

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/00281/2018
AND
MISCELLANEOUS APPLICATION NO.60/01372/2020**

ORDER RESERVED ON 28.07.2021
DATE OF ORDER: 07.09.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench at Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Surender Kumar Narwal, age 28½ years s/o Sh.Mahavir Parshad, resident of # E-141, 1st C, Khehtri Nagar, Tehsil Khehtri, district Jhunjhunu, Rajasthan-333504 (Group-C).

....Applicant

(By Advocate Shri Barjesh Mittal – through video conference)

Vs.

1. Employees' State Insurance Corporation, Head Quarters Office, Panchdeep Bhawan, C.I.G. Marg, New Delhi through its Director General.
2. Deputy Director (Administration), Employees State Insurance Corporation, ESIC Model Hospital Sector-9A, Gurugram (Haryana) 122001.
3. Medical Superintendent, Employees' State Insurance Corporation, ESIC Model Hospital, Sector-9A, Gurugram (Haryana) 122001.

....Respondents

(By Advocates Shri K.K.Thakur – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act 1985 seeking the following relief:

- i. That impugned notice dated 26.08.2017 (Annexure-A1) qua applicant rejecting his candidature for the post of Nursing Orderly in respondent ESIC Model Hospital, Gurugram, be quashed/set-aside.
 - ii. That direction in the nature of mandamus be issued to the respondents directing them to consider the candidature of the applicant for the post of Nursing Orderly as being fully eligible and having secured 62.00 marks and being more meritorious, be further directed to order the applicant to appear for medical test and thereafter on successful passing of the same, to appoint him on the post of Nursing Orderly in the respondent ESI Corporation from the due date i.e. with effect from the date when his colleagues/candidates securing lesser marks than the applicant were appointed and allowed to join with all consequential benefits of seniority etc. in the interest of justice.
2. The applicant, in his pleadings, has averred as follows:
- a. The applicant belongs to SC category and possess the qualification of 10th, 10+2 and Diploma in General Nursing and Midwifery.
 - b. The respondent No.3 issued recruitment notice/advertisement inviting online applications for filling up the posts of Paramedical and Nursing Staff for ESIC Medical College/Hospitals in Haryana Region on regular basis for direct recruitment(Annexure-A3).
 - c. The closing date for receipt of online application was 06.01.2016 which was further extended. The post relevant in the present case of Nursing Orderly is in the Pay Band of Rs.5200-20200 + GP 1800. A total number of 220 posts in the said cadre were advertised out of which 120 were for UR/General Category, 41 for SC and 59 for OBC Category.
 - d. The applicant applied for the post of Nursing Orderly under SC Quota by submitting his online application on 28.12.2015(Annexure-A4).

- e. Other essential qualifications (Experience etc.) and age limits as per existing recruitment regulations for the post of Nursing Orderly are as follows:-

Sr. No.	Post Code	Name of the Post	Educational & other Qualification (As per existing Recruitment Regulations)	Age (As per existing Recruitment Regulations)
6	18	Nursing Orderly	Matriculation or Equivalent from Recognized Board. Elementary Knowledge of 1 st Aid. One year experience in handling and dressing wounds in Govt. approved/registered Nursing Home/Hospital	18-27 years (Relaxable upto 37 years in case of Govt. Servant and employees of ESI Corporation.)

- f. The applicant possessed the above said Educational Qualifications and also possessed the required elementary knowledge of First Aid as per the certificate issued by Saint John Ambulance Association as well as one year experience Certificate issued by Chakarpani Hospital, Singhana, District Jhunjhunu, Rajasthan (Annexure-A5) of working as Staff Nurse in the said Hospital w.e.f. 11.05.2012 to 15.01.2013 and from 20.01.2015 to 25.04.2016. He submitted his online application dated 28.12.2015 (A-4) for the post of Nursing Orderly.
- g. The respondents fixed the Written Examination for the said post of Nursing Orderly to be held on 22.05.2016 and issued the E-Admit Card to the applicant with Roll No.22126180046(Annexure-A5/A).
- h. Respondent ESIC declared the result of Computer Based Test/Examination (Online) held on 22.05.2016 by issuing combined merit list for all candidates qua all the posts advertised, copy of the merit list qua the post of Nursing Orderly of Haryana Region prepared as per marks obtained(Annexure-A6). The perusal of the same shows

that the name of applicant is at Sl.No.1601 with Roll No.22126180046 having scored total marks as 62.00.

- i. Thereafter office of respondent no.2 issued a communication/corrigendum dated 15.02.2017(Annexure-A7) showing the final list of 219 candidates who were selected for the post of Nursing Orderly against the 220 advertised post against various categories in accordance with the marks obtained by them in the said written examination as per their positions/ranking in the Combined Merit List. The name of the applicant in the said final list was at Sl.No.179.
- j. Subsequently the office of respondent No.2 issued a notice dated 11.03.2017(Annexure-A8) intimating the dates fixed by the competent authority for verification of documents in respect of candidates finding place in the Select List on the basis of performance in written online examination for various Paramedical cadres for Haryana Region. The name of the applicant finds mention in the said list and 30.03.2017 at 12:00 PM was allotted to him for verification of his documents. Thereafter, the applicant received another communication dated 14.03.2017(Annexure-A8) regarding instructions to present documents for verification on the said date.
- k. After the said verification of the documents by the respondents, the office of respondent No.3 i.e. Medical Superintendent ESIC Model Hospital Sector-9A, Gurugram, issued another notice dated 28.04.2017(Annexure-A9) issuing the revised result for various posts including that of Nursing Orderly.
- l. The revised result dated 28.04.2017 (A-9) was prepared by placing all the UR Candidates enbloc at the top followed by enbloc OBC candidates then enbloc SC category candidates. The name of the applicant in the said revised results (A-9), finds mentioned at Sl.No.79 under SC Category.

- m. After the verification of documents of the applicant by the respondents on 30.03.2017, the office of respondent No.2 issued a communication dated 18.05.2017 addressed to M/s Chakrapani Hospital, Singhana, District Jhunjhunu regarding confirmation of certificate issued by the said Hospital in favour of Surender Kumar Narwal.
- n. The said hospital duly authenticated the issuance of experience certificate in favour of the applicant Sh.Surender Kumar Narwal as genuine and valid and has reverted back in response to the communication dated 18.05.2017.
- o. Respondent ESIC issued a communication dated 19.07.2017(Annexure-A11) addressed by ESIC Regional Office, Jaipur to Social Security Officer, Regional Office Jaipur which was further endorsed by the said authorities to District Level Officers, requesting the said authority to verify from the record of the concerned hospital, the name of the applicant, his father's name, attendance register, salary slip, work duration etc.
- p. The said physical verification by the Social Security Officer from Chakrapani Hospital, Singhana, District Jhunjhunu has been duly verified and authenticated by the said hospital in favour of the applicant.
- q. Thereafter the office of respondent No.3 issued impugned notice dated 26.08.2017 intimating the final list of selected candidates for Paramedical posts including Nursing Orderly who were to appear for medical test on the basis of performance in written examination and subsequent document verification.
- r. Applicant whose name finds mention at Sl.No.110 of the said notice dated 26.08.2017 found that his candidature has been rejected by mentioning that 'Candidate didn't fulfil eligibility criteria'.

- s. The applicant has claimed that he possessed the requisite educational qualification and experience as sought for by the respondents. The necessary certificates and documents had been shown to the respondents and these have also been duly verified and accepted by them. The action of respondents in rejecting the candidature vide impugned notice dated 26.08.2017 is totally illegal, arbitrary, untenable and unsustainable in the eyes of law.
3. The respondents have filed their written statement wherein they averred as follows:
- a. The application Form (Annexure-R1) of the applicant did not reveal any experience. Experience is an essential qualification for the post of Nursing Orderly as per the relevant Recruitment Rules. No doubt, the application was to be filed online but it is not correct that respondents have to entertain mistakes which the applicant is now attributing to various extraneous factors such as connectivity and power supply. No recruiter can function on the basis of second guessing and benefit of doubt. If the applicant could enter his name, father's name and address without any errors at all, he should very well have been able to enter proper experience details.
 - b. The applicant is not entitled to any relief, as sought for by him in view of the submissions made under the 'preliminary submissions'. It is denied and disputed that the candidature of the applicant was rejected without reasons. The rejection was due to lack of requisite work experience. The application Form (Annexure-R1) of the applicant did not reveal any experience, and experience is an essential qualification for the post of Nursing Orderly as per the relevant Recruitment Rules. In the application format of candidates for Nursing and Para Medical posts every candidate has solemnly and sincerely affirmed that 'if any information furnished herein by me, is found false, wrong, incorrect or inaccurate, I understand that my candidature for Recruitment in ESIC will be cancelled and shall

further lead to cancellation of my results/appointment, forfeiture of candidate and even prosecution”. Accordingly, wherever it seemed that mistakes were committed on purpose to leave room for fabrication of experience certificate or in case of any other similar ambiguity, the competent authority has checked whether the mistake appears to be malafide and if so then the candidature has been rejected.

- c. It is submitted that purported experience certificate issued by Chakrapani Hospital, Jhunjhunu has no acceptability because it was not mentioned in his application form. It is further submitted that the applicant did not possess any relevant experience or experience certificate at the time of applying. He obtained an experience certificate as an afterthought only upon qualifying in the written examination. This is why he did not mention the name of any establishment under experience column. He deliberately left the experience column blank in order to leave room for fabrication of experience certificate in case of selection in written test.
- d. The document verification team did not have the authority to take decision on candidature, since hundreds of cases were handled in bulk. The said enquiry was triggered even for an unfit candidate.
- e. It is submitted that the document verification team had no mandate to refuse receipt. They processed whatever they were presented. The ineligibility was pointed out and the competent authority decides upon rejection. It is not a fact that the screening committee had any decision making power. All the individual cases were put up to the competent authority after scrutiny for final decision. The respondent office was and is thoroughly within its rights to detect lack of qualification or fitness at any stage, as per stated policy. The screening committee was neither required to nor empowered to give any decision to the applicant. There is no evidence produced by the applicant to substantiate his claim that he informed the Screening Committee of the purported error in entry of experience details. The authority empowered to accept or reject applications entered into the merits of individual cases only after the

preliminary screening carried out by verification of documents. The documents presented by the applicant were checked for veracity and then only they were placed to the appointing authority i.e. the authority competent to decide upon acceptance or rejection. The experience was an essential qualification and since he does not have it, the OA is liable to be dismissed.

4. In the rejoinder, the applicant has averred as follows:

- a. It is an admitted fact that applicant belongs to backward area in the State of Rajasthan and does not have access to computers and knowledge regarding operating the same. Consequently, for applying in pursuant to the advertisement, the applicant and other candidates have to visit the available cyber café shops in the vicinity in their area for filling and submitting the online application forms.
- b. At the time of applying for a particular post, the candidate is not aware whether he will clear/pass the written test meritoriously and will be in the zone of consideration for selection, hence, any room for fabrication etc., as alleged by the respondents in the experience certificate is nothing else but sheer negativity and conjectures on their part. Admittedly, it is the duty of the candidates to be very particular and careful while submitting their online application forms. However, keeping into consideration various natural factors beyond their control, viz. non access to computers and knowledge regarding operating the same being belonging to backward areas, limited resources and less availability of cyber café shops in the area from where the applicant belongs, coupled with the unending fight to seek government employment to support/run their families etc., are some of the natural factors which need to be considered by the respondents while summarily rejecting the candidature of the applicant/candidates on conjectures and surmises. Further since, the application forms were required to be submitted online, any error/mistake inadvertently made while submitting the form was not possible to be

rectified/corrected by re-filling or resubmitting the online application again which also needs to be considered by the respondents.

- c. After the declaration of result of the computer-based examination held on 22.05.2016, since, the applicant was meritorious and had scored total marks of 62 and was much higher in the merit, consequently, the respondents issued communication dated 11.03.2017/14.03.2017 (A-8) calling all the applicants including the applicant for physical verification of documents. Thereafter, on perusal of the original documents, by the scrutiny committee, the respondents vide communication dated 18.05.2017 (A-10) sent the case of the applicant for verification/authenticity of the documents to the concerned hospital i.e. M/s Chakrapani Hospital, Singhana, Jhunjhunu, Rajasthan and also vide communication dated 19.07.2017 (A-11) referred the case for scrutiny by the Social Welfare Officer.
 - d. The experience certificate has been physically verified by the Social Welfare Officer, as well as confirmed by the Hospital which issued it. However, in spite of the same, the candidature of the applicant has been rejected on the grounds that he does not fulfil the eligibility criteria. This action of the respondents, being arbitrary deserves to be quashed in the interest of justice.
 - e. The respondents got the experience certificates verified. This categorically proves that the applicant, at the time of physical verification of documents by the screening committee, informed about the said inadvertent mistake in the application form, which was duly acknowledged by them, and thereafter, the other experience certificates produced and submitted by the applicant to the screening committee members were duly accepted and cross verified from the concerned hospitals and found correct and genuine.
5. By way of MA.No.1372/2020 dated 28.11.20, the respondents have raised the following additional facts/contentions:

- a. The applicant's candidature was rejected due to lack of requisite work experience, as the application form of the candidate did not reveal any experience. The purported experience certificate issued by Chakrapani Hospital, Jhunjhunu has no acceptability, because it was not mentioned in the application form of the applicant.
 - b. In the application form every candidate has solemnly and sincerely affirmed that "if any information furnished herein by me, is found false, wrong, incorrect or inaccurate, I understand that my candidature for recruitment of ESIC will be cancelled and shall further lead to cancellation of his result/appointment, forfeiture of candidature and even prosecution". As per the undertaking submitted by the applicant along with the application form, his candidature is liable to be cancelled and he is liable to be prosecuted.
 - c. ESIC ensures that all the candidates applying for the post of Nursing Orderly have an elementary knowledge of 1stAid one-year experience in handling and dressing wounds in a Govt. approved/registered Nursing Homes/Hospital. Further the corporation will verify the correctness and validity of experience certificate in terms of recruitment regulations of Nursing Orderly (RA-3).
6. Heard learned counsels for the parties.
7. The facts of the case, as revealed from the pleadings made by the applicant as well as the respondents, indicate that the reason for rejection of the candidature of the applicant for the post of Nursing Orderly is that he failed to provide the details of his experience along with experience certificate at the time of filing of his online application. According to the respondents, the purported experience certificate issued by Chakrapani Hospital, Jhunjhunu has no acceptability since it was not mentioned in the application form of the applicant.

8. There is no doubt that the applicant had appeared for the examination and had also qualified based upon his performance in the written examination. He was called for verification of documents and at that point of time he submitted his experience certificates. These certificates were also got verified by the respondents both by their own departmental channels, as well as independently by the Social Security Officer. The experience certificate has also been verified and confirmed by the issuing hospital as true and correct.
9. The veracity of the experience claimed by the applicant is being questioned on the grounds that the same had not been claimed/mentioned in the application form. If the applicant had failed to provide the required information and certificates pertaining to experience, in the application form, then the respondents were required to reject his candidature at that initial stage itself, on the ground of lack of requisite experience required for the post. He should not have been allowed to participate further in the selection process and appear in the examination. However, the application of the candidate was accepted at that stage by the respondents. After the candidate appeared for the examination, and qualified the same, he submitted his experience certificates at the time of verification of documents. Even at that stage, there was no objection raised by the respondents that the experience certificates had not been mentioned in his application form. These experience certificates were got verified by the respondents and found to be true.
10. The contention of the respondents, that the applicant had deliberately left the experience column blank, in order to leave room for fabrication of experience certificate, in case of selection in written test, appears to be completely

unfounded, particularly, in view of the fact that the experience certificate itself has been checked by them and found to be genuine.

11.The second contention of the respondents, that the document verification team did not have the authority to take a decision on candidature and that the said enquiry was triggered even for an unfit candidate cannot be accepted. The document verification team is required to verify the documents and is also expected to ensure that the documents and certificates, as claimed, were also mentioned or supplied by the candidate himself at the time of the initial online application. Once the experience certificates have been verified as correct, then, now, at this stage, the respondents cannot claim that the applicant's experience is an afterthought or that the certificates are fabricated and hence cannot be taken into account. The contention of the respondents that the applicant does not fulfil the eligibility criteria, since he failed to mention the experience certificate at the initial time of the application, is arbitrary, keeping in view the fact that these documents were verified by them and their veracity was confirmed. Hence these contentions, being arbitrary keeping in view the circumstances of the case, deserve to be rejected.

12.The OA is accordingly allowed. The respondents are directed to consider the applicant, for the post of Nursing Orderly, as being fully eligible, since he has the required qualifications and experience, and has also obtained the requisite merit in the qualifying examination. The respondents are further directed to consider appointing the applicant to the post of Nursing Orderly, subject to his completion of other pre appointment formalities such as medical examination

etc. The entire exercise be undertaken within a period of two(2) months from the date of receipt of a certified copy of this order.

13.However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

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