

Central Administrative Tribunal
Principal Bench

O.A.No.728/2002

with

O.A.No.1685/2002

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 5th day of ~~October~~ November, 2002

O.A.No.728/2002:

Shri Mahesh Chandra
s/o Shri Chunni Lal
Act Apprentice
r/o B-33, Gali No.6
New Model, Shahdara
Delhi and 14 other as per
memo of parties.

.. Applicants

(By Advocate: Sh. B.S.Mainee)

Vs.

Union of India through

1. The Secretary
Ministry of Railways
Railway Board
New Delhi.

2. The Chief Administrative Officer (Rlys.)
Diesel Components Works
Patiala.

... Respondents

(By Advocate: Shri R.L.Dhawan)

with

O.A.No.1685/2002:

Shri Dalveer Singh
s/o Shri Chhadami Lal
Act Apprentice
r/o 30/11, Railway Colony
Kishanganj
Delhi and 52
others as per memo. of parties.

.. Applicants

(By Advocate: Shri B.S.Mainee)

Vs.

Union of India through

1. The Secretary
Ministry of Railways
Railway Board
New Delhi.

2. The Chief Administrative Officer (Railways)
Diesel Components Works
Patiala (Punjab). .. Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R

By Shri Shanker Raju, M(J):

MA for joining together is allowed.

2. As both these OAs involve identical question of law and facts, they are being disposed of by this common order.

3. Applicants, who are apprentices in various trades, have assailed respondents' order dated 22.8.2001 as well as order dated 25.2.2002 whereby the respondents have decided to fill up the vacancies in the Workshop inviting non-technical persons on transfer basis over looking the claim of the applicants. They have sought directions to consider their cases for appointment against the vacancy in technical category available in Diesel Component Works, Patiala in preference to others who are yet to undergo training.

4. All the applicants are ITI passed in different trades applied for apprenticeship training under the Apprentice Act of 1961 after having been selected, they have been imparted training in various trades, i.e., Diesel Mechanics, Fitter, Motor Mechanic, etc, for two years who had done their ITI for one year to those who have done ITI course of two years.

5. After the training given by the DCW, certificates have been issued to the applicants. These applicants have been imparted training from 1994 to 1998.

6. Applicants represented to the respondents for considering their cases for appointment against technical categories in Group 'C' and 'D' despite assurance to consider their cases in the order of seniority, those who had been imparted training subsequent to the applicants were given appointments. By a notice dated 22.8.2001 applications have been called from non-technical persons to be appointed in technical category which has been opposed through representations by the applicants on the ground that they should be considered for against vacancies in technical categories, but the same has not been paid any heed to, giving rise to the present OA.

7. In pursuance of interim orders in OA 728/2002 dated 27.3.2002, directions have been issued to keep 15 posts vacant.

8. Shri B.S.Mainee, learned counsel for applicants, in both the OAs, has starred manifold arguments by referring to the decision of the Apex Court in Uttar Pradesh State Road Transport Corporation v. U.P.Parivahana Nigam Shishukhs Berozgar Sangh, 1995(1) SCSLJ 276 where the following directions have been issued:

"10. For a promise to be enforceable, the same has, however, to be clear and unequivocal. We do not read

any such promise in the aforesaid three documents and we, therefore hold that at the call of promissory estoppel, the direction in question could not have been given by the High Court. But then, we are left in no doubt that the Government of India did desire that preference should be given to the trained apprentices and it is because of this that the State Government state in its letter No.735/38-6-16(T)-79 dated 12.11.1979 that where such apprentices are available, direct recruitment should not be made. Indeed, the Government of India in its letter dated 23.3.1983 even desired reservation of 50 percent vacancies for apprentice trainees.

11. The aforesaid being the position, it would not be just and proper to go merely by what has been stated in Section 22(1) of the Act, or for that matter, in the model contract form. What is indeed required is to see that the nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits. This would also meet the legitimate expectations of the trainees.

12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:-

- (1) Other things being equal, a trained apprentice should be given preference over direct recruits.
- (2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. Hargopal, AIR 1987 SC 1227, would permit this.
- (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
- (4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be

treated as senior to the person trained later. In between the trained apprentices, preference shall be given to those who are senior.

13. In so far as the cases at hand are concerned, we find that the Corporation filed an additional affidavit in C.A. Nos.4347-43-54 of 1990 (as desired by the Court) on 20th December, 1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age requirement is concerned, the same shall be relaxed as indicated above."

9. It is contended that in a direct recruitment applicants, who have been already been trained, imparted training as an apprentice, they have to be considered and given preference over appointment against Group 'C' and 'D' post in technical categories. The respondents, in order to defeat the rights of applicants, have resorted to fill up the posts on transfer basis which is not permissible under Para 312 of the Indian Railway Establishment Manual Vol.I. It is stated that bringing non-technical Khallas to Technical post on the seniority basis and lateral induction by way of transfer has been resorted to, which cannot be countenanced and is not permissible under Para 312 ibid. Moreover, it is contended that this transfer has been resorted to ~~to~~ without any request of the concerned non-technical staff.

10. Sh. B.S.Maine further states that the applicants have been arbitrarily discriminated in the matter of according appointment as member of the trained apprentices, who have been imparted training after the applicants. The respondents have appointed the persons, who have been imparted training after the applicants, against Group 'C' and 'D' post in technical categories.

11. It is further contended that though it is incumbent upon the respondents to consider the claim of the apprentices, however letters have been issued to other Railways to consider the claim of the applicants against vacancies of technical categories and about 100 vacancies are available with the respondents in DCW, the claim of applicants have not been considered. According to the learned counsel for applicants, applicants have legitimate expectations to be given appointments in preference over the non-technical staff.

12. Shri B.S.Maine further states that applicants have already requested the respondents to appoint them in Group 'C' and 'D' against technical category in other Railways as well. It is also stated that Para 312 ibid cannot be resorted as an exodus to transfer en bloc number of non-technical categories and in view of the decision of the Apex Court, the agreement arrived at between the apprentices and respondents cannot be any avail as there cannot be any estoppel against the fundamental rights enshrined in under Articles 14 and 16 of the Constitution of India.

13. It is stated that earlier the recruitment to Group 'D' post was to be undertaken by the Railway Board but in view of the Railway Board's letter No. 167/2000, dated 29.1.2000, the same has to be undertaken by Railway Administration themselves and the respondents are not adhering to consider the case of applicants.

14. Shri Mainee further stated that under Rule 226 of Indian Railway Establishment Code, though President is competent to transfer on all India basis but the same is to be administrative exigency and cannot be resorted to en bloc. As there had been no exigency to bring down non-technical staff to the direct recruitment quota meant for technical categories, the same has no application. It is also stated that it has been pleaded in the pleadings by the respondents that the non-technical staff renders surplus and are going to be adjusted against technical categories.

15. It is lastly stated by Shri Mainee that other Workshops in different Railways like Eastern and South Eastern Railways, appointments have ^{been} ~~been~~ given to the apprentices, and finally placed reliance on a decision of the Co-ordinate Bench in OA 1381/2001 in Ajay Kumar & Others vs. Union of India, decided on 16.8.2002 contended that his case, in all four, covered by the aforesaid decision.

16. On the other hand, respondents' counsel Sh. R.L.Dhawan appearing in both the OAs strongly rebutted the contentions and took a preliminary

objection under Section 20 of the Administrative Tribunals Act, 1987 by contending that the impugned order dated 22.8.2001 has not been challenged by the applicants by way of filing a representations and in view of the decision of the Apex Court in S.S.Rathore v. State of Madhya Pradesh, AIR 1990 SC 10, the OA is not maintainable.

17. Shri R.L.Dhawan further states that merely because applicants are trained apprentices would not confer upon them a right to be appointed but only a preference is to be given as per the decision of the Apex Court in UPSRTC's case supra. In so far as the transfer order dated 22.8.2001 is concerned, it is contended that as owing to Group Incentive Scheme, drastic reduction in production targets and negligible retirements in DCW for coming five years, certain non-technical staff is being rendered surplus and in this view of the matter, resorted to Para 312 ibid an option was accorded to all the non-technical staff to be transferred on technical post. It is permissible in view of Para 312 of IREM Vol.I and moreover by referring to Rule 226 of IREC Vol.I, it is contended that the President is within his jurisdiction to transfer a Railway servant to another establishment grade, and accordingly the transfer order issued does not suffer from any legal infirmity.

18. Shri ^{Dhawan} ~~PT~~ further states that they have not resorted to direct recruitment to fill up the post in Group 'C' and 'D'. In the event the vacancies are available for direct recruitment, the applicants are at liberty to apply and the respondents are bound

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to follow the dictum of Apex Court in UPSRTC's case supra giving preference to the applicants. As the respondents are resorted to inter departmental transfers, applicants have no right to be considered against the same.

19. Shri R.L.Dhawan further states that in so far as the plea of the discrimination is concerned, contended that after 1997, no apprentices trained in DCW, Patiala have been directly appointed to the Group 'D' post. According to them, 64 senior most trained apprentices were given appointments in view of the reservation to SC and OBC candidates and the others were appointed inadvertently, and a wrong decision of the respondents would not confer upon them an indefeasible right to seek identical treatment which would be contrary to the decision of the Apex Court in State of Haryana Vs. Ram Kumar Mann, SCSLJ 1997(2) SC 257 and Chandigarh Administration & Another v. Jagjit Singh (1995)1 SCC 745.

20. Shri R.L.Dhawan by placing reliance on Section 22 of the Apprentice Act, 1961 states that it shall not be obligatory on the part of respondents to offer any appointment to any apprentice, and further placing reliance on the agreement executed between the applicants and the Railways it is contended that it is not obligatory on the part of respondents to offer appointment, and according to the agreement, any disagreement or dispute between the employee should have to be referred to the Central/State Apprenticeship Advisor and the decision of such Committee is final. In this background, in so far as

jurisdiction is concerned, contends that the applicants are bound by their contract and they should have resorted to an arbitration before the appropriate Committee and the proceedings before us is not maintainable.

21. Moreover, Shri R.L.Dhawan relies upon the decision of the Apex Court in M.R.Chaudhary v. Union of India, 1993(3) SCC 649 to contend that in the matter of grant of employment to apprentice, the Railways are under no obligation to offer appointment though there has been a provision in the relevant rules for absorption of course completed apprentices. He placed reliance on a decision of the Apex Court in Dr. M.A. Haque vs. Union of India & Others, 1993(2) SCC 213 to contend that recruitment rules are to be strictly followed in the matter of appointment to done away with back-door entry.

22. Shri R.L.Dhawan, lastly contended that in other Railways as the vacancy position is not clear, he is unable to state whether applicants would be considered or not for appointment against Group 'C' and 'D' posts in technical categories. As and when direct recruitment from open market is made, in pursuance of the advertisement to be issued, the applicants are at liberty to apply and if found eligible would be considered along with ^wopen market candidates in terms of the instructions issued by the Railways from time to time, i.e., 3.12.1996.

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23. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the contention of respondents, placing reliance on the contract arrived at between the trade apprentices and the Railways, that trainee would not make it obligatory upon them to accord appointment and their resort to Section 22 of the Apprentices Act, 1961 stipulating that it is not obligatory to offer employment to trained apprentices is concerned, in the light of the decision of Apex Court in UPSRTC's case supra, the same is not tenable as after being imparted trainee as what is indeed required is to see that the country gets the benefit of time, money and energy spent on these apprentices. Accordingly it has been held by the Apex Court that if other things are being equal, a trained apprentice should be given preference over direct recruits.

24. Another contention of respondents that only Railway Recruitment Board is to held selection for Group 'D', as per Railway Board's circular issued in 1999, the same has been over-ridden by subsequent Board's letter dated 21.9.2000 where the recruitment to Group 'D' post would be undertaken by Railway Administration themselves. However, the plea of applicants that respondents, having more than 100 posts in direct recruitment quota instead of considering and giving preference to applicants, have resorted to enbloc transfer of non-technical staff to deprive applicants their right of consideration for appointment, cannot be countenanced.

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25. Apex Court in UPSRTC's case supra, has ruled that preference to the trained apprentices in the event a direct recruitment is resorted to. Whereas in the present case, in view of the administrative exigency, as reflected from Annexure-A7 letters dated 10.12.2001 on account of introduction of Group Incentive Scheme, drastic reduction in production targets and negligible retirements in DCW, certain non-technical staff, having rendered surplus, are to be adjusted and accordingly by resorting to Para 312 of IREM supra, options have been sought from Group 'D' staff on lower seniority and accordingly a seniority list to that effect was prepared vide letter dated 25.2.2002. This exercise, undertaken by respondents, was a policy decision which does not suffer from any malafides or arbitrariness. The respondents have not resorted to any direct recruitment and the right of applicants is subject to direct recruitment being resorted to and to the extent of giving them preference over others if other things are equal. The applicants cannot claim indefeasible right for appointment.

26. As per the provisions of Para 312 of IREM supra, the seniority of a Railway servant transferred at their own request from one Railway to another should be allotted in the relevant grade and as per Rule 226 of IREC supra it is within the jurisdiction of the President to transfer Railway servant to other department or Railway establishment, and in Group 'C' and 'D' this power has been delegated to General Manager or to a lower authority to whom it is delegated in the exigency of service.

27. The aforesaid transfers have been resorted in the wake of number of employees have been declared as surplus. The respondents admittedly being not resorted to any direct recruitment, as such the claim of applicants cannot be countenanced and they would be eligible to accord of preference only when the direct recruitment is resorted to. As in the administrative exigency without any malafide the orders have been passed by the respondents to transfer non-technical staff on technical posts, the same does not violate Articles 14 and 16 of the Constitution of India. Once the power exists with respondents to transfer the Railway servants even from one Railway to another Railway establishment, and from any department, the orders passed is in consonance with Rule 226 of the IREC ibid.

28. Another contention of discrimination as alleged by the applicants is repealed by the respondents on the ground that earlier DCW certain appointments have been made of trained apprentices and after 1997 no trained apprentices in DCW has been directly appointed to Group 'D' post. The aforesaid appointments have been made inadvertently on account of mistake, the aforesaid mistake would not confer upon the applicants an indefeasible right to be considered and enforce wrong order in view of the decisions of the Apex Court in Jagjit Singh and R.K.Mann supra.

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29. In our considered view, applicants are not eligible to be considered by respondents while making lateral induction by way of inter departmental transfer which is permissible under the rules and they have a right to be considered whenever direct recruitment is resorted to in Group 'C' and 'D' technical post and if other things are equal in view of the decision of UPSRTC supra, the applicants would be given preference in case they respond to the formal advertisement/notice issued. As no direct recruitment has been resorted to applicants have no valid grievance.

30. Before imparting with having regard to the fact that although inadvertently trained apprentices, who have been imparted training later on the applicants, have been appointed and continuing and the fact that the Railway Board is one of the respondents before us who controls all the Railways where vacancies are occurring on technical side, should ensure that the applicants shall be considered for appointment in terms of the directions issued in UPSRTC's case supra subject to notification of vacancies and response of the applicants to the same.

31. With the above observations, we do not find any merit in the present applications, OAs are dismissed accordingly. No costs.

Copy of the order be placed in OA No.1685/2002.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

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