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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 31.01.2024*+ **W.P.(C) 11536/2023 & CM APPL. 44909/2023****MR. NEERAJ KUMAR**

..... Petitioner

Through: **Mr. Deepak Tyagi, Advocate**
(through video-conferencing)

versus

**UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF
LABOUR AND EMPLOYMENT & ORS.** RespondentsThrough: **Ms. Sonam Anand, Mr. Yakesh
Anand and Mr. Akshay Thakur,**
Advocates for R-2 and 3.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 20.02.2023 passed by the learned Central Administrative Tribunal in O.A.1153/2018. Vide the impugned order, the learned Tribunal has rejected the original application preferred by the petitioner/applicant, wherein he had assailed action of the respondent in rejecting his candidature for the post of Nursing Orderly.

2. Learned counsel for the petitioner submits that the learned Tribunal has rejected the O.A without appreciating that even though



in his application for appointment to the aforesaid post, the petitioner had mentioned only about his experience between 18.04.2009 to 06.05.2011, with one M/s Shakurpur Medical Centre, in respect whereof he had submitted an experience certificate dated 10.05.2011, he had at the time of document verification, submitted a further experience certificate from Nirmal Hospital where he had worked for a period between 10.04.2013 to 09.04.2015. He submits that both these certificates were verified by the respondents, whereupon it was found that the certificate from Shakurpur Medical Centre could not be verified as the said medical centre had been closed by the time the verification was carried out but the certificate from Nirmal Hospital was found to be correct. He, therefore, contends that once it was found that the petitioner's claim that he had the experience of working as a Nursing Orderly in Nirmal Hospital for more than one year, he ought to have been granted appointment on the basis of this experience certificate which was admittedly verified.

3. On the other hand, Ms. Sonam Anand, learned counsel for respondent nos. 2 and 3 supports the impugned order and submits that the petitioner, having not mentioned about his purported experience with the Nirmal Hospital in his application form which was submitted on 22.12.2015, the respondents were justified in ignoring the experience certificate issued by the Nirmal Hospital. The petitioner has given no justifiable explanation for not mentioning about his employment with the Nirmal Hospital between 10.04.2013 to 09.04.2015, while submitting the form on 22.12.2015. She, thus,



contends that the petitioner's claim of having worked in the Nirmal Hospital is clearly an afterthought and has rightly not been accepted by the learned Tribunal. She, therefore, prays that the writ petition be dismissed.

4. In order to appreciate the rival contentions of the learned counsel for the parties, it may be apposite to note the brief factual matrix as emerging from the record.

5. Upon an advertisement being issued by the respondent no.2 in 2015, inviting applications for filling up 220 vacancies of Paramedical and Nursing Staff in ESI Hospital, Haryana Region, the petitioner on 22.12.2015 submitted his application under the SC category for the post of Nursing Orderly. In his application form, the petitioner under the column 'experience' referred to only his work experience with Shakurpur Medical Centre between 18.04.2009 to 06.05.2011

6. After the petitioner qualified in the written examination he was called to the office of the Superintendent of respondent no.3 for verification of documents on 31.03.2017. It was at this stage that the petitioner along with his certificate dated 10.05.2011 from Shakurpur Medical Centre submitted an additional experience certificate from Nirmal Hospital wherein, he claimed to have worked between 10.04.2013 to 09.04.2015.

7. It transpires that both the aforesaid experience certificates were verified by the respondents, whereafter it emerged that the certificate from Shakurpur Medical Centre could not be verified as the said



Medical centre stood closed but the certificate from Nirmal Hospital was upon verification found to be correct. However, the respondent, upon realizing that the petitioner's purported experience from Nirmal Hospital was not mentioned in the application form, decided to ignore this experience certificate and proceeded to reject his candidature on the premise that his experience certificate from Shakurpur Medical Centre could not be verified. Being aggrieved, the petitioner approached the learned Tribunal, which has, vide the impugned order rejected the petitioner's claim by observing as under:

"4. Admittedly, at the time of applying for the post, the applicant had mentioned the name of Shakurpur Medical Centre in the column of 'work experience', which on verification, was found to have been closed since long. Hence, the candidature of the applicant was kept in abeyance for want of experience certificate. However, in order to cover up the said lacuna, he submitted another experience certificate issued by Nirmal Hospital, Sultanpuri, but the same was not accepted by the respondents being against the rules and treating that as an afterthought since he had never mentioned about the said hospital in the application form.

*4.1 We have carefully gone through the decision in **Mohan Kumar's** case wherein after the experience gained by the applicant therein from Shivam Bansal Hospital it was found to be not recognized, he submitted another experience certificate issued by Kamlesh Medical Centre which, according to the applicant, should have been I considered in place of Shivam Bansal, but that was not accepted by the respondents and the Tribunal, in view of these circumstances, dismissed the OA holding that the impugned order did not suffer from any illegality.*

4.2 The aforesaid decision of the Tribunal had affirmed by the Hon'ble High Court of Delhi in W.P.(C) No. 4341/2019 and CM Ns.19286/2019 and 22509/2019 decided on 16.07.2019 holding that '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'.



5. *In the facts and circumstances of the case and keeping in view the aforesaid decision of the Hon'ble High Court of Delhi in the case of **Mohan Kumar's** (supra) affirming the order of the Tribunal, we are of the considered opinion that the present OA lacks merit and the same is accordingly dismissed."*

8. Having perused the aforesaid extract of the impugned judgment, we are in agreement with the learned counsel for the respondents that the subsequent experience certificate from Nirmal Hospital, which was furnished by the petitioner for the first time during document verification, could not be taken into account. The very fact that the petitioner, despite having filled up the form as late as on 22.12.2015, chose not to mention about his purported experience with Nirmal Hospital between 10.04.2013 to 09.04.2015, was in itself sufficient to create a doubt about this certificate having been obtained from a private hospital. Even before us, the petitioner has no valid justification for not even mentioning about his experience with Nirmal Hospital in the application form, especially when the said experience pertained to a period just before filling up of the form. We, therefore, have no hesitation in agreeing with the respondent that this certificate was submitted by the petitioner by way of an afterthought and could therefore not be accepted.

9. From the impugned order, we also find that while rejecting the petitioner's claim, the learned Tribunal has relied on its earlier decision dated 30.01.2019 in O.A no. 3429/2016 titled **Mohan Kumar vs . Director General , ESI & Anr** wherein in similar circumstances, an experience certificate not mentioned in the application form was



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disregarded. This decision of the learned Tribunal was unsuccessfully assailed before this Court by way of W.P.(C) No. 4341/2019, which was dismissed on 16.07.2019. Having perused the said decision, we find no reason to take a different view in the present case.

10. In the light of the aforesaid, we find no infirmity in the impugned order. The writ petition is accordingly dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

JANUARY 31, 2024/ib