

(1999) 04 DEL CK 0053
In the Delhi High Court
Case No : C.W.P. No. 3611 of 1992

Major Tilak Bose

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 79 DLT 164

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Prag Tripathi and Swati Singh, for the Appellant; H.S. Phoolka, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner, who is a Doctor, has prayed for the following reliefs for the purpose of pursuing Post Graduate Course:

"(a) issue a Writ and/or Order in the nature of mandamus directing the respondents and each one of them to transfer the petitioner to any one of the places where there are institutions run by the Armed Forces, namely Delhi Cantonment, Pune, Bombay and Bangalore and to give admission to the petitioner as "local candidate" in the said colleges;

(b) to further issue a Writ and/or Order in the nature of mandamus directing the respondents to lay down clear policy indicating the admission to the post graduate courses under the Armed Forces Quota at the various institutions in India, both under the Entrance Exams and admissions which are made de hors the Entrance Exams and further to quash the admissions which have been given de hors the merit of the candidates as secured under the Entrance Examination;

(c) issue a writ and/or order and/or direction in the nature of mandamus directing the respondents to declare the petitioners' result in the 1991 examination for Post Graduate Course in Medicine;

(d) issue an order and/or direction directing the respondents to disclose as to how many candidates have been given admissions on the basis other than their performance in the Entrance Examination in the years 1989-90, 1990-91 and 1991-92 and to direct the respondents likewise give admission to the petitioner who is similarly situated to the candidates who have already been granted admission;

(e) issue a writ and/or order in the nature of certiorari quashing the impugned order dated 22.7.1992 passed by the second respondent rejecting the petitioners' complaints dated 10.9.1991 and 2.11.1991 and to give relief to the petitioner as prayed for in the aforesaid complaints dated 10.9.1991 and 2.11.1991."

2. The fact that the petitioner participated in the entrance examination in the years 1988, 1989 and 1991 is not disputed. What he states is that while some persons were shown privileges to get admission he has not been posted in those stations where there are Medical Courses available. His complaint has been that whenever chance was given to him to appear he was not given sufficient time and that has prejudiced his rights. The petitioner has referred to the judgment of this Court in Major Vipul K. Sharma v. U.O.I. and Ors., in C.W. No. 1993/91 dated 25.7.1991. In the reply to show cause the respondents had explained the position and the allegations in the writ petition are denied. The respondents filed an additional counter affidavit and wherein it is stated:

"1. Shri Sudhansu Sekhar Ghosh, aged about 37 years, son of late Thakurdas Ghosh, resident of P-19/1, Army Hospital (R & R), Delhi Cantt, Mew Delhi-110 010, do solemnly affirm and state as follows:

1. That I am at present working as Medical Officer, and as such acquainted with the facts and circumstances of the above case and have been duly authorised to swear this affidavit.

2. That I have gone through the additional affidavit filed by the petitioner and have understood the contents thereof.

3. That paragraph 1 of the additional affidavit need no comments.

4. That in reply to paragraph 2 of the additional affidavit it is respectfully submitted that the petitioner has misconception regarding PH studies and posting/transfer in Armed Forces. Officers are selected for advance specialist PG course through a Central P.G. Entrance Examination and interview, which is solely based on merit. It is correct to the extent that other than this procedure certain Medical Colleges/Universities provide P.G. facilities to service Medical Officers and permission to service Officers who are locally posted is granted subject to service exigencies. Service Medical Officers are posted in different Units all over India as per the service requirements. However, no Officer is posted to a particular place for the purpose of making him a Post-Graduate degree holder whether he has exhausted all his chances in Entrance Examination

or not. Officers after posting to such station where P.G. facilities are available may avail of the same provided "they are granted permission by the Director General, Medical Services (Army) and they are declared successful during the course of written examination/ interview held by a Board of Officers. The permission is only granted to the Officers subject to their tenure in the Station and no Officer posted to such locations is automatically granted such-permission. It is incorrect to say that Officers who have exhausted the chances through P.G. Entrance Examinations are posted to those locations/stations to pursue their P.G. Courses.

5. That in reply to paragraph 3 of the additional affidavit filed by the petitioner it is respectfully submitted that as explained already in paragraph 4, none of the Officers listed by the petitioner had been posted to the places for doing P.G. They were posted in these places subject to sector profile and service profile of the individual officers. Permissions were granted based on their service profile to enhance their professional knowledge. Moreover, there are hundreds of officers who are placed in the similar situations as the petitioner and could not prosecute P.G. as their sector profile of posting and service profile were such that they could not be posted to a place from where they could do their P.G. from a local University.

6. That in reply to paragraph 4 of the additional affidavit filed by the petitioner, it is respectfully submitted that the petitioner cannot demand a transfer to a particular station where Medical Colleges are located. Service Officers are transferred from one place to another to meet the service requirements as well as based on their performance during service. Conditional transfers/ postings cannot be acceptable in Armed Forces. Moreover, a decision has been taken by the Office of the D.G.A.F.M.S. vide letter No.8510/Policy/DGAFMS/DG-ID dated 17.4.1998, a copy of which is annexed herewith as ANNEXURE-R/1, to the effect that henceforth no permission will be granted to any service Officer for doing P.G. from a local University/ Medical College. This decision has been taken keeping in mind the service requirements.

7. That the facts stated hereinabove are true to the best of my knowledge and belief."

3. The instructions given by the Ministry of defense dated 17.4.1998 is filed. The same is as under:

"PG COURSES AT AFMC PUNE AND SERVICE HOSPITALS.

1. It has been decided that henceforth no Senior Officer will be permitted to do PG at AFMC Pune and other Service Hospitals as locally posted officers.

2. SSC officers in their last year of contractual service may apply for permission to do PG. All such applications will be submitted to the office of DGAFMS through proper channel.

3. This has the approval of DGAFMS."

4. On 15.12.1998 another affidavit was filed On behalf of the respondents :

"Affidavit of Major S.S. Ghosh, Medical Officer, Office of Directorate General of Armed Forces Medical Services Army HQ, Delhi.

I, the above named deponent do hereby solemnly affirm and state as under:

1. That, the policy of the respondent to give admission to the P.G. Course, to the locally posted officers has been discontinued since the year 1998. The latest policy letter to this effect is enclosed herewith as Annexure "A".

2. That, prior to 1998, from 1996, the locally posted officers were allowed to appear in the entrance test conducted on behalf of the University where the civilians as well as the ex-army men were also entitled to appear. Those candidates who qualified on the merit of this entrance test were given admission.

3. That, the respondents do not have the list of the locally posted office who qualified in the entrance test of the university. The lists are available with the respective colleges/university. In the event of this Hon"ble Court directs the answering respondents can obtain the lists from the university/ colleges and produce them in the Court.

4. That, during last 4 years, i.e. since the year 1995, the number of candidates who got admission through the entrance test of the Army and the number of candidates who were locally posted and got the admission through entrance test or by virtue of their MBBS marks till the year 1996 is mentioned in the comparative list which is annexed herewith as Annexure B. It is, however, submitted that, the figures given in the list are approximate and not the exact "figures."

5. On a consideration of the material placed on record, I am not able to persuade myself to hold that there has been any illegality or irrationality or unreasonableness in the action of the respondents. The petitioner has alleged favouritism and those in power have not been able to secure admission. The allegations are general in nature and on the mere assertion by the petitioner one cannot come to any definite conclusion.

6. In my view, the petitioner has not made out any case for interference. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.