

---

**(2019) 01 CAT CK 0083**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 1215 Of 2017**

Mohit Kumar Sharma

APPELLANT

Vs

Employees? State Insurance Corporation Ans Ors

RESPONDENT

---

**Date of Decision :** 11-01-2019

**Acts Referred:**

**Citation :** (2019) 01 CAT CK 0083

**Hon'ble Judges :** Nita Chowdhury, Member (A), S.N. Terdal, J

**Bench :** Division Bench

**Advocate :** Sourabh Ahuja, Pratik Kumar, Yakesh Anand

**Final Decision :** Allowed

---

## **Judgement**

Nita Chowdhury, Member (A)

1. By filing this OA, the applicant is seeking the following reliefs:-

"a. Quash and set aside the Office Memorandum dated 01.01.2017, whereby the respondents after the declaration of result in written examination/merit list, prescribed the minimum qualifying marks in the written examination for appointment to the post of Nursing Orderly. And

b. Direct the respondents to appoint the Applicant to the post of Nursing Orderly with all consequential benefits viz. seniority, pay fixation, salary etc. And;

c. Award costs in favour of the Applicant. And/or

d. Pass any other or further order(s) in favour of the Applicant, which this Hon'ble Tribunal may deem fit, just and proper in the above-mentioned facts and circumstances."

2. Brief facts of the case is that the respondents advertised 24 posts of Nursing Orderly (Group ?C? in PB-1 with Grade Pay of Rs.1800/-) along with other posts in the year 2012 and 23 posts of Nursing Orderly was earmarked for Unreserved category and one post is earmarked for SC category. The applicant applied for

the post of Nursing Orderly under UR category candidate before the closing date, i.e., 21.12.2012.

2.1 It is the contention of the applicant that the applicant appeared in the written examination held on 9.3.2016 and as per the advertisement, the mode of selection for the said post was prescribed as written examination only and the respondents have not fixed/prescribed the minimum qualifying marks/qualifying standard for a candidate to be obtained in the written examination on or before 9.3.2016.

2.2 It is stated that in December, 2016, the respondents have declared the result of the written examination/merit list for the post of Nursing Orderly in which the applicant secured 48.25 marks out of 125 marks and his name finds mentioned at Sl. No.22 of the merit list.

2.3 However, the respondents issued an Office Memorandum dated 2.1.2017 whereby they have introduced minimum qualifying marks 45% for UR category, 40% for OBC, 35% for SC, ST & Ex-Servicemen categories and 30% for PWD - Person with Disabilities in the written examination. By applying the aforesaid minimum qualifying marks, the respondents have prepared a select list of 7 candidates in UR category for the post in question on 30.1.2017.

2.4. Being aggrieved by the aforesaid OM dated 2.1.2017, the applicant has filed this OA seeking the reliefs as quoted above.

3. Vide Order dated 11.4.2017, besides issuing notice to the respondents, the respondents were also restrained from filling up one post of Nursing Orderly.

4. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the proposal for fixing of minimum qualifying marks/qualifying standard under different categories was sent to Ministry of Labour, Govt. of India in the month of June, 2016. The issue was examined by the Ministry of Labour & Employment, Govt. of India. As per directions of Chairman, ESI Corporation, the Minimum Qualifying marks/Qualifying Standard under different categories were fixed vide OM dated 2.1.2017 as mentioned above.

4.1 They further stated that the written examination was conducted by ESIC for various posts on 19.3.2016. The ESI Headquarters declared a region-wise combined merit list of the candidates who have appeared in the written examination for the post of Nursing Orderly on 31.1.2017. The applicant secured less than 45 marks in computer base exam for the post of Nursing Orderly. Therefore, he was not considered for selection to the said post.

5. Applicant also filed his rejoinder reiterating the contents of the OA and denying the contents of the counter reply.

6. During the course of hearing, learned counsel for the applicant submitted that the impugned order dated 2.1.2017 has been issued by the respondents much after conducting the written examination, i.e., on 19.3.2016 and the result was

also declared in December 2016 and therefore, in view of the judgment of the Hon'ble Supreme Court in the case of K. Manjusree vs. State of Andhra Pradesh and another, (2008) 3 SCC 512, the action of the respondents amounts to changing the rules of the game and as such the impugned order is liable to be quashed by this Tribunal as in the said Judgment, the Apex Court held that minimum qualifying marks can be prescribed both for written examination and interview but such prescription has to be done in advance. Counsel for the applicant also placed reliance on the judgment of the Apex Court in the case of Hemani Malhotra vs. High Court of Delhi, (2008) 7 SCC 11 in support of the applicant's case.

7. On the other hand, learned counsel for the respondents submitted that although written examination was held in March 2016 but the proposal for fixing of minimum qualifying marks/qualifying standard under different categories was sent to Ministry of Labour, Govt. of India in the month of June, 2016. The issue was examined by the Ministry of Labour & Employment, Govt. of India. As per directions of Chairman, ESI Corporation, the Minimum Qualifying marks/Qualifying Standard under different categories were fixed vide OM dated 2.1.2017 as mentioned above and there is nothing illegality or arbitrariness in the action of the respondents. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Yogesh Yadav vs. Union of India and others, (2013) 14 SCC 623, wherein it is held that fixation of benchmark of 70 marks and 65 marks out of 100 marks for unreserved and reserved category candidates respectively for recruitment was permissible since it was intended to recruit the best candidates, which was rational and reasonable and further held that it did not amount to changing "rules of the game", in absence of any rule governing the issue.

8. After hearing learned counsel for the parties, this Court is of the view that the issue involved in this case is whether action of the respondents vide impugned order dated 2. 1.2017 whereby the respondents approved the category-wise minimum qualifying marks/qualifying standards to be followed in the written examination for recruitment in different ministerial, medical nursing and paramedical and technical cadre etc. as quoted above, can be said to be legally sustainable in the eyes of law. However, it is pertinent to mention that the respondents have initiated the proposal for fixing of minimum qualifying marks/qualifying standard under different categories which was sent to Ministry of Labour, Govt. of India in the month of June, 2016, i.e., much after conducting the written examination. The issue was examined by the Ministry of Labour & Employment, Govt. of India and as per directions of Chairman, ESI Corporation, the Minimum Qualifying marks/Qualifying Standard under different categories were fixed vide OM dated 2.1.2017. It is an admitted fact that the applicant appeared in the written test, which was the only criteria for selection to the post in question, on 19.3.2016 and in the advertisement or even on or before the date of conducting the written examination, i.e., 19.3.2016, the candidates were not aware of the fact of fixation of minimum qualifying marks/qualifying standard

in different categories, which was circulated vide OM dated 2.1.2017 and the result of the said written examinations of all the candidates was declared in December 2016 and the final list of selected candidates as per the OM dated 2.1.2017 was issued by the respondents vide order dated 30.1.2017.

9. Further the argument advanced by learned counsel for the respondents that they have fixed the minimum qualifying marks/qualifying standard in different categories after having sent the proposal to the concerned Ministry and after the directions of the Chairman, ESIC would have been correct, had this decision been taken prior to issuance of advertisement with regard to the recruitment process in question. However, as held by the Hon<sup>ble</sup> Supreme Court in the cases of K. Manjusree (supra) and Hemani Malhotra (supra), it is not open to the recruiting agency to change the rules of game once the process of selection had started and as in this case, the action of the respondents is a clear cut violation of observations of the Hon<sup>ble</sup> Supreme Court as held in the said cases. The decision of fixation of the criteria of minimum qualifying marks/qualifying standard in different categories has been made simply by saying that this is in best interest of recruiting Institution so as to recruit the best candidates is not legally sustainable in the facts and circumstances of the present case. In view of the plea aforesaid taken by the learned counsel for the applicant, which is found to be in accordance with law on the subject, the respondents are directed to reconsider the case keeping in view the observations of the Apex Court in the cases of K. Manjusree (supra) and Hemani Malhotra (supra) and pass a reasoned and speaking order. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this Order.

10. In the result, the present OA is allowed in above terms. There shall be no order as to costs.