

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 14th July, 2010*

+ **W.P.(C) 4255/2010**

ESI CORPORATION & ANR. Petitioners
Through: Mr.Yakesh Anand, Advocate

versus

SHRI SURENDER KUMAR ... Respondent
Through: Mr.Awadh Bihari Kaushik, Advocate

W.P.(C) 4256/2010

ESI CORPORATION & ANR. Petitioners
Through: Mr.Yakesh Anand, Advocate

versus

SHRI SUMIT SHARMA & ORS. ... Respondents
Through: Mr.Awadh Bihari Kaushik, Advocate

W.P.(C) 4257/2010

DIRECTOR (MEDICAL) DELHI, ESI SCHEME Petitioner
Through: Mr.Yakesh Anand, Advocate

versus

SHRI ROHTASH DABAS & ORS. ... Respondents
Through: Mr.Awadh Bihari Kaushik, Advocate
Mr.Deepinder Hooda, Advocate for
Applicants of CM No.9122/2010

W.P.(C) 4596/2010

SURINDER PAL & ORS. Petitioners
Through: Mr.P.P.Khurana, Senior Advocate
with Ms.Tamali Wad, Advocate

versus

SHRI ROHTAS DABAS & ORS. ... Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.119/2010 in WP(C) 4255/2010, Caveat No.120/2010 in WP(C) 4256/2010 and Caveat No.116/2010 in WP(C) 4257/2010.

Since counsel as above appears for the caveators in the three captioned writ petitions, the caveats stand discharged.

CM No.8440/2010 in WP(C) 4255/2010, CM No.8442/2010 in WP(C) 4256/2010 and CM No.8444/2010 in WP(C) 4257/2010.

Allowed subject to just exceptions.

CM No.8807/2010 in WP(C) 4257/2010

1. Applicant Surender Kumar who is respondent No.4 in the WP(C)No.4257/2010 prays that having got appointment in Dr.Ram Manohar Lohia Hospital, New Delhi his name may be struck off as respondent No.4 and it be declared that he does not seek the benefit of the order passed in his favour by the Central Administrative Tribunal.

2. The application stands disposed of declaring that applicant Surender Kumar who was a co-petitioner in TA No.39/2010 before the Tribunal would not be entitled to either the benefit granted by the Tribunal or the instant decision. His claim against the petitioner is dismissed as not pressed.

CM No.9122/2010 in WP(C) 4257/2010

1. Applicants pray that they may be impleaded as parties and be heard.
2. To decide the application, relevant facts which require to be noted are that ESIC issued an advertisement on 3.11.2007 notifying applications to appoint Nursing Orderlies specifying therein that the appointment would be through an open competitive examination or interview or both.
3. 4117 applications were received and a written test was conducted on 31.1.2009 at which only 3160 candidates appeared.
4. In order of merit i.e. those who had secured more marks, a short list of 945 candidates was prepared, probably for the reason the number of posts required to be filled up was about 210 (it may be noted that the exact posts which were intended to be filled up have not been disclosed). The respondents of WP(C) 4255/2010, WP(C) 4256/2010 and WP(C) 4257/2010 were included in the list of 945 candidates and as claimed by them before the Tribunal, they have performed fairly well at the interview but were surprised to note that their names did not find mention in the final select list of 210 candidates selected for appointment. On inquiry they learnt that while preparing the final select list, the petitioner did not take into consideration the marks obtained by the candidates at the written examination and prepared the select list only with reference to the marks obtained at the interview. The said respondents filed 3 writ petitions in this Court. The same were transferred to the Central Administrative Tribunal since a notification was issued notifying ESIC as an organization amenable to the jurisdiction of the Central Administrative Tribunal.

5. The Tribunal took the view, and in our opinion correctly, that wholesale reliance upon marks obtained at the interview rendered the selection process extremely subjective and susceptible to manipulation. Vide impugned order dated 20.5.2010 the three writ petitions which were transferred to the Tribunal were allowed with a direction that the petitioner would re-draw the select list with reference to the marks obtained at the written examination as also the interview.

6. ESIC has filed three writ petitions being WP(C) Nos.4255/2010, 4256/201 and 4257/2010 challenging the order passed by the Tribunal, inter alia, urging that in the absence of any stay, 189 candidates were given employment and none of them was impleaded as a respondent. It is urged by ESIC that it would be unjust to set aside the appointment of said 189 candidates who were not even heard.

7. The said selected and employed candidates are the writ petitioners of WP(C) No.4596/2010. They have laid a challenge to the order passed by the Tribunal, principally on the ground that they were not heard. It is the case of ESIC as also the writ petitioners of WP(C) No.4596/2010 that the advertisement in question very clearly stated that the selection would be on the basis of a written test or an interview or both. Thus, what is urged is that each method of selection was in the alternative.

8. The applicants of CM No.9122/2010 were also in the list of 945 candidates called for interview but were not in the final select list. It is apparent that they chose to sit by, and accept their fate. They never took recourse to legal remedies. They seek to reap the harvest of the labour put in by somebody else.

9. It is settled law that law does not come to the

rescue of those who sleep and do not assert their rights at the right time.

10. From the facts noted herein above, it is apparent that the offending act of the petitioner came to light in the month of April 2009 when the select list was finally published and as respondents of WP(C) No.4255/2010, WP(C)No.4256/2010 and WP(C)No.4257/2010 promptly asserted their rights in the month of May 2009, the applicants did not do so.

11. It is apparent that the applicants have acquiesced whatever rights they had.

12. The application is accordingly dismissed.

WP(C) Nos.4255/2010, 4256/2010, 4257/2010 & 4596/2010

1. Without going into the merits of the impugned order, Mr.Yakesh Anand, learned counsel for ESIC states that to find an equitable solution to the problem at hand which solution would not create administrative chaos and would preserve the rights of the candidates who have been empanelled, ESIC has a ready solution.

2. The 8 surviving claimants, (excluding Surender Kumar respondent No.4 in WP(C) 4257/2010 who, as noted above, has abandoned his claim), i.e. the remaining 8 applicants before the Tribunal, viz. the remaining respondents in WP(C) Nos.4255/2010 to 4257/2010 can be offered the letters of appointment for the reason all of them had obtained marks high enough in the written examination evidenced by the fact that out of 3160 candidates who appeared, their names were in the list of 945 candidates.

3. Counsel further points out that these candidates have done reasonably well on an overall purview i.e. the

aggregate marks at the written examination and at the interview and that ESIC agrees to take them under employment for the reason not all posts which were advertised got filled up for the reason many candidates on the select list did not accept the offer and as of today there are 10 vacancies which are available.

4. Taking note of the fact that only 9 persons challenged the selection process, meaning thereby that the other candidates acquiesced in whatever happened; noting that ESIC could not have resorted to a selection process which made it extremely subjective; further taking note of the fact that the 8 persons who would be getting the benefit of the concession made by the ESIC were in the top 25% of the candidates, who took the written examination and as per marks obtained by them which has been shown to us at the interview have done reasonably well, to bring the curtains down on litigation which can be amicably resolved by satisfying the claim of those candidates who asserted their rights and preserving the rights of those who were selected and were given appointment letters, we feel that ends of justice would be met by passing the following directions:-

- (i) WP(C)No.4255/2010, WP(C)No.4256/2010 and WP(C)No.4257/2010 stand disposed of setting aside the directions issued by the Tribunal vide impugned order dated 20.5.2010.
- (ii) The respondents of WP(C) Nos.4255/2010, 4256/2010 and 4257/2010, save and except Surender Kumar S/o Om Prakash, respondent No.4 in WP(C) No.4257/2010, would be issued appointment letters offering them employment as Nursing Orderlies. The petitioner shall do the

needful within 4 weeks from today.

- (iii) The said 8 persons would rank junior to the existing Nursing Orderlies and would not be entitled to any back-wages and their service shall be reckoned with effect from the date when the letter of offer is issued to them and their inter se seniority would be as per their date of birth.

5. WP(C) No.4596/2010 has been rendered infructuous in view of the afore-noted directions, and hence we take on record the statement of Shri P.P.Khurana, learned senior counsel for the petitioners that the writ petitioners of the said writ petition do not press their writ petition.

6. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 14, 2010
dk