

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:INDORE

Original Application No.201/0558/2015

Indore, this Friday, the 10th day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Anand Choukse, S/o Shri Ramesh Choukse
 Aged 27 years, Occupation –Unemployed
 R/o 1368/5 Nanda Nagar
 Indore 452 011

-Applicant

(By Advocate –**Shri C.B. Patne**)

V e r s u s

1. Union of India, Through Secretary to Govt. of India
 Ministry of Labour & Employment, Department of ESIC
 Shram Shakti Bhawan New Delhi 110 002
2. The Employees State Insurance Corporation
 Panchdeep Bhawan, CIG Marg, New Delhi 110 002
 Through its Director General
3. The Joint Director (Recruitment) Headquarter Office
 Employees State Insurance Corporation
 Panchdeep Bhawan, CIG Marg
 New Delhi 110002
4. The Joint Director Employees State Insurance Corporation
 Model Hospital and Occupational Diseases Centre
 Nanda Nagar Indore 452011 (M.P.)
5. The Medical Superintendent
 Employees State Insurance Corporation
 Model Hospital and Occupational Diseases Centre
 Nanda Nagar Indore 452011 (M.P.)

- Respondents

(By Advocate –**Shri Rishi Agrawal along with Shri Ravendra
 Rahul Assistant in ESIC Model Hospital & Occupational
 Disease Centre, Nanda Nagar, Indore**)
(Date of reserving the order:06.08.2018)

ORDER**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant for rejecting the candidature of the applicant for appointment on the post of Cookmate/Mashalchi, on the ground of his non possessing of the requisite qualification vide order dated 06.01.2015 (Annexure A-12).

2. Precisely the case of the applicant is that in pursuant to an advertisement (Annexure A-1), the applicant being eligible in all respects have applied for the post of Cookmate/Mashalchi/Bearer against the total 18 vacancies. The applicant submitted all the documents as per (Annexure A-2) and has also applied on the prescribed application form as per Annexure A-3. He was declared successful in the written examination held on 20.04.2012 (Annexure A-4). Thereafter completing all the pre formalities, he was given offer of appointment on 26.04.2012 (Annexure A-5) was issued in favour of the applicant. The applicant exhibited his consent to join on the post of Cookmate/Mashachi/Bearer to the respondents vide letter dated 24.05.2012 (Annexure A-6). It is submitted by the applicant that the certificates submitted by him was seems to be genuine vide verification (Annexure A-8). The respondent-department vide letter dated 31.03.2012 (Annexure A-9) asked applicant to submit duly attested copy of two years

experience certificate in cooking of Indian food. The same was submitted by the applicant vide letter dated 13.04.2012 (Annexure A-10). Thereafter on non receipt of any response, applicant approached this Tribunal by filing an Original Application No.200/00321/2014 which was disposed of to do the needful in accordance with law. In compliance to the said order, respondent-department vide order dated 06.01.2015 rejected his claim for appointment.

3. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 to call for the relevant records of the case from the respondents

8.2 to quash the impugned rejection order dated 6.1.2005 (Annexure A-12) issued by respondent No.5, by issuing any appropriate direction or order;

8.3 to command the respondents to issue appointment order along with joining letter w.e.f.26.04.2012 and to grant the applicants all consequential and monetary benefits pursuant to their appointment on the post of cookmate/Mashalchi/bearer, in the then regular pay scale of Rs.5200-20000/- + AGP 1800/-

8.4 to allow this application with costs;

8.5 to pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the applicant.”

4. The respondents in their reply submitted that in compliance of order dated 29.04.2014 passed in Original Application No.200/00321/2014, the respondent-department passed a speaking

order dated 06.01.2015 and rejected the candidature of the applicant since experience certificate enclosed with application was not found to be proper as it was without any duration i.e. the date of issuance of certificate was not mentioned. Later in exposure of this factum the date was disclosed by the applicant. Thus was not possible to determine the eligibility of the applicant. The applicant submitted another experience certificate in the name and capacity of Dubey restaurant and tiffin Centre dated 13.09.2010. As per result declared by respondent-department dated 20.04.2012 applicant was selected provisionally which was clearly mentioned at Serial No.1 of the Notes of Annexure A-4 that “the candidature of all candidates is provisional subject to verification of their original certificate in support of their qualification, technical qualification, age, community-caste experience as claimed etc. up to satisfaction of the appointment authority.” The similar clause was available under the letter issued to applicant vide Annexure A-5 is binding on him.

5. It is further submitted by the replying respondents that an anonymous complaint of serious irregularities were received at ESIC Headquarters Office, the vigilance Branch at New Delhi, in the process of recruitment at ESIC Medical Hospital Indore. The letter was issued by the Director Vigilance on 02.07.2012 along

with the reply as Annexure R-1 and accordingly office was instructed to recast the result. The applicant cannot be given order of appointment as this Tribunal has already directed vide order dated 06.05.2014 passed in Original Application Nos.177 to 179 and 205 of 2013 (Annexure R-2) to the Secretary, Central Vigilance Commission to have a re-look into the matter, in the matter of failure of respondents Nos.1 & 2 and to see that the integrity of the selection process is maintained or not and to follow it up with appropriate action against those who are responsible. The respondents vide letter dated 27.04.2016 cancelled the recruitment for various Nursing and Para Medical Cadre Posts for ESIC Model, Hospital Indore held in the year 2011-12.

6. We have heard the learned counsel for the parties and have also gone through the documents annexed to it.

7. It is admitted fact that the applicant had applied for the post of Cookmate/Mashalchi/Bearer against the total 18 vacancies as per Annexure A-1. It is also admitted that the applicant had applied as per prescribed application form (Annexure A-3). It is also admitted fact that the applicant was declared successful in the written examination held on 20.04.2012 (Annexure A-4) and offer of appointment was issued to him on 26.04.2012 (Annexure A-5) and further his consent to join on the said post was given by the

applicant to the respondents vide letter dated 24.05.2012 (Annexure A-6). It is also admitted fact that later on as per respondent-department letter dated 31.03.2012 (Annexure A-9) the applicant was asked to submit two years experience certificate in cooking of Indian food. The same was submitted by the applicant vide letter dated 13.04.2012 (Annexure A-10).

8. The replying respondents have submitted that in pursuance to order dated 29.04.2014 passed in Original Application No.200/00321/2014, the respondent-department passed a speaking order dated 06.01.2015 (Annexure A-12) and rejected the candidature of the applicant, since the essential experience certificate enclosed with application was not found to be proper. The respondents have specifically submitted in the reply that there were an anonymous complaints of serious irregularities, received at ESIC Headquarters Office, the vigilance Branch at New Delhi, in the process of recruitment at ESIC Medical Hospital Indore. The letter was issued by the Director Vigilance on 02.07.2012 which is annexed along with the reply as Annexure R-1 and accordingly respondent No.5 was directed to send action taken report. It is specifically submitted that the applicant cannot be given appointment letter as this Tribunal has already directed vide order dated 06.05.2014 passed in Original Application Nos.177 to 179

and 205 of 2013 (Annexure R-2) to the Secretary, Central Vigilance Commission to have a re-look into the matter, in the matter of failure of respondents Nos.1 & 2 and to see that the integrity of the selection process is maintained or not and to follow it up with appropriate action against those who are responsible. The operative portion of the order passed by this Tribunal is as under:-

“4. In the instant cases, we will direct the Secretary, Central Vigilance Commission to have a relook into the matter in the matter of failure of respondents nos.1 & 2 and to see that the integrity of the selection process is maintained or not and to follow it up with appropriate action against those who are responsible.”

9. The replying respondents has clearly mentioned that due to order passed by this Tribunal whereby the inquiry of the procedure of appointment through Central Vigilance Commission was directed, therefore no further appointment was given to any contender of the publication. The respondent-department has placed on record on 08.08.2016, the letter dated 27.04.2016 issued by the Deputy Director (Recruitment) for Insurance Commissioner (Recruitment) addressed to the Medical Superintendent, ESIC Model Hospital, regarding cancellation of recruitment for various Nursing and Para Medical Cadre Posts for ESIC Model Hospital Indore held in the year 2011-12. The relevant portion regarding the decision of cancellation of recruitment process in totality is as under:-

“The Committee constituted by the Director General has pointed out in their detailed report dated 4.4.2016 (copy enclosed) that “integrity of the selection process has not been maintained even after it has been recast and the Right to Equality guaranteed under the Constitution has been violated owing to rejection of the applications of many candidates who fulfilled the eligibility criteria and had attached the requisite documents” and unanimously agreed that the recruitment test held for selection of various para medical Staff for ESIC Model Hospital, Indore, and all the result (notified, recasted, vetted or otherwise) to be cancelled in totality.

e.g. No experience is required for the post of Staff Nurse but applications of many candidates have been rejected on the ground of “Less Experience”, “Experience Certificate not attached” etc. No uniformity in scrutiny of the applications, which resulted in rejection of applications of any potentially meritorious candidates on various ground viz. age, lack of relevant certificate, lack of attestation of certificate etc., while accepting applications of many other candidates with similar defects, which resulted in discrimination against some candidates whose applications were rejected.

The Chairman, ESIC and Secretary MOL&E have conveyed their approval vide note dated 21.04.2016 (copy enclosed) to cancel the entire recruitment process for the recruitment of Nursing and Para Medical Cadre posts for ESIC, Model Hospital, Indore carried out in the year 2011-12.”

10. In the same letter dated 27.04.2016, some directions were also given to publish the cancellation notice in the leading newspaper of the State and also to upload in the official website of the region. The relevant portion of the direction given by the Deputy Director (Recruitment) is as under:-

“In view of approval sought from MOL&E dated 21.04.2016 in connection with cancellation to recruitment for Nursing & Para Medical Cadre posts for ESIC Model Hospital, Indore, it is requested to comply the following directions in order to

conclude the recruitment process carried out in the year 2011-12.

1. To cancel the results (notified, re-casted, vetted or otherwise) for all the 10 cadres of Nursing & Para Medical which were advertised in the month of March-2011.

2. To publish Cancellation Notice in this regard in the leading Newspaper of State and also to upload on the official website of your region.

3. To apprise cancellation notice to the Hon'ble CAT/High Court through your Legal Counsel against all court cases/contempt cases/writ petitions filed by various candidates in connection with recruitment process carried out in the year 2011 for Model Hospital Indore.

4. The cancellation Notice may be informed to those candidates to whom Speaking Order were issued from time to time by your office in compliance to Hon'ble CAT/High Court orders against their candidature.

5. The unfilled vacancies as a result of cancellation of the above recruitment of the year 2011 may be re-assessed, accrued and filled from the ongoing Recruitment for which advertisement was released in December 2015. However, increased vacancies for a post in particular category/categories should be filled only where vacancy /vacancies are notified in that category/categories.

Vacancy which is not advertised in a particular category should not be filled as a result of increase in vacancy position in that category.”

11. The applicant has moved Misc. Application No.201/00235/2016 whereby it has been indicated that the respondent-department has issued advertisement Annexure A-14 regarding Recruitment of Paramedical and Nursing staff for ESIC, Model Hospital, Nanda Nagar, Indore (M.P.) in Madhya Pradesh Region and has prayed to stay the selection process. It is pertinent to mention that no stay has been granted by this Tribunal.

12. During the course of argument, it has been submitted by the learned counsel for the respondents that the selection process vide Annexure A-14 has been completed and the selected candidates has been given appointment.

13. If the letter dated 27.04.2016 is minutely seen, the committee constituted by the Director General has pointed out irregularities which are in serious nature and it has been specifically indicated that those irregularities will result in discrimination against the candidates whose applications were rejected without any cause. Resultantly, the Chairman, ESIC and Secretary MOL&E have conveyed their approval to cancel the entire recruitment process for the recruitment of Nursing and Para Medical Cadre posts for ESIC, Model Hospital, Indore carried out in the year 2011-12.

14. The learned counsel of the respondents has relied upon the judgment passed by the Hon'ble Apex Court in the matters of **S.S. Balu and Another vs. State of Kerala and Others** AIR 2009 SC 1994, whereby it has been held that employer has right to fill all posts or not to fill them and mandamus would not be issued unless discrimination is made in regard to filling up of vacancies. It has been specifically submitted by the counsel for the respondents that in the circumstances in the instant case, the various irregularities

has been indicated by the Central Vigilance Commission and the competent authority has decided to cancel the whole process of recruitment which was initiated as per Annexure A-1 and the action taken by the replying respondents has not discriminated any person.

15. The learned counsel for the applicant submits that regarding the cancellation of the recruitment process in pursuance to Annexure A-1, there is no intimation to the applicant. But the submission made by the applicant is not sustainable due to the fact that there is no discrimination as the whole process of recruitment has been cancelled due to irregularities indicated by the Central Vigilance Commission in pursuance to the order passed by this Tribunal in Original Applications No.177 to 179 and 205/2013.

16. Resultantly we are of the affirmed view that the action taken by the respondent-department to cancel the recruitment advertised at Annexure A-1 is legal and we do not find any reason to interfere with such action.

17. Accordingly, this Original Application is dismissed being devoid of any merit. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member