



UNION TERRITORY OF JAMMU & KASHMIR
DIRECTORATE OF HEALTH SERVICES, JAMMU

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Subject:-O.A. No. 61/234/2022 titled Dr. Amer Hussain Vs UT of J&K & Ors.

ORDER

Whereas, the Hon'ble Central Administrative Tribunal, Jammu Bench has disposed of the above titled case, on 10-03-2022, and Para 7 & 8 of the judgment reads as under:-

7. *".....In view of the above submissions of counsels for both the parties, this O.A. is disposed of at the admission stage, without expressing any opinion on the merits of the case, directing respondent Nos. 1 and 2 i.e Commissioner cum Secretary to Government, Health and Medical Education Department, Civil Secretariat, Jammu and Director Health Services, Jammu Division to quickly consider the representation of the applicant dated 30-12-2021, on similar basis with case of Dr. Prabhat Singh, as per provisions of relevant Government orders on the subject of higher study courses by in-service doctors dated 27-05-2019 and decide it quickly by 13-03-2022 and to communicate the order to the applicant immediately thereafter. No costs.*
8. *Mr. Hunar Gupta, D.A.G. assures that he would communicate the contents of this order to the concerned respondent authority today itself and request them to decide the applicant's representation before 13-03-2022."*

Whereas, the department came to know about disposal of the above titled case, on 15-03-2021, only after receipt of notice in this office from the counsel of the applicant. Immediately, thereafter, the record has been examined and found that the applicant has not filed any representation dated 30-12-2021 in this office, and;

Whereas, the applicant in his representation annexed with the OA as Annexure A2 has requested to forward his case to the competent authority for issuance of certificate of permission/NOC to participate in selection process NEE-SS, and;

Whereas, the case of the applicant has been examined in light of rule position and relevant Govt. Orders and Circulars and sought out that the Government vide Government Order No:-03-HME of 2019, dated 27-05-2019 has issued a policy/guidelines regarding undergoing of higher study courses viz Registrarship, Demonstratorship, Senior Residency, PG, Diploma, tutor etc by in service doctors. The circumstances leading to issuance of policy/guidelines are that it has been observed by the Government that earlier during the process of recruitment of Medical Officers, a substantial chunk of selectees were undergoing PG/Senior Residency/Registrar ship/ Demonstratorship at the time of their selection and as a consequence, such selectees pleaded for permission to continue their higher studies courses. These posts though substantively occupied, physically/practically remained vacant which in turn led to great resentment in the public and consequent crisis of non availability of doctors in the concerned Health institutions in the rural/peripheral areas. It has further been observed that on earlier occasion as well the Government vide Government order No:-164-HME of 2012, has issued some guidelines for the deputation of in-service doctors for the tenure posts of Registrar/Demonstrator and the Hon'ble High Court of J&K at Srinagar vide its decision dated 31-05-2016 in SWP No:-2355/2015 has also directed to strictly adhere to the rules and Government Order No:-164-HME of 2012 for the deputation of doctors. Therefore, the Government vide Government Order No:-03-HME of 2019, dated 27-05-2019 came up with policy/guidelines for the deputation of in-service doctors for undergoing higher study courses/tenure posts. There are certain terms and conditions in the policy/guidelines and condition No:-1 & 3 of these guidelines provides as under:-

1. *The concerned HOD shall not forward/recommend any case of doctor intending to appear in the selection process by NEET or Senior Residency/Registrarship/ Demonstratorship/PG/Diploma etc unless or until concerned doctor has completed prescribed period of probation or 3 years of service, whichever is later and is intending to undergo such course for the first time during his/her service for which a categoric certificate shall be furnished by the concerned HOD.*
3. *The concerned eligible doctors shall submit their cases through the concerned HOD well within the prescribed time fixed by the selection agencies alongwith all service particulars enabling Administrative Department to take decision prior to cut off date, as the case may be.*

Whereas, it is pertinent to mention here that the condition of three years services came to be modified to five years in the case of higher study courses vide Circular No:-18-HME of 2020, dated 29-12-2020 which provided as under:-



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"...In terms of S.O. 234 dated 21-07-2020 issued by the Finance Department and in partial modification of Circular No. 03-HME of 2019, dated 27-05-2019, instructions are brought to the notice of all concerned that NOC for undergoing higher study courses, excluding tenure postings/trainings, shall be considered by the Health and Medical Education Department in respect of only those in-service doctors who have completed atleast 05 years of service instead of three years as on 1st of January of the said calendar year and are otherwise eligible for availing study leave."

Whereas, the Hon'ble High Court in another writ petition bearing WP (C) No:-2553/2019 titled Abdul Roof & Ors Vs State & Ors issued certain directions which included the direction to the Government to constitute the panel for issuing No Objection Certificate (NOC) in favour of the eligible in-service Medical Officers and other doctors who would apply for undergoing higher study courses and the tenure posts. The panel so constituted shall invite applications from the eligible in-service candidates in the first week of January each year. After receiving the applications, the committee shall scrutinize the applications and consider the same keeping with the Government guidelines framed vide Circular No:-03-HME of 2019, dated 27-05-2019, and;

Whereas, for the calendar year 2022, a departmental committee, vide Circular No:-05-JK (HME) of 2021, dated 21-12-2021, was constituted to examine the cases of doctors for issuing NOC in favour of eligible in-service Medical Officers desirous of undergoing higher study courses/applying against the tenure posts and accordingly applications were invited from the desirous/intending eligible in-service doctors for seeking NOC for participating in the selection process for undergoing higher study courses/tenure posts during the calendar year-2022. The condition No. 2 of this Circular provided as under:-

- 2. Concerned doctor (s) shall submit their application in a devised proforma (Annexure-A) duly authenticated by the concerned DDOs and route it through concerned Directorate of Health Services Jammu/Kashmir by or before 10th of January, 2022. After cut-off date, no such application/request shall be entertained by the concerned HOD for calendar year, 2022, falling which concerned HOD shall be held responsible for such lapse.*

Whereas, according to above stated terms and conditions of the Government Circular, the applicant, who is undergoing Registrarship in



General Medicine in Govt. Medical College, Doda and has become eligible on 1st of January, 2022 after completion of five years of service, had to route his application, in the devised proforma alongwith his service particulars authenticated by his DDO at Govt. Medical College, Doda, to the HOD (Director Health Services, Jammu) before the cut off date i.e. 10th of January, 2022. However, as per record, the applicant has not applied for issuance of NOC, following the due procedure as laid down in the Govt. Circular, as such has not been considered for issuance of NOC to participate in the selection process for the calendar year, 2022, and;

Whereas, the case of the applicant for issuance of NOC on the analogy of Dr. Prabhat Singh could have only be considered had the applicant applied properly in the devised format alongwith his service particulars following the due procedure as provided in the Govt. Circulars. Since, the applicant has not applied properly for issuance of NOC before the cut-off date as such cannot be considered for issuance of NOC on the similarity of Dr. Prabhat Singh.

Now, therefore, the case of the applicant for issuance of NOC to participate in the selection process has been accorded consideration, in compliance to the orders of the Hon'ble Central Administrative Tribunal, Jammu Bench, and found devoid of merit, hence rejected.

Sd/-
(Dr. Saleem-Ur-Rehman)
Director Health Services,
Jammu

No;-DHSJ/Legal/18231-34

Dated: - 19/03/2022

Copy to the:-

1. Private Secretary to Additional Chief Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu for information of worthy Additional Chief Secretary.
2. Health Education Bureau, Directorate of Health Services, Jammu to upload the order on official website.
3. Establishment Section Es-3.
4. Dr. Amer Hussain S/O Mohd Hussain R/O Lowang Tehsil Bani District Kathua for information.

(Dr. Seema Gupta)
Dy. Director Health Services (Sch)
Jammu