



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.: 1346/1024/2014

Dated: 22.09.2017
Dispatch No.....

In the matter of :

Dr. Alok Yadav,
Sr. Medical Officer, R3763
National Institute of Tuberculosis and
Respiratory Diseases,
Sri Aurobindo Marg,
Near Qutab Minar,
Mehrauli,
New Delhi – 110 030

..... Complainant

Versus

National Institute of Tuberculosis and Respiratory Diseases,
(Through the Director)
Sri Aurobindo Marg, R3764
Near Qutab Minar,
Mehrauli,
New Delhi – 110 030

..... Respondent

Date of Hearing : 07.04.2017

Present :

1. Complainant - Absent.
2. Shri Jasbir Bidhuri, Advocate – On behalf of Respondent

ORDER

The complainant, a person with 65% locomotor disability had filed a complaint dated nil before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding denial of study leave.

2. The complainant had submitted that he has completed 5 years of permanent job in National Institute of Tuberculosis and Respiratory Diseases (NITRD) and as per Rule 50(5) of the Central Civil Service (Leave) RULES, 1972 and Ministry of Health & Family Welfare's (CHS Division) O.M. No. A.12034/03/2012-CHS-V dated 02.11.2012, he is entitled for Study Leave. As per complainant, the strength of CMOs/MOs in the Institute is between 1-10 and one officer can be allowed to join PG Course. He applied for All India Post Graduate Medical Entrance Examination (AIPGMEE) 2014 through proper channel under disabled category. However, the administration vide O.M. No. 2/2013/9405 dated 28.12.2013 informed him that in case of his selection, he would

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाइल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

be relieved on Leave of Kind Due and not on study leave as approved by the Chairperson, governing body. The complainant has been selected in AIPGMEE but due to non relieving him by respondent on study leave, he could not join the PG course.

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 vide this Office's letter dated 23.05.2014.

4. The HOD (Hospital Administration), National Institute of Tuberculosis and Respiratory Diseases vide letter no. Adm.2/2014/2315 dated 13.06.2014 submitted that there is no violation of the CCS (Leaves) Rules 1972 and the study leave has been rejected in accordance with the CCS (Leave) Rule 1972 and the O.M. dated 02.11.2012. The complainant was informed by the Respondent Institute at the time when he applied online for AIPGMEE that he would be granted leave of kind due and not study leave. The Respondent further submitted that the complainant was well aware that he would not be granted study leave even if he qualifies the AIPGMEE for pursuing PG Course. The institute is having over 470 hospitalization beds and an O.P.D. averaging 550 patients per day. Further, the institute is a National Training Center having trained over 13,000 trainers in the country. The institute is running post graduate teaching programme in Respiratory diseases and there are only nine doctors in the Medical Officer Cadres. In view of the expanded patient care, research and training activities, complainant cannot be spared for two years' study leave. If the complainant is granted Extra Ordinary Leave (EOL), his substitute can be taken by filling up of post against leave vacancy and patient care not to be interrupted. If the complainant is given study leave, the Respondent institute cannot appoint any person in place of the complainant which would hamper the patient care. The Respondent submitted that the complainant had applied for AIPGMEE which was conducted by the National Board of Examination for which the complainant had sought permission through an application dated 20.11.2013 and the Respondent institute had vide its letter No. Adm.2/2013 dated 28.12.2013 had allowed the complainant to appear in the said examination with a condition that in case of his selection in the PG Course, he would be relieved of his duty with leave of kind due (LOKD) as per the rules and due approval, of the Chairperson, Governing Body of the Respondent institute. The complainant was also informed that he would not be granted Study Leave for pursuing in the PG Course. The complainant at the time of being granted the permission to appear in the PG Course, was informed that he would be granted leave of kind due and not study leave. The Respondent submitted that the complainant vide his letter dated 29.03.2014 had sought for a sponsorship certificate to which the Respondent Institute replied through letter dated 29.04.2014, informing him that the complainant's request had been considered by the administration and the same

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was not accepted. The complainant was further informed that the case of his admission in MD (Pediatrics) in AIIMS had been considered for grant of EOL for the duration as per rules. The Institute does not have any substitute as the Expanded Patient, Care, Research and Training candidate Complainant cannot be spared for two years study leave and in case the complainant is given Extraordinary Leave, his substitute can be taken by filling up of post against leave vacancy. The Respondent submitted that even otherwise, there is going to be no added benefit in terms of the patient care in the Institute in case he is granted study leave to pursue PG Course in Pediatrics. The decision to decline the study leave has been taken by the institute keeping in view of the fact. A copy of Respondent's reply dated 13.06.2014 was sent to the complainant vide this Court's letter 24.06.2014.

5. The complainant vide his rejoinder dated 17.07.2014 submitted that since the present complaint pertains to the deprivation of rights of a person with disability, this Court has the jurisdiction to entertain the present complaint, which the Respondent is not agreeing. The complainant submitted that vide the Order dated 28.12.2013 and 29.04.2014, the administration of the Respondent institute has rejected the application for study leave of the complainant without even having the power to do so. It is pertinent to note that such power under the OM dated 02.11.2012 is only provided to the concerned department of the Ministry and does not vest with the Respondent's administration. Additionally, no proper consideration has been provided and no reasons have been assigned in the order rejecting the study leave of the complainant. The complainant submitted that in view of the aforesaid, the impugned orders are entirely baseless and deserve to be dismissed. The complainant further submitted that the leave of kind due/EOL granted to the complainant is entirely baseless. He submitted that the no reasons have been provided by the Respondent for denying the study leave and why only leave of kind due could be granted. The complainant submitted that the application for issue of study leave as per the OM could only be determined by the Ministry and not by the controlling authority or the administration which is only required to forward the requisite applications along with the documents to the concerned ministry. The complainant submitted that it is denied that if the complainant is granted EOL, his substitute can be taken by filling up of post against leave vacancy and patient care not be interrupted. It is further denied that if the complainant is granted study leave, the Respondent cannot appoint any person in place of the Complainant. The complainant submitted that at the stage of seeking permission to apply to AIPGMEE, the Respondent was not required to determine whether the complainant can be granted study leave or not. He submitted that since the decision not to grant study leave to the complainant did not vest with the Respondent, the complainant never expected the Respondent to pre-judge the issue without forwarding the application to the concerned ministry. He is repeatedly being stopped from pursuing higher studies in an arbitrary and

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discriminatory manner which is inconsistent with the relevant rules and regulations. He reiterated that since the concerned O.M. does not permit the filling up of the post by substitute whether study leave or EOL is granted, the reasoning provided by the Respondent is entirely incorrect and false. The complainant vide his letter dated 06.01.2015 has submitted that he was being refused by his Institute from two years 2013 and 2014 for doing post graduation. In the year 2013, he got selected for MS Orthopedics Course in ESI MGMH Medical College, Parel, Mumbai, but his institute verbally refused him from releasing without giving any order in this regard. In the year 2014 at the time of applying for permission to appear in post graduate examination, the administration vide memo no. adm.2/2013/9405 informed the complainant the in case of his selection, he will only be relieved on leave of kind dues and not on study leave but as per rule he is entitled for study leave. In the said examination, he got selected for Diploma in child health DCH Course from Aligarh Muslim University, but he was not relieved by his institute. Recently when he applied for third time for permission to appear in All India Post Graduate Medical Examination 2015, his institute vide office memo. No. 2/2013/7204 conveyed him that he will be released only on leave of kind dues and not on study leave. A copy of complainant's letter dated 06.01.2015 along with enclosures were sent to the HOD, Hospital Administration, National Institute of Tuberculosis and Respiratory Diseases vide letter of this Court dated 28.01.2015 for his comments and thereafter by reminder of this Court dated 13.04.2015.

6. The Administrative Officer (O), National Institute of Tuberculosis and Respiratory Diseases vide their letter no. 25.02.2015, has submitted that there were 09 sanctioned posts of Medical Officer/Sr. Medical Officer and at present one post is lying vacant. He stated that no study leave was granted to any employee of similar rank of the Institute during the last five years.

7. Upon considering respondent's replies dated 13.06.2014, 25.02.2015 and complainant's communications dated 17.07.2014, 06.01.2015 and 12.02.2015, it was decided to hold a personal hearing in the matter and accordingly the same was scheduled for 07.04.2017 at 11:00 Hrs.

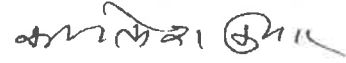
8. During the hearing, the Legal Counsel for the Respondent submitted that the complainant had applied for extraordinary leave for pursuing the P.G. Course. The Institute had categorically informed the complainant at the time when he applied online for AIPGMEE that he would be granted leave of kind due and not study leave. It is further submitted that the Complainant was well aware that he would not be granted study leave even if he qualified the AIPGMEE for pursuing the PG Course. The Institute is having over 470 hospitalization beds and an O.P.D. averaging 550 patients per day. The Institute is running post graduate teaching programmed in Respiratory diseases and there are only nine doctors in the Medical Officer Cadre. The Respondent submitted that the complainant cannot be spared for two years study leave. They submitted that if the complainant is granted Extra Ordinary Leave (EOL), his substitute can be taken by filling up of post against leave vacancy and patient care

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not be interrupted. However, if the Complainant is given study leave the Respondent Institute cannot appoint any person in place of the Complainant which would hamper the patient care. He further stated that even otherwise there is going to be no added benefit in terms of the patient care in the Institute in case he is granted study leave to pursue PG Course in Pediatrics. The decision to decline the study leave has been taken by the Institute keeping in view of this fact.

9. The Court observed that there is no violation or infringement of any of the statutory rights of Persons with Disabilities in the present case.

10. The case is accordingly disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities