

(2019) 01 CAT CK 0091

In the Central Administrative Tribunal

Case No : Original Application No. 2204 Of 2017, Miscellaneous Application No. 3327 Of 2017

Dr. Dinesh Kumar Yadav

APPELLANT

Vs

Employees State Insurance Corporation & Anr.

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0091

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Yash Pal Rangil., Mohit Kukreja, T.R. Kukreja

Final Decision : Disposed Off

Judgement

1. The applicant is a qualified MBBS doctor and is working as Insurance Medical Officer Grade-II (IMO) in the Employees' State Insurance Corporation (for short ESIC), where he had joined at ESI Dispensary Complex, Tilak Vihar, New Delhi as IMO in the said Grade-II on 15.09.2009. His probation was confirmed in the year 2011. Subsequently, the applicant wanted to acquire higher qualification (Post Graduate Medical Degree) to enhance his knowledge & professional skills, which directly helps him in discharging his duties to the respondent institution. He was required to appear in NEET-PG-2017 which is a nationally held competitive examination for admission to such courses. In accordance with extent policy directives, the Government Servants having 5 years regular service, are eligible to apply for study leave. This eligibility was achieved in the year 2014.

2. While the applicant was working in ESIC Hospital at Delhi, he applied for grant of No Objection Certificate (NOC) to appear in NEET-PG-2017 examination, which is the requisite examination for candidates to write and come up in the merit and this merit is the eligibility criteria to get admission in the Post Graduate medical course. This NOC permission was granted by the Additional Director, vide order dated 16/21.11.2016, which reads as under:-

" In this connection, the Competent Authority has provisionally accorded approval for issue of Provisional "No Objection Certificate" to appear in NEET-PG-2017 subject to the condition that he will not join the course without proper prior permission of Competent Authority i.e. (Hqrs. Office)".

Thereafter, the applicant appeared in the relevant NEET-PG examination in Dec., 2016, for which the result was declared in April, 2017 and he qualified for admission to Post Graduate medical course.

3.0 In the meanwhile, he was transferred on administrative grounds from Delhi Hospital to ESIC Hospital, Gurgaon (Haryana), vide order dated 07.04.2017.

Thereafter, he made request for grant of study leave to DG, ESI Corporation (Respondent No.1) vide his application dated 18.05.2017, wherein he brought out the NOC, already granted to appear in the NEET PG 2017 and that he had qualified for the same. He also mentioned that he was willing to abide by all conditions relating to grant of study leave which includes a bond. It was also mentioned that he was fully willing to abide by all conditions relating to the said study leave.

4.0 Thereafter, another reminder application was made by him on 24.05.2017. However, on the same date Deputy Director (Admn.) advised him that his request for study leave to undergo this Post Graduate Medical Course has been rejected. Thereafter, he received another communication dated 24.05.2017 indicating that Gurugram ESIC Hospital is having 22 GDMOs (Regular) and as per instructions only 4 percent of the doctors can be sanctioned study leave at a time and since one Dr. Rashmi Gupta , Insurance Medical Officer Grade-I has already been granted EOL for study leave from 07.10.2014 to 6.10.2017 (for three years) and keeping in view 4 % limit, any other officer cannot be granted study leave.

5.0 Subsequently, the applicant obtained information under RTI and it transpired that Gurugram, hospital had actually had 22 GDMOs and 16 Specialists (including Dental Surgeon). With this, total available doctors workout to 38 and applying 4 percent limit, two doctors could have been granted study leave. Since one Doctor Rashmi Gupta was already on study leave, the applicant could also have been granted the same.

Further, to this, the applicant had also obtained information in respect of ESIC, and it transpires that this limit of four percent of doctors on study leave, is worked out for doctors as a whole i.e. GDMOs plus Specialists. Accordingly, applicant pleads that he has been unjustly denied study leave, despite NOC having been granted already and has been discriminated also.

6.0 The respondents on the contrary brought out the entire scheme of study leave was approved by the ESI Corporation in their meeting held on 09.06.2006, wherein the DG explained that at that time only 2.5% of the doctors were permitted to pursue higher studies which causes inconvenience to those doctors

who get selected for higher studies on their own efforts but cannot go for higher studies despite having leave to their credit, because of this restriction. In view of the same, DG proposed that this limit be increased from 2.5 percent to 4 percent subject to other conditions remaining the same. The Standing Committee approved this proposal. These minutes are silent about whether this limit of 4 percent was to be applied for GDMOs and Specialists, separately or as a whole.

7.0 The matter was heard at length. The applicant was represented by Mr.Yash Pal Rangi and the respondents were represented by Mr. Mohit Kukreja.

8.0 Acquiring higher qualification by a medical doctor, is in the interest of existing doctors as well as patients, as they will receive medical services from more qualified doctors. The scheme of study leave thus assumes special importance in the medical profession. The ESIC rules also permits four percent of the doctors in hospital, to be considered for study leave. This was the very purpose when limit was enhanced.

In the instant case, the applicant had appeared in the NEET-PG-2017 after receiving NOC approval. Naturally, this creates expectation that in the event a candidate secures merit and extent rules permit, he / she will be granted study leave. As brought above, despite the extent limit of four percent (38 doctors were working in Gurugram hospital) and accordingly, two doctors could have been given study leave at a time. The applicant could have been given study leave in addition to one another doctor who was already on study leave. In the event this has not been sanctioned. The reasons for rejection are not convincing (para 4.0 supra) and hence cannot be agreed to and especially so for reasons brought out in para 9 below.

9.0 Moreover, in several other ESIC hospitals, four percent limit has been applied on total number of doctors working GDMOs plus Specialists. There are no reasons forthcoming as to why the same criteria is not adopted at ESIC hospital Gurugram where applicant was working. Such discrimination, without any reason could not be permitted.

10. In view of the foregoing, contentions put forward by the respondents are not accepted. Under the circumstances, it was fully legitimate for applicant to undertake the PG Course based on NEET-PG-2017 examination. The respondents are directed to treat this period as study leave with all consequential benefits. The OA is disposed of with these directions. No order as to the costs.