

**Central Administrative Tribunal
Principal Bench, New Delhi**



**O.A. No.1874/2018
MA No.2107/2018**

This the 3rdday of December, 2020

(Through Video Conferencing)

**Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

Nitin Kumar
S/o Shri Jaipal Singh
Age 34 year
R/o H. No.180, Gujjar Basti
Gharoli Village,
Delhi - 110 096

... Applicant

(through Sh.R. K. Sharma, Advocate)

Versus

1. Union of India
Through its Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi – 110 002.

2. The Director
All India Institute of Medical Science
Ansari Nagar,
New Delhi – 110 029.

... Respondents

(through Sh.V. S. R. Krishna, Advocate)

ORDER (Oral)

Hon'ble Mr. Pradeep Kumar, Member (A):



The applicant herein had applied against the recruitment notice by All India Institute of Medical Sciences, New Delhi against the post of Operation Theatre Assistant. The last date for applying the post was 14.06.2015. The applicant was successful in the said examination on the basis of said recruitment examination and he was issued a letter on 08.03.2017 to attend office along with requisite qualification certificate and the experience certificate.

The applicant submitted the same however he was issued another letter on 10.06.2017 which indicated that the experience submitted by him does not conform to the essential requirement specified in the said advertisement and he was again advised to bring the requisite certificate(s) etc. within next 20 days.

2. The applicant is aggrieved that his candidature for said recruitment has since been cancelled vide letter dated 17.10.2017. This letter reads as under:

“Subject: Offer of temporary appointment to the post of Operation theatre Assistant at the AIIMS, New Delhi – cancellation thereof.

In continuation of this Office Memorandum of even number dated 22.08.17 on the subject cited above, Sh. Nitin Kumar

is informed that he was asked to submit the Experience letter (i.e., of 5 years in 500 bedded hospital) but he has failed to submit the same in the Stipulated period of time.

In view of this, his candidature to the Post of Operation Theatre Assistant is hereby treated as Cancelled/Withdrawn with immediate effect.”



It is against this cancellation order that the applicant has felt aggrieved and preferred the instant OA.

3. The applicant pleads that he has served in many hospitals including PGIMER Chandigarh and Lal Bahadur Shastri Hospital, Khichripur, Delhi. He has submitted the experience certificate dated 07.01.2010 issued by Lal Bahadur Shastri Hospital where he worked from 12.05.2008 till 23.07.2009 on contractual basis for 11 months. This certificate reads as under :

“TO WHOMSOEVER IT MAY CONCERN

This is to certify that Sh. Nitin Kumar has worked in this hospital as O.T.Technician w.e.f. 12-05-2008 to 23-07-09 on Contractual basis for 11 Months after one day compulsory break.

The Work & Conduct of the official was satisfactory during that period.”

4. The essential qualification prescribed as per the advertisement read as follows:

S.No.	Name of the Post, Pay Band & Grade Pay and Essential eligibility criteria	Group	Upper age Limit	Number of vacancies (s)* and reservation
10.	<p>Operation Theatre Assistant (PB-1 Rs.5200-20200 + Rs.2800 Grade Pay)</p> <p><u>Essential:</u></p> <p>A) B.Sc. OR 10+2 with Science with five year experience in the following areas;</p> <p>i) O.T., ii) ICU, iii) CSSD, iv) Manifold Room</p> <p>Preference will be given to candidates with Certificate/Diploma course in O.T Techniques from recognized Hospital/ Institution.</p> <p>B) Work experience shall be considered, if candidate has worked in private or public sector/Hospital of at-least 500 beds.</p>	C	30 years	137 (UR-77, SC-20, ST-01, OBC-32)



Admittedly, the applicant has not been able to submit a certificate which testifies that he has the experience for minimum period of five years or that the said hospitals were having atleast five hundred beds.

The applicant pleads that in case there are no hospitals with five hundred beds, how can the candidate be penalised for not having the requisite experience certificate.



5. The matter has been heard at length. Shri R.K. Sharma, learned counsel represented the applicant and Shri V.S.R. Krishna, learned counsel represented the respondents.

6. The controversy in the instant OA is very limited. The said recruitment specified certain essential qualification (Para 4 supra). It is admitted that the applicant does not have the same. However, the purview of judicial review is limited in the instant case as to what was the essential qualification prescribed and whether the applicant has such requisite qualification or not. The applicant was granted an opportunity to bring out and satisfy the requirement (Para 1 supra).

It, however, emerged that those essential qualifications are not satisfied by the applicant. It was only thereafter that the candidature was cancelled (Para 2 supra).

7. As regards the pleas by the applicant that the hospitals having five hundred beds are not set up or they are not available in sufficient numbers, the Tribunal noted that the

appropriate stage for challenging such prescription of an essential qualification, was at the stage when the said advertisement was issued. It is admitted that no such challenge was mounted at that time and even at present also the said requirement has not been challenged.



Having participated in the said selection and challenging the same after he was not successful, for want of essential experience, is without any basis.

8. In view of the foregoing, the Tribunal finds that there is no cause of interference. There is no merit in the OA and the same is dismissed. No costs.

9. Pending MA also stands disposed of.

(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

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