

(2011) 01 DEL CK 0421
In the Delhi High Court
Case No : W.P (C) No. 8753 of 2010

Sanjay Kumar

APPELLANT

Vs

Employees State Insurance Corporation (ESIC)

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0421

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Avadh Bihari Kaushik, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 11th November, 2010 passed by the Central Administrative Tribunal, Principal Bench in O.A No. 3721/2010 titled "Sanjay Kumar v. Employees State Insurance Corporation" dismissing the original application of the Petitioner seeking direction to the Respondent to declare the Petitioner as selected and to appoint him to the post of Nursing Orderly or alternatively to set aside the selection process and the select list dated 11th May, 2009 and to direct the Respondent to make a fresh selection list after combining the marks obtained by the candidates in the written examination and in the interview.

2. The Respondent had advertised the filling up of number of vacancies of Nursing Orderly, a Group "D" post by notification dated 13th October, 2007. The Petitioner alleged that he fulfilled the qualification and applied against the OBC category and the result was declared in March, 2009 and 945 candidates were declared qualified for interview. The Petitioner appeared for interview in April, 2009 but when the select list was issued, his name did not appear in the select list of 201 candidates which was issued on 11th May, 2009.

3. The applicant challenged the select list of 201 candidates which was issued on 11th May, 2009 by filing an original application on 1st November, 2010. The

Tribunal noted the judgment dated 20th May, 2010 in T.A No. 39/2010 titled Sh. Rohtash Dabas and Ors. v. UOI and Ors. which was relied on by the Petitioner. It was noticed that the High Court had set aside the directions given by the Tribunal in the case of Rohtash Dabas (Supra) and the matter was amicably resolved. Consequently, it has been held by the Tribunal that the Petitioner cannot claim relief on the basis of the directions which were given by the High Court in the case of Rohtash Dabas on the basis of settlement.

4. Certain other candidates also filed applications in the writ petition which was filed against the order passed by the Tribunal in the case of Rohtash Dabas (supra) which application was rejected holding that it is a settled law that law does not come to the rescue of those who sleep and do not assert their rights at the right time. The High Court had also held that the act of the Respondent which was to be challenged came to light in the month of April, 2009 when the select list was published and some of the candidates filed W.P(C) No. 4255/2010; 4256/2010 and 4257/2010, however, the candidates who had moved the application for impleadment in the writ petition did not do so and, therefore, their applications were dismissed. The Tribunal in the facts and circumstances has declined the relief to the Petitioner on the ground that he did not come at the appropriate stage and all the candidates similar to the Petitioner have already been declined relief by the High Court. Reliance was also placed on the order passed in O.A No. 3175/2010 filed by Sh. Shammi against dismissal of his original application being O.A No. 3175/2010 and declining the relief to him. Against the order passed by the Tribunal in O.A No. 3175/2010, a writ petition was also filed seeking similar relief which writ petition was also dismissed by the High Court.

5. The Tribunal, therefore, has declined to give any relief to the Petitioner who had filed the original application on 1st November, 2010. In the circumstances, it has been held that the applicant would not be entitled to challenge the select list which was finally declared in April, 2009 and pursuant to which appointment process has already been concluded.

6. The learned Counsel for the Petitioner is unable to disclose any sufficient or cogent reason for not approaching the Tribunal and High Court when the select list was declared and for the undue delay on the part of the Petitioner in the facts and circumstances. In the circumstances, there is no illegality or any ground which will make the order of the Tribunal unsustainable or perverse in any manner. In the facts and circumstances, this Court finds no ground to interfere with the order of the Tribunal dated 11th November, 2010 dismissing the application of the Petitioner seeking a direction to the Respondent to declare him as selected and appoint him to the post of Nursing Orderly or to carry out a fresh selection after preparing a fresh select list as has been claimed by the Petitioner.

7. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.