Mr.B.K.Raut, Pairavi Officer,
CRPF

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The petitioner, a senior Medical Officer (Assistant Commandant) has invoked the jurisdiction of this Court under Article 226 of Constitution of India, for quashing the signals dated 20.09.2013 and 30.09.2013 whereby her request to appear in Post Graduate Entrance Exam 2014 was turned down. She has also sought our indulgence for

quashing Para g Sub Clause (II) of Policy dated 01.03.2012, which makes three years of field service mandatory for study leave.

2. In brief, the case of the petitioner is that a policy (Standing Order No. 2/2009) was framed by respondents to allow leave to pursue higher studies to all Medical Officers who had completed 5 years of service in CRPF (in consonance with Rule 50(5) Sub Clause 5 of the CCS (Leave) Rules). She joined CRPF on 25.04.2005 and worked as Medical Officer (Assistant Commandant) at GC Greater Noida and promoted to the post of Senior Medical Officer on 25.04.2009. She was transferred to Sri Nagar and worked there from September 2009 to March 2011, when she was posted to Neemuch. She first applied for Post Graduate Medical Entrance Examination 2012 vide her application in 2011 and she was permitted but she could not join it. She again applied for permission to appear in Post Graduate Medical Entrance Examination, 2014 vide application dated 26.06.2013, which was forwarded by DIG (Pers) to ADG (Medical) vide its letter dated 11.07.2013. ADG (Medical) vide letter dated 01.08.2013 asked her to intimate her choices of Post Graduate Course and she vide her letter dated 05.08.2013, sent the choices of Post Graduate Courses. She however was denied permission to appear in Post Graduate Medical Entrance Examination, 2014 for the reason that she had not completed three years mandatory field service (PG).

3. The petitioner made a fresh representation requesting to treat her tenure at Neemuch Composite Hospital as field service on the grounds that her postings were not in her hand and she should not be put to disadvantage for the act of the respondent who choose not to post her in

field area for more than 1 ½ years during her 8 ½ years of service with them and relied on order of this Court in W.P. (C) No. 21900/2005 in case of *Ashok Kumar vs. Union of India & Ors* wherein by order dated 27.10.2009, the Court had struck down the requirement of two years of mandatory service as a Dy. Commandant in duty Battalion or Regiment Commandant in BSF Artillery as an eligibility criteria for the next higher promotion on the ground that the officer cannot be denied promotion on the ground for which he could not be faulted. Pursuant to this order, the respondents had, vide order dated 04.07.2012, issued instructions for waiver/relaxation of mandatory requirement of field service for those officers. It is not contended that the same principle is applicable in her case also. It is further contended that while the posting at Delhi (which has all the facilities) is considered field service, the posting at Neemuch (where work load is more and which cater three training institutes and have scanty facilities) is not considered as field service. Prayer is made that her posting at Neemuch be considered as field posting.

4. The respondents filed counter affidavit which disclosed that the petitioner was posted in 79 Battalion (J&K) i.e. field area on 11.09.2009, and at her own request (domestic reasons- having daughter of 2 ½ years of age and being in family way) she was transferred to CH Neemuch on 07.03.2011 where her husband was posted.

5. On 01.07.2014, the petitioner filed her rejoinder wherein she had elaborated the reasons for seeking transfer to Neemuch.

6. The parties submitted their written synopsis and arguments were heard.

7. We have given thoughtful consideration to the facts and circumstances and developments pursuant to interim orders of this Court and the arguments and submission made by learned counsel for both the parties.

8. At the onset, the respondents highlight that the petitioner, along with present writ petition had filed an application (CM No.14469/2013) for interim order seeking provisional permission to appear in P.G. Entrance Exam, 2014 and this Court, after considering her submissions, issued directions to the respondents to grant the requisite permission/no objection to the petitioner for undertaking the Post-Graduate Medical Entrance Examination for the 2014 Session in such institutions as is permissible under the rules of the respondent.

9. Pursuant to these directions of the Court, the respondent had granted requisite permission to her on 28.11.2013. It is further argued that the petitioner had concealed the fact from the notice of this Court that she had failed to qualify the Post Graduate Medical Entrance Examination for the year 2014.

10. Although she failed in Post Graduate Medical Entrance Examination 2014 exam yet made false submissions before this Court on 11.07.2014 that she had qualified the Post Graduate Medical Entrance Examination 2014. In rejoinder too, she had stated that she was selected for MBA in Health Care Management and the Course starting on 14.07.2014, while she had never applied for MBA in Health/Health Care Management and had never sought permission to appear for Post Graduate Medical Entrance Exam for MBA-Health Care Course/Management also and did not qualify the MBA Health Care Course

Management in Post Graduate Medical Entrance Examination 2014. She therefore without permission from respondents and without knowledge of the Court appeared in the Entrance Exam in MBA Health Care Management on 28.02.2014 from Manav Rachna International University Faridabad, a deemed University and is not a part of Post Graduate Medical Entrance Examination 2014 in which she appeared on 06.12.2013. Along with her application dated 08.01.2015, she had submitted the copy of her admit card and informed the respondent that she had appeared in Post Graduate Medical Entrance Examination on 06.12.2013 but did not inform that she had failed to qualify it. It was only when the result was downloaded, the respondents learnt that she could not qualify the said exam. It is stated that she concealed these facts and represented to Court on 11.07.2014 as if she had qualified the Post Graduate Exam and made fraudulent and misleading statements which led the Court to pass the order dated 11.07.2014. It is further submitted that the petitioner had come before this Court with the claim of entitlement to appear in the Post Graduate Medical Entrance Examination-2014 and for study leave. Now since she failed to qualify the Post Graduate Medical Entrance Examination 2014, her second relief has no relevance and the order dated 11.07.2014, which was obtained by her on misleading facts, is liable to be recalled. The order in any case was subject to final outcome of the present writ petition. It is further submitted that opportunity was given to the petitioner to serve in field area, but she herself sought her transfer for a peace area, the respondents cannot be faulted. It cannot be said that the respondent had not given

opportunity to the petitioner to serve in field area and the ratio of *Ashok Kumar's* case (supra) is not applicable on the facts of this case.

11. It is argued by Dr. Ashwani Bhardwaj, learned counsel for respondents, that since the petitioner had obtained the order dated 11.07.2014 from this Court by making misleading statements and concealing facts, she is liable for perjury.

12. It is contended on behalf of the petitioner that MBA-Health Care Management is also a part of P.G. Course. It is however conceded that petitioner had not opted for this course, while applying for permission to appear in Post Graduate Medical Entrance Examination 2014 Course.

13. On hearing the rival contentions and perusal of record, what emerges is that, as per rules of Rule 50(5) Sub Clause 5 of the CCS (Leave) Rules, the study leave can be granted only to those officers who had completed 3 years of field area tenure. The petitioner was posted to field area i.e. Jammu & Kashmir in September 2009 and she was transferred to peace area i.e. Neemuch at her request in March 2011. She had no doubt not completed 3 years of field area tenure.

14. The Court is of the opinion that the petitioner's request for posting to Neemuch cannot, in the circumstances of this case, be construed as disentitling her to disability to apply for PG in medicine or other courses. This was because she was compelled to apply for change of posting due to an infant child and her pregnancy. Her husband, also a CRPF officer, was posted there. She was left alone in Jammu and Kashmir, unable to care for her child and also having to undergo pregnancy. Her request for transfer could not be, therefore, treated as a normal one, but wholly due to compelling circumstances. The CRPF, therefore, should not have

rejected her request for study leave. The petitioner had applied for appearing in PG Medical Entrance Examination and in her letter gave following choices of P.G.:

*“ Sub: **Choice of subjects to pursue Post Graduation***

Kindly refer your U.O. No.-06/ADG (Med)/PG study/2013-14 dated 01.08.2013. In this regard, it is submitted that I would like to pursue PG in either of the following subject-

- 1) RADIOLOGY
- 2) PEDIATRICS
- 3) MEDICINE
- 4) ANAESTHESIA
- 5) PATHOLOGY
- 6) GYNAE-OBS
- 7) ENT
- 8) OPHTHALMOLOGY
- 9) DERMATOLOGY
- 10) RADIOTHERAPY
- 11) CHEST AND TB
- 12) SURGERY

Sir, all these subjects are clinical specialties and of utility in CAPF's. Hence any case may kindly be taken up with MHA for condonense of field service.”

15. It is apparent that she did not opt for MBA in Health Care Management. Permission was denied to her by the Management. She approached this Court for following relief:-

- (a) Permission to appear in PG Medical Entrance Exam 2014.
- (b) Grant of study leave for that purpose.

16. On the petitioner's application being CM No.14469/2013 for interim relief, this Court passed following order:-

“Issue notice to the respondents. Mr. R.V. Sinha, Advocate accepts notice on behalf of the respondents.

The petitioner, who is a doctor, is aggrieved by the refusal of the respondents to permit him to undertake the Post Graduate Medical Entrance Examination for the 2014 session.

It is submitted by Mr. Ankur Chhibber, learned counsel for the petitioner that adjudication in the writ petition would take time and the petitioner may lose an opportunity to undertake the examination. It is also submitted that the petitioner has been wrongly denied opportunity to undertake the examination inasmuch as her postings are completely in the hands of the respondents and she has no choice in the matter.

In this background the requirement of the respondents that she should have spent three years out of five years preceding the request for undertaking the examination cannot be meaningfully work and results in grave injustice to the petitioner.

It is submitted that in case the petitioner is granted interim permission to apply for the examination and to take the examination, pending the adjudication in the writ petition, the petitioner would not claim any equities in the matter.

In view of the above, we direct that the respondents shall grant the requisite permission/no objection to the petitioner for undertaking the Post Graduate Medical Entrance Examination for the 2014 session in such institutions as are permissible under the rule of the respondents.

It is made clear that no equities would flow in favour of the petitioner in case she succeeds in the entrance examination procedure. The requisite permission/no objection shall be granted and furnished to the petitioner within a period of one week from today.

This application is allowed and disposed of in the above terms.”

17. Pursuant to the above directions to the respondents, the respondents vide letter dated 28.11.2013 gave permission to petitioner to appear in Post Graduate Medical Entrance Exam 2014. Vide her letter dated 08.01.2015, the petitioner informed the DIG (Medical) CH that she had appeared for the following exams:-

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|-----|---|---------|
| (1) | All India Post Graduate Medical
Entrance examination 2014
Admission session | 6/12/13 |
| (2) | MBA Entrance exam held in
Faculty of Management studies
By Manav Rachna International
University for MBA 2014-16
Admissions | 28/2/14 |

18. These show that the petitioner appeared in two entrance exams-one All India Post Graduate Medical Entrance Examination (AIPGMEE) 2014 and other MBA Entrance exam, conducted by Manav Rachna International University for MBA 2014-16 admissions. Undisputedly, this Court had, by its interim order dated 23.10.2013 directed the respondents to grant permission to petitioner to appear in Post Graduate Medical Entrance Examination 2014 only and not in the MBA Entrance Exam to be conducted by Manav Rachna International University. She thus appeared in MBA Entrance Exam conducted by Manav Rachna International University-without the permission of the respondents and without the knowledge of this Court.

19. In her rejoinder, the petitioner made the following submissions:-

“Further, the petitioner has been selected for MBA in Health Care management, the course starting on 14th July, 2014”.

20. It is apparent that when she filed her rejoinder in July, 2014, the result of All India Post Graduate Medical Entrance Examination, 2014 had been declared and the petitioner was aware that she had failed to qualify in it. It was also within her knowledge that she had appeared in MBA Entrance Exam held in Faculty of Management studies by Manav Rachna International University for MBA 2014-16 on 28.02.2014 without the permission of the respondent or of this Court. Yet, in her rejoinder, she did not disclose any of such fact. She thus intentionally did the following:

- (a) concealed the fact that she had failed to qualify AIPGMEE 2014;
- (b) that she had appeared in another exam of MBA Entrance Exam on 28.02.2014 from Manav Rachna International University and qualified it;
- (c) and made an averment giving the impression that she had qualified the AIPGMEE for the PG Course in Health Care Management.

21. The petitioner did not stop at making wrong and misleading statements in her rejoinder; her counsel made submissions on 11.07.2014 recorded as:-

“Mr. Ankur Chhibber, learned counsel for the petitioner states that the petitioner has already qualified the PG Medical Entrance Examination for the year 2014 and is one of the four (4) successful candidates belonging to para-military forces. Learned counsel also states that as per Clause 2.4 of the Standing Order dated 8.6.2009, it has been laid down that not more than six (6) Medical Officers will be sent on study leave for the PG courses each year and further total number of MOs on study leave at any given point of time shall not exceed eighteen (18). Learned counsel also submits that the respondents have already granted study leave to three (3) candidates and they have yet not taken any decision on the

application filed by the petitioner seeking study leave to attend the course/classes. Learned counsel further submits that the PG course is going to begin from 14.7.2014 and serious prejudice would be caused to the petitioner if she is not granted study leave to attend the classes of the PG course”.

On those submissions, the Court issued following directions:-

“Vide order dated 23.10.2013, the respondents were directed to grant requisite permission/no objection to the petitioner for undertaking the Post Graduate Medical Entrance Examination for the year 2014 of such institution as is permissible under the Rules of the respondents. Now we are informed that the petitioner has already qualified the said test and the classes of the said PG course are now going to begin from 14.7.2014.

In the circumstances, we direct the respondents to immediately grant study leave to the petitioner to enable her to attend the PG course classes commencing from 14.7.2014.

It is made clear to the petitioner through his counsel that the permission granted to her and her participation in the said session/classes will be subject to the final outcome of the present writ petition.

List on 10.9.2014.

Considering the fact that there are two (2) holidays in between the respondents shall grant study leave to the petitioner today itself.”

22. These directions to respondent to grant study leave to petitioner were therefore obtained by her concealing material and relevant facts. The representation made was that she had qualified the AIPGMEE 2014 (although she had failed). It is also apparent that the petitioner had sought interventions of this Court for permission to appear in AIPGMEE Exam (she appeared) and direction to respondent to grant for study leaves

to pursue PG Course. It is also clear that the grant of study leave was subject to her qualifying the AI PGMEET (which she could not qualify). The petitioner neither sought nor granted permission to appear in MBA Entrance Exam in Manav Rachna International University Faridabad University. She had appeared for MBA Entrance Exam on her own without any permission and knowledge of anyone and rather concealed these facts. A litigant who approaches the Court should do so with clean hands and not attempt to overreach the judicial process through “smart manoeuvre”. We, at the same time, understand the petitioner’s zeal for higher education to acquire higher skills in her field and also that her fear/apprehension of denial of such opportunity in the quagmire of rules and regulations might have motivated her to conduct herself before this Court in this manner. We therefore propose no adverse consequence against her for her omission.

15. This Court in its order dated 11.07.2014 had also observed that grant of study leave was subject to the final outcome of the present writ petition.

16. Now since the petitioner has failed to qualify the AIPGMEE, her claim to study leaves cannot be acceded to. The study leaves sanctioned to her pursuant to our order dated 11.07.2014 be treated as such for one year. Conscious of the fact that the petitioner had completed more than a year of MBA Course—this permits her to continue the course. Thus, the remainder of the period (i.e 14.07.2015 to May/June 2016) shall be adjusted against the petitioner’s leave account; if she does not have adequate leave, the period or periods shall be treated as leave without pay. The respondents are directed to accommodate the petitioner in that

regard, in her endeavor to complete her MBA Health Care Course in Manav Rachna International University Faridabad.

The petition is partly allowed to the above extent.

DEEPA SHARMA, J

S. RAVINDRA BHAT, J

SEPTEMBER 21, 2015/sapna

