

(2011) 04 DEL CK 0123
In the Delhi High Court
Case No : LPA 362 of 2011

National Board of Examinations

APPELLANT

Vs

N.P. Kamalesh and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0123

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Rakesh Gosain, for the Appellant;

Final Decision : Dismissed

Judgement

1. National Board of Examinations has filed the present intra-court appeal impugning the decision dated 16th May, 2011 allowing W.P.(C) No. 1732/2011 filed by Mr. N.P. Kamalesh, the Respondent No. 1 herein.
2. It is an admitted case of the Appellant that the Respondent No. 1 had appeared in the Common Entrance Test (CET) held in January, 2010 for admission as a DNB Trainee in Super Speciality in Surgical Speciality Group. The Respondent No. 1 had qualified and was entitled to be admitted as DNB Trainee in any of the accredited hospitals of the Appellant.
3. The Respondent No. 1 applied and vide letter dated 27th February, 2010 he was informed of his selection as a DNB Trainee in PVS Memorial Hospital Ltd., Kaloor Cochin, Kerala, the Respondent No. 2 herein.
4. The contention raised by the Appellant is that the Respondent No. 2 could not have admitted/selected the Respondent No. 1 as DNB Trainee in view of the amendments carried out and Information Bulletin for CET-SS January, 2010. Reference in particular is made to Clause 8, which stipulates that accredited hospitals were required to evolve a merit list of applicant candidates in descending order of marks and were required to offer seats on merit-cum-choice

basis i.e. the candidates at their respective position of merit were free to exercise their option in the available seats.

5. It appears that there was violation of the said clause but the learned single Judge has allowed the writ petition in view of the reasons given in paragraph 14 of the impugned decision, which for the sake of convenience are reproduced below:

14. I am of the view that:

(i) since the Petitioner has already spent by now over one year as a DNB Trainee; and,

(ii) further, since the procedure for admission is in the process of transformation; and,

(iii) yet further for the reason of it being now not possible to give any benefit to the Respondent No. 3 or to anyone more eligible than the Petitioner.

Equity demands that the Petitioner be permitted to continue with the course. It cannot be lost sight of that the procedure under which the Petitioner has been admitted by the Respondent No. 2 Hospital was prevalent since the year 1975.

6. Apart from the above reasons, we find that the Respondent No. 3 hospital had written to the Appellant letter dated 29th March, 2010, but no reply or confirmation was sent. Thereafter, the Respondent No. 2 had sent reminder dated 30th June, 2010 to the Appellant. The Appellant raised objection to selection of the Respondent No. 1 vide their letter dated 13th August, 2010. The Appellant, therefore, had belatedly responded to the letter dated 29th March and the same was responded after nearly 5 months. By that time the Respondent No. 1 had already joined the course and was studying. As noticed by the single Judge, the Respondent No. 1 had already completed half of the course and has studied for about 14-15 months. Setting aside his selection will not serve any purpose. Rather a seat will go waste. Of course this does not mean and should not be construed to imply that the accredited hospitals/institutions can violate the prescribed rule/policy of merit-cum-choice.

7. In these circumstances, we are not inclined to entertain the present appeal and the same is dismissed without any order as to costs.