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

+ W.P.(C) 4341/2019 and C.M. Nos.19286/2019 & 22509/2019

MOHAN KUMAR

..... Petitioner

Through: Mr. Sudhir Naagar and Mr. Mohit
Singh, Advocates.

versus

DIRECTOR GENERAL,
ESI CORPORATION AND ANR.

..... Respondents

Through: Mr. Yakesh Anand, Mr. Nimit
Mathur, Mr. Akshay Thakur and
Ms. Deepshikha, Advocates for
respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

16.07.2019

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1. The petitioner has preferred the present writ petition to assail the order dated 30.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3429/2016. The Tribunal has rejected the said Original Application, wherein he had assailed cancellation of his candidature for the post of Nursing Orderly advertised by the respondents.

2. The respondents had issued public advertisement to make appointments, inter alia, to the post of Nursing Orderly/ Stretcher Bearer/

Attendant. The last date for making application in response to the said advertisement was 31.03.2011. The eligibility criteria prescribed in the advertisement for the said post was as follows:

10	<i>Nursing Orderly/ Stretcher Bearer/ Attendant</i>	<i>Matriculation or equivalent from recognized board. Elementary knowledge of first aid. One year experience in handling and dressing wounds in Govt. approved / registered Nursing Home / Hospital.</i>	<i>Age between 18-27 years. (Relaxable up to 37 years in case of Govt. servant and employees of the ESIC)</i>
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3. The petitioner made his application. The petitioner was selected and he was also issued offer of appointment on 23.02.2015. The petitioner was informed that the decision on his candidature would be taken after receipt of information from the Director General of Health Services regarding registration of Shivam Bansal Hospital, of which the petitioner had provided an experience certificate in terms of the advertisement. The respondents were informed that Shivam Bansal Hospital was not registered with the Director General of Health Services, Delhi during the period from 06.05.2008 to 12.05.2009 which covered the period for which the petitioner gave his experience certificate. Consequently, that experience certificate of the petitioner was rejected. Faced with the aforesaid situation, the petitioner provided another experience certificate from another hospital, namely Kamlesh Medical Centre. The respondents while issuing the impugned communication dated 08.08.2016 cancelling his candidature, rejected the petitioner's reliance thereupon since the experience certificate from Kamlesh Medical Centre was submitted subsequently, and not along

with the application. In this background, the petitioner approached the Tribunal. The Tribunal did not find merit in his Original Application and rejected the same.

4. The submission of learned counsel for the petitioner is that the Recruitment Rule – as it prevailed on the date of issuance of the advertisement and even on the date of closing of the last date for making the application, did not require experience from a hospital which was recognised by the Director General of Health Services. In this regard, our attention has been drawn to the eligibility criteria prescribed for the post of Nursing Orderly, which stated:

“Middle standard Elementary knowledge of first Aid one year Experience in handling or dressing wounds for Nursing Orderly”

5. Learned counsel submits that the rules were amended subsequently on 21.05.2011 with the making of the ESIC (Recruitment) Regulations, 2010 Group ‘C’ (Para-Medical) Posts. It was under the amended rules that the aforesaid requirement as advertised was introduced.

6. Learned counsel submits that the petitioner was not aware that Shivam Bansal Hospital was not a recognised hospital when he made his application, and when the issue was raised, he provided another experience certificate from Kamlesh Medical Centre which should have been taken into consideration. The respondents have not even proceeded to get the said certificate verified while cancelling the petitioner’s candidature.

7. On the other hand, learned counsel for the respondents submits that

the eligibility criteria was clearly laid down in the advertisement itself, and it was for the petitioner to follow the same. The petitioner did not assail the eligibility criteria prescribed in the advertisement as being contrary to the Recruitment Rules and it is not open to him at this stage to raise an issue in that regard. He further submits that like the petitioner, candidature of many others would have been rejected on the same ground and it would not be fair to others, if the petitioner's candidature is now considered on the basis of a subsequently provided experience certificate.

8. Having considered the submissions of learned counsels, we are of the view that the petitioner's candidature was rightly cancelled since he did not provide the experience certificate from a hospital recognised by the Director General of Health Services. The petitioner was well aware of the said requirement as advertised by the respondents. It was not his case, at that point of time, that the said requirement was illegal and contrary to the Recruitment Rules. Not having assailed the prescription in the advertisement with regard to the experience qualification at the relevant point of time, it does not lie in the mouth of the petitioner to subsequently claim that the eligibility criteria laid down in the advertisement was contrary to the Recruitment Rules. It appears that the Recruitment Rules were in the process of being amended, since they were framed in the year 2010 but were published in the official gazette only in the year 2011. It appears that it was this background that the respondents prescribed the eligibility criteria in the advertisement issued by them in March 2011. The eligibility of the petitioner had to be judged on the basis of the application submitted by him, and to permit the petitioner to submit another experience certificate

subsequently would not be fair to others who may similarly have been ousted from consideration.

9. We do not find any infirmity in the impugned order.

10. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 16, 2019
B.S. Rohella