
(2019) 09 CAT CK 0052

In the Central Administrative Tribunal

Case No : Original Application No. 3864 Of 2017

Rajesh Kumar Bairwa

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0052

Hon'ble Judges : Pradeep Kumar, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : Vijendra Mahndiyan, Manish Kumar, Jagdish Kumar

Final Decision : Dismissed

Judgement

Pradeep Kumar, J

1. Applicant herein had applied against a recruitment notice issued by All India Institute of Medical Sciences (AIIMS), New Delhi which was designated as the recruiting agency to recruit Staff Nurses in Pay Band-2 Rs.9300-34800 with grade pay of Rs.4600/- for four different hospitals, namely Dr. RMLH (226 posts), Safdarjung Hospital (150 posts), LHMS & Smt. Suchita Kriplani Hospital (266 posts) and Kalawati Saran Children's Hospital (50 posts). The applications were to be filled in online mode only and the last date was 13.01.2015.

2. The applicant had applied against said advertisement vide application No.5321024153. He was allotted roll No.201181 and, on the basis of written examination, he was provisionally selected. The applicant's grievance in this OA is that despite having requisite experience, he has not been finally selected and his candidature has been rejected vide respondents' letter dated 09.11.2017, which reads as under:

"Reference to your Application Form/Documents and result declared by AIIMS and during the documents verification it has been found that you have No Experience as staff Nurse; therefore, your Candidature for the Post of Staff

Nurse/Nursing Officer (regular) is cancelled.

This issues with the Approval of Competent Authority."

3. The qualification prescribed for said recruitment and the associated general conditions read as under:

"1. Qualifications : A candidate must possess the following essential qualification as under:

I. (i) B.Sc. (Hons.) in Nursing from a recognized University or Institute.

Or

Regular Course in B.Sc.Nursing from a recognized University or Institute.

Or

Post Basic B.Sc. Nursing from a recognized University or

Institute:

(ii) Registered as a Nurse or Nurse and Midwife (RN or RN and RM) with State Nursing Council.

(iii) Six months experience in minimum fifty bedded hospital after acquiring the educational qualification mentioned above.

Or

II (i) Diploma in General Nursing Mid-wifery from a recognized Board or Council.

(ii) Registered as a Nurse or Nurse and Mid-wife (RN or RN and RM) with State Nursing Council and

(iii) Two and half years experience in minimum fifty bedded hospital after acquiring the educational qualification mentioned at II (i) above.

Note.1) Experience are relaxable at the discretion of the competent authority for reason to be recorded in writing in the case of candidates otherwise well qualified.

Note.2) The qualification (s) regarding experience is/are relaxable at the discretion of the competent authority for reasons to be recorded in writing in the case of the candidate belonging to Scheduled Castes or the Scheduled Tribes, if at any stage or selection the Competent authority, is of the opinion that sufficient number of candidates from the communities possessing the requisite experience are not likely to be available to fill up vacancies reserved for them.

xxx xxx xxx

GENERAL CONDITIONS

1. The aspiring applicants satisfying the eligibility criteria in all respect can submit their application only through ON-LINE mode. The On-line registration of applications is made available on AIIMS web site www.aiimsexams.org from 24.12.2014 to 13.01.2015 upto 5:00 P.M. No documents including the Registration Slip of on-line application form is required to be sent,. However, all the applicants are advised to keep a copy of registration slip with them, along with proof of payment (a copy of challan/online payment receipt) for their record.

2. The applicants applying in response to this advertisement should satisfy themselves regarding their eligibility for the aforesaid post and must fulfil all the eligibility criteria on or before 13.01.2015 failing which their application will be summarily rejected.

xxx xxxx xxx

10. Preview of the candidate Photo and Signature must be clearly visible to candidate, if Photo signature image is coming small or not visible in preview on website online then it mean photo/signature is not as per the AIIMS prescribed format and your application will be rejected. So, be careful while uploading your photo and signature. Both must be visible clearly on Registration Slip.

11. The candidates are advised to bring Admit Card downloaded from AIIMS website at the time of Written Test and hand over the same to the Invigilator during marking their attendance, failing which their candidature / performance in the written test will not be considered.

12. The written test will be held on a Sunday the 15th February, 2015 in Delhi/ NCR only. The candidates are advised to download their Admit Card from AIIMS web site www.aiimsexams.org as no admit card will be sent by post. The Admit Card will be hosted on AIIMS website by 30.01.2015.

The result of the written test will be displayed on the Notice Board of Examination Section, AIIMS on 2 nd March, 2015. Result will not be intimated on Telephone.

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15. All the original certificates/documents will be verified at the time of Interview. On the basis of written test, the shortlisted candidates must bring all original certificates along with one set of photocopy, duly attested, viz:

i) Copy of download Registration Slip of on-line application form.

ii) Copy of download Admit Card.

iii) Certificate showing the Date Birth.

iv) Certification of passing High School/High Secondary/B.SC (Hons)/B.Sc Nursing/Post Basic B.Sc. Nursing or its equivalent forms a recognized University/ Board.

- v) Certificate in General Nursing and Midwifery from recognized Institution
- vi) Registration certificate as 'A' grade Nurse and Midwife from State Nursing Council.
- vii) Caste certificate if applied under SC/ST/OBC category issued by the competent authority.
- viii) Disability Certificate, if applied under OH-(OL) category.
- ix) 'No Objection Certificate, if in employment.
- x) Experience certificate."

4. In the online application form, the applicant had indicated as under:

"25) Details of Experience (Minimum 50 bedded hospital after acquiring the educational qualification)

S. No.

Name of Hospital/ Institute

Number of Beds in the Hospitals

Position Held

Period from

Period To

Nature of Duties

1

Haris hospital CNHH ALWAR

50

CLINICAL INSTRUCTOR

19 Mar 2013

Till Date

CLINICAL INSTRUCTOR"

Note: Entry made by applicant, is shown in italicised letters.

5. The applicant pleads that he has filled up the form by going to a cyber cafe and the computer operator there, by mistake, has indicated his experience as Clinical Instructor for the period starting from 19.06.2013, whereas it ought to have been starting from 19.06.2014.

6. The applicant pleads that the result of the written examination was published on 07.04.2017, wherein his name was included in the list of provisionally

selected candidates and he was allocated LHMC. At that stage, such candidates were also required to fill an attestation form and the same was submitted by him on 11.06.2017, and in the experience column in this form, he has indicated as under:

11. (a) Are you holding or have any time held an appointment under the Central Govt. or State Govt. or a quasi-Govt. body or an Autonomous body or a public undertaking, or a private firm or institution? If so, give full particulars with dates of employment up to date

PRIVATE - HOSPITAL

PRIVATE - COLLEGE

Period

Designation, emoluments & Nature of employment

Full name/ address of

Reasons for leaving previous service

From

To

15/10/2013

20/05/2014

Staff Nurse

AYAAN Hosp. Alwar (Raj.)

Join the College

19/06/2014

Till Date

Clinical Instructor cum NSG. Tutor

CNHH, Alwar (Raj.)

For joining Govt. job.

Note: Entry made by applicant, is shown in italicised letters.

7. LHMC issued a notification on 12.09.2017 wherein a list of such candidates, who were provisionally eligible but for whom certain deficiencies were found in their applications, was also issued and such candidates were directed to complete their documents within 15 days of publication of this notice. The applicant's name appeared at serial no.77 of this list and the reason of deficiency was indicated as "Bed strength not mentioned in the Exp. Certificate".

Applicant pleads that he replied to this notice on 19.09.2017 attaching his experience certificate, while also submitting affidavit in support of contention in para 5 above. He pleads that his counsel has also issued a legal notice to the respondents on 07.10.2017. However, his candidature has still been rejected vide respondents' letter dated 09.11.2017 (para-2 supra).

8. The applicant also pleads that the respondents have not followed a uniform policy in respect of experience for the post of Staff Nurse. In support of this contention, the applicant drew our attention to a notice issued by the AIIMS, Jodhpur dated 17.09.2015 wherein a recruitment notice was issued for three different categories, including Staff Nurse Grade-II, i.e., the same post as in the instant case. The essential qualifications prescribed for this selection was as under:

"Essential:-

(i) B.Sc. (Nursing) (4 Year Course) from a recognized Institute/University.

OR

(i) B.Sc. (Post-certificate) or equivalent such as B.Sc. Nursing (Post-basic) (2 Year Course) from a recognized Institute/University.

(ii) Should be registered with the Indian Nursing Council/State Nursing Council.

Desirable:-

Ability to use computers - hands on experience in office applications, spread sheets and presentations."

8.1 Subsequently, the qualifications and experience for Staff Nurse Grade-II for above posts, were modified. The said modified notice dated 24.09.2016 reads as under:

"Qualification/Experience

Essential:-

(i) Matriculation or its equivalent from a recognized University/ Board.

(ii) Certificate in General Nursing and Midwifery from a recognized Institution or equivalent qualification for male nurses.

(iii) Should be registered "A" Grade Nurse and Midwife with a State Nursing Council or equivalent qualification for male nurses."

8.2 It is, however, noted that this recruitment notice dated 24.09.2016, was only in continuation of the earlier notice dated 17.09.2015 and it also had a provision as under:

"(Candidates, who have already applied against Advertisement No.: Admn/ Estt/09/01/2015- AIIMS.JDH dated 17th September, 2015, need not apply again.

The Cut-off date (16th October, 2015) for determining the eligibility for such candidates will remain the same as mentioned in that advertisement.)"

8.3 The applicant pleads that AIIMS, Jodhpur has not specified any experience required for recruitment of Staff Nurse Grade-II.

9. The applicant also drew attention to Recruitment Rules (RRs) notified by Ministry of Health & Family Welfare in the year 2017 for the posts of Staff Nurse for all the four hospitals, as were included in the recruitment notice, which is the subject matter of instant OA. The applicant also pleads that in respect of those candidates who were having the qualification of B. Sc. (Hons.) in Nursing from a recognized university or institution, there was no requirement of experience as a Nurse. Experience was needed only from those who had diploma in general midwifery.

However, subsequently vide another notification dated 28.01.2017, these RRs were modified wherein six months' experience, in a hospital having minimum 50 bed, was specified for those candidates also who were having qualification of B. Sc. (Hons.) in Nursing.

10. The applicant pleads that he has more than six months experience, as was required by the instant advertisement, from a hospital, namely, Ayaan Hospital, Alwar, Rajasthan, which was issued on 20.05.2014 and which reads as under:

"Certified that Mr. Rajesh Kumar Bairwa S/O Sh. Badri Prasad Bairwa R/O Bahadko Kalan, Teh - Rajgarh Distt- Alwar (Raj.) has worked in Our Hospital as nursing staff from 15-10-13 to 20-05-14.

He is a sincere staff having good character & behavior.

Our hospital 50 beds approved by pollution department of Rajasthan. We do not have any objection join anywhere.

We wish him Good luck for his future."

11. In view of the foregoing, applicant pleads that the mistake, in filling up application form, was committed by the cyber cafe operator and thereafter he has taken adequate action to correct the same by filing an affidavit as well as indicating correct position in the attestation form and accordingly his candidature needs to be upheld for the said recruitment (paras 5, 6 & 7 supra).

12. Per contra, the respondents opposed the OA. AIIMS, New Delhi, who are the designated recruiting agency for said selection, have filed their counter on 02.04.2018. It was pleaded that they are only a recruiting agency who are required to hold selection in accordance with the RRs. Specific averment was made in their counter reply that the result of the written examination declared on 07.04.2017, had also contained the following remarks:

"This result is provisional subject to fulfillment of the eligibility conditions as laid down in the advertisement. The appointment of the provisionally selected

candidates will be strictly subject to verification of all original certificates of the candidates. All original certificates and eligibility criteria will be verified by the DGHS, Ministry of Health & Family Welfare, Govt. of India. The individual marks of all the candidates who have appeared in the above mentioned Examination is available at the website i.e. www.aiimsexams.org. Please note that inclusion in the list cannot be claimed as a right to employment to the post of Staff Nurse for Central Government Hospitals in Delhi. The DGHS, MOHFW, Govt. of India, New Delhi reserves the right to use or not to use the above list."

Thus the list was provisional only and not conferring any right on the candidates so shortlisted till the process of selection was finalized.

13. As directed in the recruitment advertisement, it was for the candidates to satisfy themselves that they hold requisite qualifications and experience (para 3 supra). These details were to be verified subsequently by the appointing agency. Therefore, inclusion of a candidate's name in the provisional select list, does not confer upon him any right as regards eligibility as per the requisite qualifications/experience, till it is verified.

14. The respondent nos. 1&3 have also submitted their counter reply on 12.10.2018. Following specific averment was made in their counter-reply:

"Para wise reply:

1. That the contents of this para are wrong and hence denied. That As per the notified RRs provision regarding experience is as follows:

a. B.Sc. (Hons.) in Nursing from a recognized University or Institute with Six month experience in minimum fifty bedded hospital after the educational qualification.

b. GNM with two and half years experience in minimum fifty bedded hospital after the educational qualification mentioned above.

The clause, "experience in minimum 50 bedded hospital" clearly indicates that the candidate should have possessed the clinical experience as Staff Nurse. If the candidate has experience in any other field other than the clinical experience or the candidate has the clinical experience in a hospital whose bed strength is less than 50 beds, the candidate is not eligible in terms of the notified RRs for the post of Staff Nurse.

Moreover, the applicant mentioned the experience as Clinical Instructor in the application form. That he did not mention the working experience as Staff Nurse which is the essential qualification in terms of RRs for the post of Staff Nurse. Therefore, he is not eligible for the post based on the information provided by him in the application form. Therefore, the applicant submitted the experience certificate as a Nursing Tutor cum Clinical Instructor (Copy of the same is annexed as Annexure-B). The experience as a Nursing Tutor-cum-Clinical Instructor is not a valid experience in terms of the RRs.

Since the applicant mentioned the experience as Clinical Instructor in the application form which is not the valid experience in terms of the RRs for the post of Staff Nurse.

Therefore, that the candidature of the applicant was cancelled on the basis of "No Experience as Staff Nurse".

(Emphasis supplied)

15. The applicant in the instant case has not indicated his experience as a Staff Nurse in the online application form. It is only later that he submitted his experience certificate as a Staff Nurse. However, the belated claim cannot be taken into account and accordingly it was held that the applicant does not have experience as a Staff Nurse and his candidature was cancelled and he was advised on 09.11.2017 (para-2 supra).

16. It was pleaded that the OA is without merit and is required to be dismissed.

17. The matter has been heard at length. Dr. Vijendra Mahidiyan, learned counsel represented the applicant. Shri Manish Kumar, learned counsel represented respondents No.1&3 and Shri Jagdish Kumar, learned counsel represented respondent no.2.

18. The facts of this case are not in doubt. The advertisement had very clearly indicated that the applications are to be filled in online mode and the documents shall be verified at a subsequent stage. Accordingly, till a candidate is finally selected no right can be accrued in his favour.

19. The plea of the applicant is that he was issued an admit card based upon the information furnished in the online application form which indicated that he has experience as a Clinical Instructor. Therefore, his candidature cannot be cancelled later on the plea of his not having experience as a Staff Nurse.

This plea is erroneous and is not acceptable. It was expressly enjoined upon the candidates as per the advertisement, to satisfy themselves that they have the requisite experience as on the last date of filling up of online application form. The applicant is an educated person who was required to furnish correct information in the online application form. He did not fill the form correctly, even to the extent of omitting relevant experience as a Staff Nurse.

It is not open to the candidate to turn up now and plead that he actually had the requisite qualifications and the experience and it is the mistake of cyber cafe that has caused him the trouble. Once he verified the online filled up form and uploaded it, he has to own up full responsibility in this regard.

20. Even on merits also, it is the Tribunal's view that application form was deficient and did not show that he had requisite experience as a Staff Nurse. His pleas of confusing language in attestation form are not acceptable in view of factual position of reading of the item in attestation form (para 6 supra). Hence, rejection of his candidature on this account, cannot be faulted. Even the RRs also

specify that B. Sc. (Hons.) Nursing candidate needs to have six months experience (para-9 supra).

21. The pleas put forth by the applicant of selection by AIIMS, Jodhpur (paras 8 to 8.3 supra) are not relevant as they pertain to a different selection and not the selection in the instant OA. The criteria adopted for instant recruitment, was uniformly applied for all candidates, who took part in this selection. It is noted that applicant has not brought out any discrimination faced by him.

22. Under the given circumstance of incomplete application form having been filled by the applicant, which failed to show essential experience, his plea to treat his candidature as eligible based on his subsequent submissions, is not acceptable.

23. The OA is without merit and the same is dismissed. No costs.