



2024:DHC:1495



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

+ **W.P.(C) 11143/2021**

DR. FAHED AHMED KHAN

..... Petitioner

Through: Mr. Prateek Khanna and Ms.
Rumella Jain, Advs.

versus

**NATIONAL BOARD OF
EXAMINATION & ANR.**

..... Respondents

Through: Mr. Waize Ali Noor, Mr.
Kirtiman Singh and Mr. Varun Rajawat,
Advs. for R-1
Mr. Arjun Dewana and Mr. Shahryar Khan,
Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

23.02.2024

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W.P.(C) 11143/2021

1. Consequent to clearing the DNB CET¹ July 2018 Examination, the petitioner joined the DNB post MBBS training in the specialization of Emergency Medicine, which was for a period of three years. He was assigned training with the Fortis Hospital, Noida (hereinafter referred to as “the Hospital”).

2. The petitioner was admitted to training on 22 October 2018. The period of three years of training would, therefore, have come to an end in October 2021.



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3. There is no dispute that, during the period 19 March 2020 to 16 March 2021, the petitioner remained absent from the training. Mr. Prateek Khanna, learned Counsel for the petitioner, submits that this was because the petitioner's mother was suffering from cancer and that her condition deteriorated day-by-day, resulting ultimately in her unfortunate demise on 3 November 2020. The petitioner also pointed out that he was the principal caregiver for taking care of his mother. The petitioner has also annexed, with the writ petition, the medical records of his mother, which indicate that the submission is correct and that the petitioner's mother was indeed suffering from advanced stage of cancer, which was progressively deteriorating, resulting ultimately, as noted, in her demise on 3 November 2020.

4. The petitioner wrote, on 18 March 2020, to the Hospital, drawing the attention of the Hospital to the medical condition of his mother and seeking one month's leave, further stating that, in view of nature of the disease from which the petitioner's mother was suffering, further leave might also be required.

5. The Hospital responded on 18 March 2020 itself, stating that it was not possible to grant leave to the petitioner, especially in view of the then prevalent COVID-19 pandemic. The petitioner was also informed that there was an imminent possibility of the issuance of a Government order, requiring him to join back. It is worthwhile to



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reproduce the said communication, thus:

“Dear Dr Fahed

It’s sad to know about your mother.

I have no way to grant your leave looking at pandemic COVID 19 Preparation.

Be aware that govt order might come to join back.

Forwarding your LWP to Hari and Dr Shalini for needful and their records.

Best wishes for your mother.

Dr. Dina”

6. The petitioner, thereafter, addressed three more communications, apropos the leave that he was seeking. The first was on 6 May 2020, also addressed to the Hospital, seeking four months’ extension of the period of his leave. Thereafter, on 15 June 2020, the petitioner wrote to the National Board of Examination (NBE), under whose aegis the petitioner was undertaking the DNB training, on 15 June 2020. In the said communication, attention was drawn to the fact that the petitioner had been on leave owing to the medical condition of his mother. He also sought relocation to Hyderabad, so as to be able to take care of her more effectively. The last such representation was addressed by the petitioner on 9 July 2020, in which, again, a decision on the petitioner’s request for leave was sought.

7. It may be noted that, apart from the e-mail dated 18 March 2020 reproduced in para 5 *supra*, the only other communication from the Hospital to the petitioner, apropos the request for leave was on 5 May



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2020, which read thus:

“Dear Dr Fahed khan and Dr Kartheek reddy

I am here to understand your status at home and your plan to join back.

I hope your mother is coping well with chemotherapy Dr Fahed and You Dr K rituals after the death of your father.

Please take care of yourself and stay safe as you look after your family.

On a quick note;

Please send mail about your leave (absence from the duty); and let us know

Do let us know if you need any assistance to travel back.

Till lock down get lifted; as discussed on training group ensure to complete with your study as well.

God bless you and your family going through this tough time.

Best wishes
Dr Dina shah
HOD Emergency department
8826372421”

8. A reading of the aforesaid two communications indicates that there was no categorical rejection by the Hospital of the petitioner’s request for leave.

9. The NBE, for its part, did not address any response to the petitioner in reply to his letters dated 15 June 2020 and 9 July 2020.

10. After July 2020, the petitioner’s mother condition steadily deteriorated resulting, ultimately, as already noted, in her demise on 3



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November 2020.

11. According to the averments in the petition, given the extensive involvement of the petitioner in the treatment of his mother, as also because his father, who survived his mother, was a senior citizen, the petitioner was able to reapproach the Hospital only on 16 March 2021, requesting the Hospital to take him back, with the following communication:

“16/March/2021

To,
The Professor Head
Emergency Department
Fortis Hospital, Noida-62

Subject: Application for re-joining of DNB(EM) Training Programme.

Respected Madam,

I, Dr. Fahad Ahmad Khan, DNB(EM) resident of June 2018 Batch, was on absent from my duties from 19/03/2020 till today due to ill health and subsequent death of my mother.

I wish to resume working and rejoin training programme.

Therefore, Madam I request you to allow me to join the department and guide me further in this regard.

Thanking you,

Sd/
Yours faithfully
Dr. Fahad Ahmad Khan
Mob. No. 9609335449
e-mail:fahadsale@gmail.com
DNB Registration No. 152-43112
182-22/1082 ”

12. On the body of the aforesaid letter, the Professor and Head of

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the Department, Emergency Medicine in the Hospital entered the following endorsement, while forwarding the letter to the Human Resources (HR) Department of the Hospital:

“16/3/2021

To
HR,

Please forward this to NBE office for DNB reinstalling candidate/or let me know process of after about a year and after their persuasion I am happy to take Dr. Fahed back on his training.”

13. The aforesaid representation of the petitioner was forwarded by the Hospital to the NBE under cover of an email dated 19 March 2021.

14. The NBE, for its part, addressed the following communications to the petitioner on 9 April 2021, 25 May 2021 and 17 June 2021 and 27 July 2021:

“Email dated 9 April 2021:

Respected Sir/Madam,

Please refer your trailing email.

In this regard, I am directed to inform you that the candidate request for rejoining the DNB training after being unauthorised absence for more than a year *cannot be considered* as per NBE guidelines.

With Best Regards,

Section Officer
Training & Monitoring Division
National Board of Examinations

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(An autonomous organization of MoHFW, Govt. of India)
Medical Enclave, Ansari Nagar,
New Delhi – 110029

Email dated 25 May 2021:

“Dear Candidate,

Please refer your trailing email.

As per the information received from your hospital, you were on unauthorised leave since 19th March 2020 and requested fore re-joining on 16.03.2021 (the date on which you reported to the institute after your unauthorised absence). You were on authorized absence for 363 days till 16-3-2021.

In this regard, your kind attention is invited to the prescribed NBE leave rules/guidelines which has been fully communicated to you vide Handbook of Counselling. Your registration letter, web notices published on NBE website www.natboard.edu.in. As per NBE leave rules dated 20.03.2018, unauthorized absence from DNB/FNB training for more than 7 days may lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted.

Accordingly your request for re-joining *was not considered* and were informed accordingly vide NBE’s email dated 9-04-2021.

This is for your information that the request to reconsider the rejoining cannot be considered as per NBE rules.

Regards,

O/o Joint Director
Training & Monitoring Division
National Board of Examinations
(An autonomous organization of MoHFW, Govt. of India)
Medical Enclave, Ansari Nagar,
New Delhi – 110029”

Letter dated 17 June 2021:

“Ref. No. NBE/EDO/2021/1126

Dated: 17.06.2021

Subject: Permission for Shri Dr. Fahed Ahmed Khan to join as DNB (EM) trainee at Fortis Hospital, Noida (UP).

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Dear Dr Khan,

Kindly refer letter no. MP/Pbn/Appointment/2021/292 dated 07.06.2021 regarding permission for Shri Dr. Fahed Ahmed Khan to join as DNB (EM) trainee at Fortis Hospital, Noida (UP).

Dr. Fahed Ahmed Khan joined DNB course in the speciality of Emergency Medicine on 22.10.2018 for the period of 3 years at Fortis Hospital, Noida (UP). As per email dated 19.03.2021 received from his hospital stating that he was on unauthorized leave from 19th March 2020 to till date and reported on 16.03.2021 with a request for re-joining.

Unauthorized absence from DNB/FNB training for more than 7 days may lead to cancellation of registration and discontinuation of the DNB training and rejoining shall not be permitted.

In view of the above *his request for re-joining was not considered* and were informed accordingly vide NBE's email dated 09.04.2021.

This is for your kind information.

Kind regards,

Yours Sincerely
Sd.
(Prof. Pawanindra Lal)
Executive Director

Enclosure: As above
Dr. Fauzia Khan
Member of Parliament (Rajya Sabha)
Room No. 216,
Maharashtra Sadan,
Kasturba Gandhi Marg,
New Delhi 110001

Letter dated 27 July 2021:

Ref. No: NBEMS/EDO/2021/1607

Dated: 27.07.2021

Subject: Permission of rejoin Dr. Fahed Ahmed Khan at Fortis Hospital, Noida-reg.

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Dear Or khan,

Kindly refer your letter No. MP/Pbn/dnbtraining/2021/300, dated 01.07.2021 regarding re-joining of Dr. Fahed Ahmed Khan for his DNB training at Fortis Hospital, Noida.

The matter has been re-examined by NBEMS & comments in this regards are as follows:-

- NBEMS is not in receipt of any communication regarding leave request of Dr. Fahed Ahmed Khan from either the Fortis Hospital, Noida (UP) or from the candidate himself.
- Dr. Fahed Ahmed Khan has requested NBEMS to re-allocate him to other institute citing the illness of his mother vide email dated 15.06.2020 and 09.07.2020. As per Handbook for Admission to DNB Broad Specialty Courses available on NBEMS website www.natboard.edu.in "Change of Institute/college from one place to another is not permitted under any circumstances. Requests for the same shall not be entertained by the NBEMS after the allotment process is completed."
- Dr Fahed Ahmed Khan was on unauthorised absence since 19.03.2020 and as per NBEMS leave rules "Unauthorized absence from DNB/FNB training for more than 7 days may lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted."

Dr. Fahed Ahmed Khan was an unauthorised absence for a period of 363 days and has violated the leave rules. Therefore, *his request for re-joining was not considered* and Dr. Fahed Ahmed Khan was informed accordingly vide NBEMS email dated 09.04.2021.

This is for your kind information please.

Kind regards,

Yours Sincerely

Sd.

(Prof. Pawanindra Lal)

Executive Director & CEO

Dr. Fauzia Khan
Member of Parliament (Rajya Sabha)
Room No. 216,
Maharashtra Sadan,

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Kasturba Gandhi Marg,
New Delhi 110001”

15. All four communications, extracted hereinabove are, therefore, consistent in acknowledging that the petitioner’s request for permission to rejoin his training “*was not considered*”.

16. Mr. Prateek Khanna, learned Counsel for the petitioner has submitted that the absence of the petitioner from duty was entirely *bona fide*. His mother was indeed suffering from cancer, already at an advanced stage, and, as the only caregiver to take care of her, it was impossible for the petitioner to attend work. Moreover, the COVID-19 pandemic was also at its peak at the said time, and the continuation of the pandemic had resulted in an additional handicap in ensuring proper and adequate treatment to the petitioner’s mother. Given all these circumstances, Mr. Khanna submits that it would be a travesty of justice if the petitioner were not to be allowed to rejoin duty, when he had not remained away from duty for any reason other than the critical medical condition of his mother and, after her unfortunate demise, the time he himself took to take care of his father and recover from all that he had himself undergone.

17. The Leave Rules applicable to DNB trainees and the sequelae of unauthorized absence, as they applied to the petitioner, were notified by the NBE on 20 March 2018. They read thus:

“LEAVE RULES FOR DNB/FNB TRAINEES

Attention: All NBE Accredited Hospitals/Institutes/Medical
Colleges and DNB/FNB Trainees

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The following revised leave rules shall apply to the candidates, those who join on or after 2018. Those who joined before 2018, the old leave rule shall be applicable.

1. DNB/FNB Trainees are entitled to avail leave during the course of DNB/FNB training as per the Leave Rules prescribed by NBE.
2. A DNB/FNB Trainees can avail a maximum of 30 days of leave in a year excluding regular duty off/ Gazetted holidays as per hospital/institute calendar/policy. This leave shall be processed at the institutional level.
3. Any kind of study leave is not permissible to DNB/FNB Trainees.
4. Under normal circumstances leave of one year should not be carried forward to the next year. However, in exceptional cases such as prolonged illness, the leave across the DNB/FNB training program may be clubbed together with prior approval of NBE.
5. *Unauthorized absence from DNB/FNB training for more than 7 days may lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted.*
6. Any Leave availed by the candidate other than the eligible leave (30 days per year) shall lead to extension of DNB /FNB training. The training institute has to forward such requests to NBE along with the leave records of the candidate since his/her Joining and supporting documents (if any) through the Head of the Institute with their recommendation/comments. NBE shall consider such requests on merit provided the seat is not carried over and compromise with training of existing trainees in the Department.
7. Any extension of DNB/FNB training beyond the scheduled completion date of training is permissible only under extra-ordinary circumstances with prior approval of NBE. Such extension is neither automatic nor shall be granted as a matter of routine.
8. DNB/FNB trainees are required to complete their training by a prescribed cutoff date (as per information



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bulletin of Exit exam) for being eligible to DNB/FNB Exit examination.

9. The eligibility for DNB/FNB Final Examination shall be determined strictly in accordance with the criteria prescribed in the respective information bulletin.”

18. A reading of the aforesaid Leave Rules indicates that the only provision which envisages refusal of permission to a DNB trainee to rejoin training is Rule 5. Rule 5 stipulates that more than 7 days unauthorized absence from DNB training “*may* lead to cancellation of registration and discontinuation of the DNB/FNB training and rejoining shall not be permitted.” The use of the word “*may*” indicates that the consequences envisaged by the Rule are not inevitable sequale to unauthorized absence exceeding seven days. Had the rule read “unauthorized absence from DNB/FNB training for more than 7 days *shall* lead to cancellation of registration and discontinuation of DNB/FNB training and rejoining shall not be permitted” the position would have been entirely different. In that event, the statutory imperative would have been clear and categorical, and over seven days’ unauthorized absence would have *ipso facto* led, by operation of the Rule, to cancellation of registration and discontinuation of the DNB training, and the refusal to the candidate to rejoin. By using the words “*may*” instead, the intention of the Rule is clear, which is that the NBE would have the discretion to decide, based on the merits of an individual case, as to whether the registration of candidate was required to be cancelled or his DNB training discontinued.

19. Insofar as the stipulation regarding refusal of permission to rejoin is concerned, it is clear that it can only be a consequence of

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cancellation of registration or discontinuation of the DNB training, and is envisaged as a consequence thereof. Without his registration being cancelled, or his DNB training discontinued, the trainee cannot, quite obviously, be prevented from rejoining the training. That would lead to an unacceptable and paradoxical situation in which a DNB trainee, even during the continuance of his DNB training, is not being permitted to undertake it.

20. *Rule 5 of the Leave Rules, therefore, required the NBE to consider the application of the absent trainee and take a decision as to whether the registration of the applicant was merited cancellation or his training merited discontinuance. These are positive acts. There is no question of implied cancellation of registration or implied discontinuation of training. There has to be a positive order from the NBE communicating to the candidate, in no uncertain terms, that his candidature was cancelled or that his training was discontinued.*

21. On a reading of the communications dated 9 April 2021, 25 May 2021, 17 June 2021 and 27 July 2021, it is clear that there has been no compliance, by the NBE with the above rule. Each of the said communications, first notes the fact that the petitioner was on leave, thereby reproduces Rule 5 and proceeds, in no uncertain terms, to state that the petitioner's request for rejoining was "*not considered.*"

22. This, in my opinion, is clear abdication of the responsibility cast on the NBE by Rule 5 of the Leave Rules. The result that emerges is that *while the NBE did not consider the petitioner's application, as*



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Rule 5 of the Leave Rules required it to do, there is, further, no positive order, either cancelling the petitioner's registration or discontinuing his training.

23. Mr. Waze Ali Noor, who appeared for the NBE, did seek to advance a contention that, in fact, the words “did not consider” as used in the communications from the NBE extracted in para 14 *supra* should be understood as “considered and rejected”. The submission is unacceptable. This Court cannot rewrite the communication of the NBE. Besides, it is not once, but thrice, that the NBE has reiterated that the petitioner's request for rejoining *was not considered*. An order made by a statutory authority has to stand, or fall, based on what is stated, and the reasoning to be found, in the order itself. It can neither be rewritten by the Court, nor supplemented by affidavits filed in its defence. Krishna Iyer, J., classically enunciated this position in the oft-cited decision in *Mohinder Singh Gill v. Chief Election Commissioner*², relying, for the purpose, on the equally classic words of Vivian Bose, J., in *Commissioner of Police v. Gordhandas Bhanji*³:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, *its validity must be judged by the reasons so mentioned* and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr. of Police, Bombay v. Gordhandas Bhanji*:

² (1978) 1 SCC 405

³ AIR 1952 SC 16



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“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively *with reference to the language used in the order itself.*”

Orders are not like old wine becoming better as they grow older.”
(Emphasis supplied)

24. At the very least, it is apparent that, working on the premise that a trainee who had remained away from training for as long as the petitioner had, was *ipso facto* disentitled to rejoin training, the NBE did not address itself to the merits of the petitioner’s request. The use of the word “may” in Rule 5 of the Leave Rules clearly indicates that this impression, as is conveyed by the aforementioned communications, is erroneous. The NBE is required to objectively assess the merits of every request for rejoining made to it by a trainee who has remained away from training for more than seven days without leave, and to take a decision on the merits of the request. If the absence is for genuine and unavoidable reasons, the NBE may well condone the absence of the trainee, irrespective of its length or duration, and permit him to rejoin. The discretion in that regard, needless to say, vests with the NBE, but it has to be exercised, and exercised dispassionately and with objectivity.

25. That exercise has not been undertaken in the present case, as the communications from the NBE indicate. The request of the petitioner has not been considered on merits, and the NBE has merely referred to



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the length of the petitioner's absence from training, apparently regarding this as a sole factor to completely disentitle the petitioner even from consideration of his request to rejoin training.

26. The decision to disallow the petitioner's right to rejoin the training with the Hospital is, therefore, not taken in accordance with the discipline of Rule 5 of the Leave rules, and, cannot, therefore, sustain.

27. I must confess here that, in arriving at my final conclusion, I have also taken into account the equities of the present case. This is not a case in which the petitioner remained absent from training for any reasons other than those which were entirely beyond his control and unavoidable. The petitioner's mother was critically ill. After a long and protracted period of illness, during the testing times of the COVID-19 pandemic, the petitioner's mother expired. The NBE has not questioned the genuineness of the medical certificates on record, as quite obviously, it cannot. Nor has Mr. Noor sought to contend, quite fairly, that the reason for the petitioner's being unable to rejoin training was anything other than genuine. The circumstances in which the petitioner was unable to attend to his DNB training have, therefore, to be appreciated in their right perspective.

28. The petitioner addressed as many as four communications regarding the necessity of granting him leave and extension thereof. There is no categorical refusal either by the Hospital or the NBE of any of the said requests. NBE did not condescend to respond to either



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of the petitioner's letter dated 15 June 2020 or 9 July 2020.

29. It is also significant to note that, in its first response to the petitioner's application dated 18 March 2020, the Hospital, while stating that there was no way to grant leave as sought by the petitioner, further noted that there was a possibility of a government order being issued requiring him to join back. No communication, requiring the petitioner to join back has been placed on record, nor is it the case of the NBE that any such communication was addressed to the petitioner requiring him to join back, despite the fact of his being absent from the DNB training being in the knowledge of all concerned authorities.

30. In these circumstances and given the situation in which the petitioner found himself, it would indeed be unfair as well as unjust to prohibit the petitioner from continuing and completing DNB training with the Fortis Hospital, especially when the Head of the Department of Emergency Medicine, under whom the petitioner was training at that time, herself was willing to take the petitioner back for completing of his training.

31. There are no absolutes in law. The Court dispenses justice; it does not dispense with justice. The Court cannot, while dispensing justice, act like an automaton, unmindful of the facts before it and mechanically apply the law. Especially while exercising jurisdiction under Article 226 of the Constitution of India, the Court has to ensure that equity is not sacrificed, and substantial justice is ultimately



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rendered. Our preambular goal is not law, but justice. If, in adhering to the law, the Court is not able to dispense justice, we would be seriously failing in our constitutional responsibilities. Law, which does not aspire to justice, is stillborn, and unworthy of enforcement.

32. In the aforesaid circumstances, and given the peculiar facts of the present case, I am of the opinion that the petitioner should be allowed to rejoin his DNB training with the Hospital and complete the training in accordance with the protocol prescribed in that regard.

33. The writ petition is accordingly allowed, with no orders as to costs.

34. Pending applications, if any, are disposed of.

C.HARI SHANKAR, J

FEBRUARY 23, 2024

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Click here to check corrigendum, if any