

(2019) 08 DEL CK 0172

In the Delhi High Court

Case No : Civil Writ Petition No. 9050 Of 2019

Employee State Insurance Corporation

APPELLANT

Vs

Dr. Dinesh Kumar Yadav

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Citation : (2019) 08 DEL CK 0172

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : V.K. Singh, Prachi Singh, Nisha Hans, Yaspal Rangi

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

C.M. No. 37365/2019

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

CAV No. 840/2019

2. Learned counsel for the respondent caveator has appeared. The caveat is, accordingly, discharged.

W.P.(C) 9050/2019 & C.M. Nos. 37363, 37364/2019

3. The petitioner assails the order dated 11.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 2204/2017. The Tribunal has allowed the said Original Application preferred by the respondent. In the said Original Application, the respondent had assailed the denial of permission by the petitioner to the respondent to join the post graduate medical course for which he had been declared successful.

4. The respondent is a qualified MBBS Doctor. He joined the petitioner on

15.09.2009 as IMO in Grade II. Upon the completion of his probation, he was confirmed in the year 2011. He was desirous of acquiring higher educational qualification i.e. post graduate medical degree to enhance his knowledge and professional skills which would have a direct bearing on discharge of his duties with the petitioner. He applied for, and was granted provisional permission to appear in the NEET-PG-2017, which is a nationally held competitive examination for admission to such courses. The said permission/ NOC was granted to the respondent on 16/21.11.2016. While granting the said permission, the respondent was instructed that he would not join the course without proper prior permission of the Competent Authority i.e. (Hqrs. Office). The petitioner was declared successful in the NEET-PG-2017 held in December, 2016. The result was declared in April 2017. In the meantime, the respondent was transferred to ESIC Hospital Gurugram (Haryana) vide order dated 07.04.2017. Consequently, he applied for study leave to DG, ESI Corporation on 18.05.2017. He also brought to the notice of the petitioner, the NOC granted to him to appear in the aforesaid examination. After he sent a reminder, he was informed that his request for study leave to undergo the post graduate medical course has been rejected. On 24.05.2017, the respondent was informed that ESIC hospital (Gurugram) was having 22 GDMOs (Regular) and, as per the instructions, only 4% of the doctors could be sanctioned study leave at any point of time. Thus, only one doctor could be spared for study leave. It was stated that one Dr. Rashmi Gupta - Insurance Medical Officer Grade I had already been granted EOL for study leave from 07.10.2014 to 06.10.2017, and keeping in view the 4% limit, the respondent could not be granted study leave. The respondent obtained information under the Right to Information Act, and was informed that the ESIC hospital (Gurugram) had 22 GDMOs and 16 specialists. Thus, the total number of doctors available worked out to 38, and applying the 4% limit, two doctors could be granted study leave. Thus, the respondent claimed that he too could be granted study leave, apart from Dr. Rashmi Gupta, who was already on study leave. Since the petitioner did not oblige, the respondent preferred the Original Application.

5. The impugned order shows that the only aspect raised by the petitioner at the hearing of the Original Application was with regard to the percentage of doctors who could be granted study leave, and also the actual number of doctors serving in ESIC hospital (Gurugram). Since the Tribunal came to the conclusion that there were in all 38 doctors available at ESIC hospital (Gurugram), applying the four percent limit, the Tribunal allowed the Original Application of the respondent as two doctors could be spared for study leave. The Tribunal also noticed that in several other ESIC hospitals, 4% limit has been applied on total number of doctors working as GDMOs and specialists.

6. Learned counsel for the petitioner does not really find fault with the analysis of the Tribunal. The submission of learned counsel for the petitioner is that a vigilance complaint had been received against the respondent on 30.03.2016 that he was running a coaching centre for doctors known as Team Motivation at Gautam Nagar, New Delhi. His submission is that the petitioner has issued a

charge sheet to the respondent and, thus, he cannot be allowed to proceed on study leave. Learned counsel for the petitioner does not dispute the position that no such plea was raised by the petitioner in its reply before the Tribunal.

7. The petitioner has placed on record the complaint dated 30.03.2016 along with an application for filing the additional documents i.e. C.M. No. 37364/2019. Firstly, since the said plea was never raised before the Tribunal, we are not inclined to entertain the same, as it is a fact based plea. Secondly, raising of the said plea, at this stage, shows that the alleged vigilance complaint was not a reason for denial of permission to the respondent to proceed on study leave. The only reason given by the petitioner was that only 1 doctor could be granted study leave by applying the 4% limit, since there were only 22 GDMOs in ESIC hospital (Gurugram). It is evident that the said complaint was made on 30.03.2016, whereas the respondent was granted the NOC to appear in the All-India Competitive Examination on 16-21/11/2016 i.e. nearly 8 months after the making of the said complaint. If the said complaint were to come in the way of the respondent, he would not have been granted the NOC to appear in the competitive examination in the first place. The charge sheet, which is claimed to have been issued to the respondent has been issued only on 30.01.2019 i.e. well after the passing of the impugned order dated 11.01.2019 by the Tribunal. Thus, it appears to us that the issuance of the charge sheet has been timed deliberately to prevent the respondent from enjoying the fruits of the impugned order.

8. Lastly learned counsel for the petitioner submits that the posts for which the study leave is sought by the respondent, namely post graduate in pharmacology would not be to the advantage of the petitioner organization. Pertinently, this was not even stated as a ground while rejecting the respondent's request for permission to proceed for study leave for the post graduate course. This was not even taken as a ground taken before the Tribunal. Therefore, we are of the view that the same has been taken as an after thought.

9. We find no merit in this petition. Dismissed.

10. However, we make it clear that we have not gone into the merits of the allegations made against the respondent, and it shall be open to the petitioner to proceed in that regard independently.