

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.4404 of 2012
Dr. Numan Muhammad Khan
Vs.
CA&DD through its Secretary & others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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Presence as on 23.5.2013

Mr. Naeem Ahmad Shah, Advocate for the petitioner,
Qazi Rafi ud Din Babar, learned Deputy Attorney-General.,
Mr. Iftikhar Malik, Law Officer PIMS.

27.5.2013

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

Through this constitutional petition, petitioner [Dr. Numan Muhammad Khan] seeks direction against the respondents to allow his admission in MDS (Oral and Maxillofacial Surgery) Course with all consequential benefits and that the result on the basis of which the candidates having less merit were allowed admission, be also declared as null and void.

2. It is, inter-alia, contended that the petitioner is a Dental Surgeon, registered with PMDC and belongs to Lakki Marwat, the far flung area of Khyber Pakhtoon Khaw (KPK). He remained the student of Bachelor of Dental Surgery (BDS) in Ayub Medical College, Abbottabad, and was awarded the degree from Khyber Medical University, Peshawar, on 28.6.2011. He has an excellent academic record and obtained twelve (12) Distinctions Certificates-Gold Medals, during the whole professional exams in different subjects of BDS.

3. It is next argued that the petitioner being well qualified and most eligible candidate, applied for admission in MDS (Oral and Maxillofacial Surgery) announced by the respondents No.2 & 3. He appeared in the NTS test as arranged by the respondents No.2 & 3 and not only qualified it, but also remained topper amongst the qualified candidates and stood first in the further test/exam conducted by the respondents No.2 and 3.



4. It is further asserted that the proper procedure, which had been adopted in the past, was not adopted this time in the case of MDS (Oral and Maxillofacial Surgery) by the respondents 2 & 3 as the result for all disciplines was not announced and displayed on the same day or the next day. In this case, exam/test interview was conducted on 01.12.2012, but result was announced on 13.12.2012. Such delaying tactics were only used to manage the admission of their blue eyed.

5. It is also argued by the learned counsel that even after topping the NTS and being number one 01 on merit-list, he was ignored for admission to MDS (Oral and Maxillofacial Surgery), while the other Candidates/Doctors namely, Dr. Sanam Qureshi, Dr. Muhammad Umair Farooq & Dr. Javed Akhtar, who had passed their BDS Professional Exams by parts were selected, despite the fact that they were below him in the merit-list.

6. Lastly, it is argued that the respondents willfully and in order to favour their blue eyed, ignored him by not showing his marks/numbers in the column of "**College Position**" of the List of Selected / Non Selected Candidates as shown in (Annex-A), as such, the act of the respondents to allow admission on the basis of pick & choose be declared as null and void.

7. On the other hand, learned Deputy Attorney-General assisted by learned Law Officer of the respondent-department repelled the above arguments by maintaining that the petitioner had not provided educational certificates with his application and therefore, the same could not be considered. Learned Law Officer admitted that the petitioner passed NTS Test, which was the screening test and after interviewing him by the Selection Committee alongwith thirty-five other candidates, he was placed at serial No.4 in the merit-list first on the waiting list and being not eligible candidate, he was not succeeded to get admission, therefore, the petition in hand, merits dismissal.



8. Heard & record perused.

9. Learned counsel pressed this petition, while referring Articles 2-A, 4 and 25 of the Constitution by maintaining that the equal treatment of all similarly situated persons is the basic principle of law. If even handed justice is not administered, same could have many adverse and negative effects on the society and could cause discontentment and frustration in the social set up and there is no denial that social justice is an objective, enshrined in the Constitution.

10. In this case, according to learned counsel, the petitioner retains exceptional educational record and passed his exam in the very first attempt, but the said qualification was not given due weight by the respondents, rather they ignored him by placing at serial No.1 of the waiting-list, whereas three rival candidates who were selected for admission have no such qualifications.

11. The version of the respondents, contained in their written reply, is that the petitioner passed NTS test, which was the screening test and he was interviewed by the Selection Committee alongwith thirty-five other candidates and was placed at serial No.4 in the merit-list and did not stand first in the said list. The result was not deliberately delayed. The merit-list was prepared according to assessment by the Selection Committee after interview. No vested right of the petitioner has been infringed.

12. In their additional reply submitted through CM. No.2653/13, they further maintained that at the time of admission only three posts were vacant against which the three selected candidates were granted admission on merit having NTS result card after passing the NTS test. Although, the petitioner passed the test/interview, but his passing marks were below the doctors, who were given the admission.

13. In order to ascertain whether the contention of the petitioner is plausible, I have gone through the list/NTS test besides the list of successful candidates, which has



been placed on record by the respondents No.1 to 3. For convenience and ready reference the entries qua petitioner and three successful candidates in the said two lists are reproduced hereunder for ready reference & better understanding as "Chart-A" & "Chart-B":-

"Chart-A"

MDS Oral & Maxillofacial Surgery, QPGMC/PIMS Session January, 2013

S.No.	Name with Father's Name	MBBS Year	NTS Marks	First Professional Part I		First Professional Part II		Second Professional		Third Professional		Final Professional	
				%Age	Attempt	%Age	Attempt	%Age	Attempt	%Age	Attempt	%Age	Attempt
36	Nauman Muhammad Khan D/O Muhammad Khan Marwat	2011	65	67.1	1	67.1	1	76.42	1	71.33	1	66.37	1
40	Muhammad Umair Farooq S/o Fiyaz Hussain Farooq Ch.	2010	58	54	1			63	2	58	1	67	1
49	Sanam Qureshi D/O Muhammad Asif Qureshi	2008	54			62.1	1	60	1	65	1	59	1
50	Javed Akhtar S/O Rana Muhammad Akhtar	2001		52.4	3			51.1	4	54	2	51.5	3

"Chart-B"

**LIST OF SELECTED/NON SELECTED CANDIDATES
MDS Oral & Maxillofacial Surgery Session Jan. 2013 (01-12-2012)**

S. No.	Name with Father's Name	Division	No. of Attempt	Distinction	College Position	Pakistani University	House Job in PIMS	Clinical assessment/ Structure Interview	Deanery	Total	Remarks
		8	8	4	2	5	3	50	20	100	
36	Nauman Muhammad Khan D/O Muhammad Khan Marwat	8	8	4	0	5	0	40	10	75	1 st waiting
40	Muhammad Umair Farooq S/o Fiyaz Hussain Farooq Ch.	6	7	0	0	5	0	41	19	78	Selected
49	Sanam Qureshi D/O Muhammad Asif Qureshi	7	8	0	0	5	0	45	20	84	Selected
50	Javed Akhtar S/O Rana Muhammad Akhtar	4	4	0	0	5	0	44	19	76	Selected

14. It is clear from Chart-A that petitioner is much ahead of three selective candidates in NTS marks, three professional parts and in final professional part. The petitioner obtained 65 NTS marks, whereas the other two candidates namely, Umair and Sanam who were admitted have obtained 58 and 54 marks, respectively. Likewise, in final professional part, the percentage of the petitioner is 66.37%, which is higher than the two selected candidates namely, Sanam and Javed, who obtained 59 and 51.5%, respectively.

15. In the Chart-B, the column of the college position against the petitioner has been left blank, which shows that he was not awarded the marks of his twelve distinctions certificates.

16. On being questioned as to why the petitioner was not awarded the said marks, the learned Law Officer replied that in order to verify this fact, he consulted the head of the department and it was replied that the marks of distinctions were not awarded to the petitioner as his credential certificates were not available with the application for admission. This excuse, in my view, is devoid of force, rather the same is an admission that the petitioner has been deprived of his legitimate right, either willfully or due to negligence, but the fact remains that the petitioner's case deserves interference by this Court.

17. It is an admitted position that the petitioner obtained highest marks in NTS i.e. 65 and is ahead of the selected candidates. His distinction certificates were also not taken into consideration, while preparing the merit-list.

18. It is the fundamental right of every citizen to be treated in accordance with law without discrimination on the basis of equality. Right to get education is the basic right of every citizen and the Courts are under obligations to protect such rights. In the present case, the petitioner, having exceptional educational record and belonging to far flung area of Khyber Pakhtoon Khawa, appeared and after obtaining highest marks in NTS, had



been placed at serial No.1 of the Waiting List despite the fact that his average in all the three professional parts was ahead of the selected candidates, as highlighted above.

19. In view of above discussion, the respondents No.1 to 3 are directed to allow the petitioner's admission in MDS (Oral and Maxillofacial Surgery) Course, without disturbing the candidates already selected, by making special arrangements admissible under the law, within a period of fortnight from the date of receipt of this Order under intimation to this Court through the Registrar for perusal in Chambers and further necessary action, if need be.

20. The writ petition is disposed of in above terms.

M. Suhail*
27.5.2013

(CHIEF JUSTICE)

Approved for reporting

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