

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA No.100/2014 and
MA No.1448/2014 in
OA No. 3507/2012

Order Reserved on: 05.09.2016

Pronounced on: 20.09.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Ankur Arora
s/o Sh. Shiv Narayan Arora,
r/o H.No. 425/1E, St. No.5,
East Babarpur, S.D.N.Marg,
Shahdara, Delhi.

- Applicant

(By Advocate: Mr. Sudarshan Rajan with Mr. Ramesh Rawat)

Vs.

Govt. of NCT of Delhi through

1. The Chief Secretary,
Govt. of NCT of Delhi
New Secretariat,
I.P. Estate,
New Delhi.
2. The Secretary,
Delhi Subordinate Services
Selection Board,
FC-18, Institutional Area,
Karkardooma Complex,
Delhi.

- Respondents

(By Advocate: Ms. Ritika Chawla)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

MA No.1448/2014 seeking condonation of delay in filing the RA is allowed for the reasons stated therein.

2. Present RA has been filed in OA No.3507/2012, which was disposed of by this Tribunal on 04.09.2013 with the following order:

“4. Applicant in the present OA has worked as OT/CSSD Technician in Lok Nayak Hospital (a Govt. hospital) from 01.07.2008 to 15.02.2010. For the rest of the period his certificates are from private hospitals. As on the closing date of receipt of applications, i.e., 15.01.2010, he did not have all the required experience of 03 years in Government Hospital(s) or even “private hospitals of repute”. We, therefore, do not find the decision taken by the respondents in disqualifying the applicant on the ground to be arbitrary in the given circumstances.

5. While disposing of the Petitions/Appeals the High Court concluded the order in **Lalit Kumar Vimal**(supra) thus:

*“The proof of the fact that the diplomas obtained by them were after seriously pursuing a course from an institute worthy of awarding the diploma is the fact that appellant No.3 of LPA No.1653-58/2005 as also Sanjay Kumar have been working as Medical Laboratory Technician since the year 2002 and 2003 respectively and nothing unworthy in their work has been noted. **This reassures us that as a result of our decision untrained persons would not be appointed. We note that three petitioners have been successfully working for the last 7 to 8 years.**”*

(Emphasis supplied]

6. Clearly, we do not have any such background that would reassure us with regard to the future performance of the applicant. Accordingly the OA is found bereft of merit and is dismissed. No costs.

7. With a view to prevent recurrence of such confusion in future, we direct the respondent No.1 to either create a mechanism to notify 'recognized institutions/hospitals' or modify the recruitment rules to bring clarity with regard to the word 'recognized'."

3. The applicant had challenged this order in the Writ Petition (Civil) no. 7261/2013 which was disposed of by the Hon'ble High Court of Delhi on 22.11.2013 with the following directions:

"12. Accordingly, learned counsel for the petitioner on instructions from the petitioner seeks leave to withdraw the writ petition stating that the petitioner intends to file an application seeking review before the Tribunal, if at all the petitioner could arm himself with the relevant facts pertaining to CM Patel Hospital and Shahdara Orthopaedic and Surgical Centre. Relevant facts would be whether the two institutions had In patients and the number of beds etc.; the duties of the petitioner at said hospitals.

13. Being a question of fact, not pleaded before the Tribunal, we permit the petitioner to withdraw the writ petition with right reserved to seek review before the Tribunal and while so doing, bring to the notice of the Tribunal such relevant facts which petitioner could not bring to the notice of the Tribunal due to petitioner's counsel not understanding the core issue.

14. We hope and expect the Tribunal not to be technical. If, while seeking review, petitioner presents facts which are relevant for determining experience of having worked at a recognized institution/hospital in light of the observations which we have made hereinabove, the Tribunal shall accord a proper thought to the same."

4. Learned counsel for the applicant submitted that the issue before the Tribunal in OA No.3507/2012 was whether the applicant fulfilled the condition of three years' experience in the

recognised hospital. The applicant had submitted certificates from Lok Nayak Hospital which is a Government hospital and two other hospitals, namely, Shahdara Orthopaedic & Surgical Centre and C.M. Patel Hospital. The Tribunal had taken a view that in the absence of any experience of technician in “recognised hospital” and also without any indication with regard to the type of work done by the applicant in the private hospitals, it was not possible to consider the experience in those hospitals towards eligibility criteria of the post of Technical Assistant (OT/CSSD) Post Code 087/09 and 088/09). The applicant could not place on record, in his pleadings in the OA, the factual position regarding the type of work which he had done in the aforementioned private hospitals. Later on, he procured certificates from Shahdara Orthopaedic & Surgical Centre and C.M. Patel Hospital which clearly indicated that these hospitals had operation theatre and the applicant had provided technical assistance in surgical procedures such as insertion of nail, plating, ORIF and bone grafting etc. He also assisted in various anaesthesia procedures like general and regional anaesthesia. It is the contention of the applicant that this was relevant information which could not be placed on record, and therefore, the review was now filed under Section on 22 (3) (f) of the Administrative Tribunal Act. The Hon’ble High Court in the order dated 22.11.2013, while permitting the applicant to seek review before this Tribunal, has

held that this was a question of fact not pleaded before the Tribunal earlier. He further stated that the posts (Post Code 087/09 and 088/09) for which the applicant had made claim are still vacant for want of suitable candidates. He, therefore, prayed for a direction from this Tribunal to the respondents to consider the candidature of the applicant against these post codes. It was also mentioned that from the same selection process the applicant was successful for the post of OT Assistant and he has been working in Dr. RML Hospital since 16.02.2010.

5. Learned counsel for the respondents had no objection to the RA following the order of the Hon'ble High Court dated 22.11.2013. Further in pursuance of the direction of this Tribunal dated 22.07.2016 respondents have filed an additional affidavit on 12.08.2016 confirming that the recruitment process for the post code 087/09 and 088/09 has not been closed. All the posts under these codes have not been filled up due to non-availability of suitable candidates. However, fresh advertisement for post code 35/15 Assistant OT/CSSD and post code 36/14 Technician OT/CSSD has been issued.

6. Order XLVII, Rule (1) of Code of Civil Procedure defines the scope of review of its own order by a Court. The relevant provision reads as follows:

“(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

7. One of the ground on which the review can be allowed is ‘discovery of new and important matter/evidence which could not be produced’ by the applicant at the time when the original order was passed by the Court. The Hon’ble High Court has taken a view that the facts relating to C.M. Patel Hospital and Shahdara Orthopaedic & Surgical Centre such as the facilities available, the nature of activities in those hospitals, and the type of work which the applicant had done was not pleaded before the Tribunal earlier. Therefore, the applicant was allowed to withdraw the Writ Petition with liberty to seek review before this Tribunal. The Hon’ble High Court further observed that *“we hope and expect the Tribunal not to be technical. If, while seeking review, petitioner presents facts which are relevant for determining experience of having worked at a recognised institution /hospital in light of the observations which we have made hereinabove, the Tribunal shall accord a proper thought to the same.”*

8. From the certificate dated 12.02.2014 from Shahdara Orthopaedic & Surgical Centre where the applicant had worked for two years, it is seen that the applicant had helped and provided assistance in surgeries such as insertion of nail, plating, ORIF and bone grafting etc. He also assisted in various anaesthesia procedures like General and Regional anaesthesia. In such a situation, the experience of the applicant in the aforementioned hospital can be considered relevant for the purpose of eligibility for the post codes 087/09 and 088/09. Similar is the situation with regard to the experience of the applicant in C.M. Patel Hospital. We are, therefore, of the view that counting the experience in the two private hospitals along with the experience of the applicant in Lok Nayak Hospital from 01.07.2008 to 15.02.2010, the applicant possessed more than three years' experience required for the post codes 087/09 and 088/09 as advertised. Though technically any experience gained by the applicant after the last date of submission of the application forms for the post codes 087/09 and 088/09, i.e. 15.01.2010 cannot be considered for the purpose of meeting eligibility condition, it is reassuring to note that the applicant has been working as OT Assistant in RML Hospital since 16.02.2010 and has gained additional experience of desired kind for more than six years by now.

9. In the light of the facts mentioned above and the reasons stated, the RA is allowed and the order in the OA is recalled. The OA is disposed of with direction to Respondents that with regard to experience of three years in Government hospital or private hospitals of repute for the post codes 087/09 and 088/09, the applicant shall be considered as eligible. The respondents shall process the appointment of the applicant subject to fulfilling other conditions in accordance with the rules and law.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

'sd'

20 September, 2016