

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

No. T.A. 1 of 2013  
M.A. 719 of 2018

Reserved on 12.12.2019  
Date of order: 4.5.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Md. Elias Khan,  
Son of Late Md. Yeasin Khan,  
Residing at Village – Panagarh Gram,  
Post Office – Panagarh Bazar,  
Police Station – Kanksa,  
District – Burdwan,  
West Bengal.

... Petitioner

- V E R S U S -



1. The Steel Authority of India Limited,  
A Government of India Undertaking,  
Service through its Chairman,  
Having its office at 'Ispat Bhawan',  
Lodhi Road,  
New Delhi.
2. The Chairman,  
Steel Authority of India Limited,  
Having his office at 'Ispat Bhawan',  
Lodhi Road,  
New Delhi.
3. The Durgapur Steel Plant,  
A Unit of Steel Authority of India Limited,  
Having its office at Main Administrative Building,  
(Ispat Bhawan),  
Durgapur – 3,  
District – Burdwan,  
West Bengal.
4. The Managing Director,  
Durgapur Steel Plant,  
Having its Office at  
Main Administrative Building,  
(Ispat Bhawan),  
Durgapur – 3,  
District – Burdwan,  
West Bengal.

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5. The Executive Director (Personnel & Administration),  
Durgapur Steel Plant,  
Having its Office at Main Administrative Building  
(Ispat Bhawan),  
Durgapur - 3,  
District - Burdwan,  
West Bengal.
6. The General Manager (Personnel & Administration),  
Durgapur Steel Plant,  
Having his office at  
Main Administrative Building (Ispat Bhawan),  
Durgapur - 713203,  
District - Burdwan,  
West Bengal.
7. The Assistant General Manager - Pers. (NW & IR),  
Durgapur Steel Plant,  
Having his office at  
Main Administrative Building (Ispat Bhawan),  
Durgapur - 3,  
District - Burdwan,  
West Bengal.
8. The Senior Manager - Pers. (CS),  
Durgapur Steel Plant,  
Having his office at  
Main Administrative Building (Ispat Bhawan),  
Durgapur - 3,  
District - Burdwan,  
West Bengal.
9. The Deputy General Manager (Law),  
Durgapur Steel Plant,  
Having his office at  
Main Administrative Building (Ispat Bhawan),  
Durgapur - 3,  
District - Burdwan,  
West Bengal.
10. Sri Dipak Kumar Mondal,  
Working for gain as Technician (S-5 Grade),  
Water Management Department,  
Durgapur Steel Plant,  
Durgapur -3,  
District - Burdwan,  
West Bengal,  
Ticket No. 318877.

.... Respondents

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For the Applicant : Mr. J.R. Das; Counsel  
Mr. S. Banerjee, Counsel

For the Respondents : Mr. A. Roy, Counsel  
Mr. T.K. Banerjee, Counsel

**ORDER**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The instant matter has been taken up in compliance to the orders and judgment of the Hon'ble High Court at Calcutta dated 4.9.2018 passed in **WPCT No. 36 of 2018 (The Durgapur Steel Plant, an unit of Steel Authority of India Limited & Anr. - vs.- Md. Elias Khan & ors.)**. The directions of the Hon'ble Court upon the Tribunal were as follows:-



"..... Therefore, we are of the considered view, that the order passed in the writ application, has merged with the order passed by the Division Bench, where there was no direction upon the petitioners-Authorities to absorb the respondent No. 1 in an appropriate grade. As a result, in the second round of writ application, when the writ application was filed by the respondent No. 1, challenging the order of regularization of his services in the post of Jr. Technician, grade S-1, the learned Tribunal was under an obligation to arrive at a conclusion as to whether Junior Technician, Grade S-1 was the appropriate post for regularization of services of the respondent No. 1.

On perusal of the order impugned to this writ application, we do not find that such a finding was in the order passed by the learned Tribunal.

Therefore, both the orders, which are impugned to this writ application, are quashed and set aside with a direction upon the learned Tribunal to adjudicate the issue involved in the transferred application expeditiously and preferably within a period of three months from the date without granting any unnecessary adjournments to either of the parties."

In the transfer Writ Petition, renumbered as TA. No. 1 of 2013, this Tribunal has been directed to adjudicate on the issue as to whether Jr. Technician, Grade S-I, was the appropriate post for regularization of services of respondent No. 1.

The arguments advanced by the petitioner/applicant in support of his claim that he was entitled to regularization w.e.f. 24.11.2006 in the S-4 Grade are based on the following grounds:-

- (i) That, the petitioner/applicant to the T.A. has been deprived twice by the respondent authorities in according him

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regularization. Firstly, he was not absorbed in the Durgapur Steel Plant (DSP) along with 55 other candidates in the year 1999, immediately after completion of the training period whereby all 55 candidates, save and except the present applicant had been appointed in S-I Grade and that he was forced to discontinue for no fault of his own.

Furthermore, it is only after a period of seven years, that he was absorbed pursuant to the judgment and order dated 8.6.2006 issued in Writ Petition No. 14939 (W) of 2002.

(ii) Being an unemployed youth, who was subject to harassment by the respondent authorities, he had no option but to accept such regularization orders dated 24.11.2006, and, that, although he accepted the said letter of appointment, he had immediately objected to the S-1 Grade in which he was regularized.

(iii) That, the respondent authorities, while acknowledging the same, had informed him that the said objection would be taken care of immediately after the orders of the Hon'ble Division Bench in FMA. 696/2007.

(iv) That, all other 55 candidates were offered S-3 grade immediately after 18 months of their service in S-1 Grade, but the present petitioner/applicant was offered S-3 Grade after a period of 8 years of his service in S-1 grade indicating discriminatory treatment against the instant applicant.

(v) That, although certain other trade apprentices, who had been similarly declared medically fit for 'non-works' area were absorbed immediately after completion of their training, the



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applicant has been singled out for discriminatory treatment by the respondent authorities.

2. The respondents, per contra, would argue as follows:-

(i) That, the transfer Writ Petition renumbered as TA No. 1 of 2013 was disposed of by the Tribunal earlier on 24.2.2016 whereby the respondent authorities were directed to regularize the appointment of the petitioner/applicant in appropriate grade.

(ii) The respondent authorities had sought certain clarifications for better understanding of this Tribunal's order of 24.2.2016 but such prayer was dismissed by this Tribunal upon which, the authorities, being aggrieved by both orders of the Tribunal, approached the Hon'ble High Court at Calcutta in WPCT No. 36 of 2018, and, the Hon'ble Court, having quashed both orders, directed the Tribunal to adjudicate the issues involved in appropriateness of the post in which the petitioner/applicant was regularized.

(iii) That, the applicant had applied for Apprenticeship Training in Durgapur Steel Plant while responding to an advertisement dated 15.10.1993, and, that, on selection, he was sent for medical examination before he could be engaged as a trainee. The applicant could not qualify in the medical examination, and, consequently, was not allowed to participate in the said Apprenticeship Training. Consequent to initiation of legal proceedings by the petitioner/applicant in C.O. No. 22326 (W) of 1995, and judgment and orders thereupon, the applicant was permitted to train as an apprentice with effect from 21.10.1996 and he completed his training on 21.10.1999.

The applicant was allowed to participate in the 71<sup>st</sup> All India Trade Test upon the interim directions of the Hon'ble High Court at



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Calcutta in the petitioner's second round of litigation in W.P. No. 17126 (W) of 1999 and AST 40383/99. Hon'ble Court further directed that his results could not be disclosed without leave of the court.

(iv) The petitioner/ applicant's results in the All India Trade test was declared on 12.7.2000, but, prior to considering him for appointment in the Durgapur Steel Plant, another medical examination was held (as per Rules) on 25.1.2001, whereby he was found medically unfit for "works area" and was, therefore, not offered any appointment by the authorities. Being aggrieved, the applicant again filed a Writ Petition No. 5438 (W) of 2001 (third stage litigation), inter alia, claiming to be eligible for appointment in the "works area" of the Durgapur Steel Plant. On the basis of his submission that he could work in "non-works" area, the Hon'ble Court directed that the applicant's vision is to be checked by the Burdwan Medical College and Hospital and, that, the respondent authorities were to consider the medical report from the Burdwan Medical College and Hospital so as to decide on offer of appointment to the petitioner, failing which they had to disclose the reasons of their refusal to the said petitioner/applicant. The authorities filed an appeal [MAT No. 46 of 2002 with CAN No. 615 of 2002] against the said order, upon which, the authorities were directed to constitute a medical board at the DSP Hospital for medical examination of the petitioner. The said medical board opined that the applicant was not fit for appointment in "works area" as per company regulations but was eligible to be considered in "non-works" area in Category-C post.



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(v) The respondent authorities, after having considered the advice of the medical board, could not ascertain any Category 'C' post in which his skills as a trainee in "plumbing" could be utilized in the interest of the Company. Further, based on the extant corporate strategy for rationalization of non-essential manpower, the respondents informed him of their inability to appoint him in any such post.

(vi) The applicant, thereafter filed another Writ Petition No. 14939(W) of 2002 in fourth round litigation which was disposed of on 8.6.2006 by directing the respondents to absorb him as a trade apprentice vis-à-vis the 55 candidates, who had been engaged as trade apprentice in that particular year. Although the respondent authorities appealed against the said order, they failed to obtain a stay thereupon, and, in response to the Contempt notice served by the petitioner/applicant, the respondents were constrained to appoint the petitioner/applicant as Jr. Technician S-I Grade in "non-works" area making it abundantly clear in such appointment letter was issued without prejudice to their rights and contentions with respect to the pending appeal [FMAT 2907 of 2006]. The appeal was finally heard by the Hon'ble Court, and, having noted that the applicant had started working and is still working for a considerable period in DSP in S1 grade, and, that, the respondents were not inclined to remove him from such job, the Hon'ble Court directed that his services could be regularized subject to results of the appeal. The Hon'ble Court, having recorded the submissions of the respondent in the appeal, (petitioner/applicant in the T.A.), appreciated the gesture of the



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appellants/respondents in the T.A. and directed the authorities to regularize his services in the appropriate grade and scale within a specified time period. On 4.2.2009, the respondent authorities regularized the services of the petitioner as Junior Technician in S-I grade.

(vii) The applicant had unconditionally accepted the offer of the respondent authorities dated 24.11.2006 to be engaged as Junior Technician S-I Grade in DSP [Annexure P5 to WP 7251 (W) of 2009]. He, however, preferred a representation on 3.1.2008 staking his claim to S-4 grade.

(viii) While disposing of WPCT No. 36 of 2018, the Hon'ble Court had categorically observed that the orders of the Hon'ble Single Judge in WPCT No. 14939(W) of 2002 was merged with the final orders passed by a Coordinate Bench of the Court while disposing of the appeal. It was also noted that the appellate court had directed the authorities to decide on the regularization of the respondent to the appeal (petitioner/applicant to the TA), in an appropriate scale at an early date, implying thereby that the Hon'ble Court, while finally disposing of the appeal, did not pass any mandatory directions on the scale or the grade to which the applicant should have been regularized. Also, vide orders in Writ Petition No. 36 of 2018, the Hon'ble High Court at Calcutta has remanded the matter back to the Tribunal for adjudication on that specific issue.

(ix) Under the Apprenticeship Act, 1961, the petitioner had no legal right to be absorbed in a company even if he was engaged as a Trade apprentice as noted by Hon'ble Court while adjudicating W.P. No. 5438 (W) of 2001.. Absorption in service being the



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prerogative of the employer, 55 candidates were absorbed as per vacancies, their medical fitness and skills in relevant trades. The applicant was found fit only for category 'C' post as per report of the medical board that had examined him under directions of the Hon'ble Court. The category 'C' posts, however, did not include 'plumbing', the trade in which the applicant was trained as an apprentice. Accordingly, there was no available post to accommodate the petitioner/applicant.

(x) Although the orders of the Single Bench were merged with the orders of the Appellate Court, the applicant had never alleged violation of the appellate court's orders.

(xi) That, trade apprentices on completion of training and after qualifying in the trade test are all appointed in S-I category as per Rules subject to requirement of such manpower and availability of vacancies in the respondent company.

Hence, all 55 appointees were initially appointed S-I category and that nobody could have been appointed outright in S-4 category at their initial stage of appointment.

Accordingly, compliance to the directions of the appellate court that the authorities should regularize him in appropriate grade and scale could only be ensured as per regulations of the company governing initial appointment.

(xii) The petitioner/applicant had unconditionally accepted the offer of appointment dated 24.11.2006. He took more than a year to object to the same, whereas, on the other hand, the respondent authorities had offered him the appointment without prejudice, subject to the decision of the appellate court. The said appellate court only directed regularization in appropriate scale.

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and grade which, as per the extant rules of the respondent authorities, was S-I grade.

**DISCUSSION**

3. We have considered the rival contentions, examined pleadings, documents on record as well as the written arguments filed by both Ld. Counsel.

4. The moot question before us is whether the petitioner/applicant has been regularized in the appropriate post and grade upon his initial appointment.

5.1. The history of litigations, when analyzed, reveal as follows:-

(a) That, the petitioner/applicant was an aspirant to engagement as a trade apprentice in the Durgapur Steel Plant (DSP).

(b) As he failed to qualify in the medical test, initially he was not engaged as an apprentice and was so permitted upon directions of the Hon'ble Court in CO No. 22326 (W) of 1995 (1<sup>st</sup> round of litigation).

(c) He attended his training from 21.10.1996 to 21.10.1999, but, as his course completion was delayed, he could not participate in the All India Council Trade Test in accordance with the original schedule. Vide interim orders in W.P. No. 17126 (W) of 1999 and AST. 40383/99, (second round of litigation), the Hon'ble Court directed the authorities to allow him to appear in the said examination.

(d) Upon completion of the trade test, and, disclosure of results thereof, the applicant had to once again appear in another medical examination wherein he was found medically unfit for the "works area". Upon his approaching the Hon'ble High Court in WP No. 5438 (W) of 2001 (third round litigation), and, in conjunction with



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the directions in MAT No. 46 of 2002 filed by the respondents, the authorities were directed to constitute a medical board at DSP for his medical examination.

(e) The medical board constituted under directions of the Hon'ble Court considered him eligible for Category 'C' post as per their findings on his medical status.

(f) The trade of 'plumbing' was not included in the list of Category 'C' posts.

(g) Corporate strategy of the company mandated rationalization of manpower in Category 'C' posts.

(h) The applicant approached the Hon'ble High Court in 14939 (W) of 2002 (fourth round of litigation) and obtained a direction to be absorbed by respondents as a trade apprentice belonging to the particular year where 55 candidates were given employment out of 56 candidates.

The respondent authorities approached the Hon'ble High Court in appeal but failed to obtain any stay and, under the threat of contempt, issued an offer of appointment in S-I grade to the petitioner/applicant without prejudice to their rights and contentions in the said appeal.

(i) The orders of the Single Bench of the Hon'ble High Court at Calcutta was merged with orders in FMA. 696/2007. In their orders, the Hon'ble appellate court, having acknowledged that the applicant had unconditionally accepted the offer of appointment in S-I grade, permitted the respondent authorities to regularize his services in appropriate grade and scale as per rules. The respondent authorities, thereafter, regularized the applicant in S-I grade and the applicant who had kept silent for more than a year



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after receiving the offer of appointment, and, having joined such post unconditionally, objected to the same in January, 2008 and approached the Hon'ble Court in Writ Petition No. 7251 (W)/2009 in fifth round litigation. The said Writ Petition being renumbered as T.A. No. 1 of 2013, upon remand by Hon'ble High Court in WPCT No. 36 of 2018, is the subject matter of present adjudication.

5.2. We have carefully noted the respondents' submissions that there was no inclusion of "plumbing", the trade in which the applicant was trained, in Category 'C' posts.

In this context, the analysis of the medical reports and conclusions drawn thereupon by the Respondents as disclosed vide their communication dated 11.9.2002, is relevant. This communication was issued in compliance to Hon'ble Court's directions in WP No. 5438 (W) of 2001.

The said letter, annexed at P3 to the WP No. 7251 (W) of 2009 is reproduced as below:-



ANNEXURE 'P-0'

By Regd. Post with A/D.

STEEL AUTHORITY OF INDIA LIMITED

DURGAPUR STEEL PLANT

No. FL-I/10.42/TA/2002/196

Dated : 11th September, 2002

Md. Elias Khan  
S/o. Late Md. Yeasin Khan  
Village Panagarah Gram  
P.O. Panagarah Bazar,  
P.S. Kanksa,  
Dist. Burdwan.

Re : MAT No. 46 of 2002 with CAN 615 of 2002  
SAIL - Vs - Md. Elias Khan



Dear Sir,

In pursuance of the order dated 1st July, 2002 in the matter and the order dated 28th November, 2001 in the matter of W.P. No. 5438(W) of 2001 passed by the Hon'ble High Court, Calcutta your case has been considered by the undersigned as hereunder.

1. In pursuance of the order dated 15th July, 2002 in the above matter and the order dated 28th November, 2001 in the matter in W.P. 5438 (W) of 2001 passed by the Hon'ble Calcutta High Court the Case of Md. Elias Khan has been considered by the undersigned as General Manager (P&A) since there is the one functioning at present as Executive Director (P&A). The undersigned is exercising the power of Executive Director (P&A) in DSP. On consideration of the case the following points emerge.

a) Md. Elias Khan S/o Late Yeasin Khan resident of Village

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Panagarh Gram , P.O. Panagarh Bazar, P.S. Kanksa, Dist., Burdwan on being selected through an interview for engagement as a Trade Apprentice in DSP in 1993 was referred for Medical Examination in Durgapur Steel Plant Main Hospital on 2nd December, 1993. where he was found unfit due to poor vision. Therefore, letter of engagement as Trade Apprentice was not issued to him. Three other candidates of 1994 batch, namely S/Sri Ranjit Kumar Mondal, Debasis Mondal and Partha Chatterjee were declared unfit due to colour blindness. These four candidates were once again referred to DSP Main Hospital to assess their fitness for non-wetis area. On examination the medical authority found them fit for non-works area.



b) On the basis of the said Medical Re-Examination, three candidates namely S/Sri Ranjit Kumar Mondal, Debdas Mondal and Partha Chatterjee who were colour blind cases, joined in 1994 as trade apprentices in non-works area Md. Khan having poor vision, was not engaged Md. Khan preferred a writ petition before the Hon'ble High Court, Calcutta in 1995 inter alia claiming that he should be engaged as a trade apprentice in DSP.

c) Pursuant to direction of Hon'ble Court on his writ petition, Md. Elias Khan was subsequently allowed to report for apprenticeship training on 22.10.1996. He completed the training on 21.10.1999.

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d) On Completion of his apprenticeship and on passing AITT he was again medically examined on 25.01.2001. He was found unfit for the works area hence no offered employment in DSP.

e) Being aggrieved he tried another writ petition No. 5433 (W) /2001 before the Hon'ble Calcutta High Court which was disposed of on 28th November, 2001 inter alia with the direction that respondent authority shall request the Burdwan Medical College & Hospital to constitute a medical board for the Medical Examination of the petitioner as to whether he has perfect vision in one eye and he is capable of doing the job in works area. It was further directed that the respondent authority shall consider the case of petitioner in the works area of non-works area as he case may be. Such decision is to be taken within three months from the date of receipt of medical report. It was further ordered by the Hon'ble Court that in case DSP finds any difficulty in giving appointed to the petitioner, DSP must disclose specific reason thereof and communicate the reason to the petitioner.

f) An appeal was filed against the said order dated 28th November, 2001. In pursuance of the order of the Hon'ble Appellate Court Md. Elias Khan was examined by a duly constituted medical board of DSP on 04.05.2002. He was found unfit for works area and " said fit for non-works area in category 'C' posts mentioned in the Regulations for medical examination of candidates for

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appointment in SAIL" The Medical Report dated 4th May, 2002 is reproduced below,

" The board considered the report dated 07.02.2002 of Burdwan Medical College & Hospital and also Regulations for medical examination of candidates for appointment in SAIL.

As Paragraph 6.1.1 of the said regulation it states that the procedure applied in case of all the employees to be recruited in SAIL, which includes in non-executives also (6.2.4). Since Khan was a Trade Apprentice it falls under the category B (6.2.4.2-VIII).



The Medical examination of the non executives given at para 6.3.3. and category 13 workers at 6.3.3.2.

On Medical Examination the Board found

I. Acuity of Vision

Acuity of Vision	Naked	With glasses.
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RE 6/60 with 0.25 Doyl 90°

Distance Vision LE 6/9 0/9 with -0.25 Doyl 90°  
RE  
Near Vision  
LE

II. Colour Vision - Normal

III. Ophthalmic Examination - RE Amblyopia.  
LE - Normal.

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While make the comparison with the Burdwan Medical College & Hospital findings it is observed that on keeping the power of the glasses are same as RE 0.75 Doyl 90° and LE 0.25 Doyl 90°. The Acuity of vision by the Board was found to be 6/24 in RE. The acuity of vision by the Board was found to be 6/24 in RE. The acuity of vision differs from the Burdwan Medical College & Hospital finalising. There is no difference in findings in L.

As per the SAIL regulation distance vision i.e., Acuity of vision should have been 6/12 without glasses in case of those below 35 years of age. Since Md. Elias Khan is 30 years 3 months has distance vision with glasses should have been 6/12. But his distant vision RE was found 6/24 which is below the eligible vision of appointment. Therefore as per SAIL regulation he is not fit for appointment in the works area.



Since in Category of the distant vision should be 6/12 with or without glasses in both eyes and in one-eyed person 7/12 in the healthy eye considering his LE vision 6/9 he may be said fit for Non-works area."

g) - As per the SAIL " Regulations for medical examination of candidates for appointment in "SAIL" following posts are included under said category 'C' post.

Category -C. Workers engaged in other jobs outside the plant or outside the mines and not covered under category 'A' and 'B'.

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- 1) All unskilled workers employed in township.
- ii) Unskilled workers in the mines including water carrier canteen boys and any other designations not covered.
- iii) Canteen Staff.
- iv) Horticulture staff.
- v) Ministerial staff and kindred occupations
- vi) Para-medical workers nurses and public health workers,
- vii) Teachers
- viii) Receptionist
- ix) Telephone Operators, telex operators, wireless operators lift operators
- x) Time Keeper Staff

h) Md. Elias was a Trade Apprentice in the trade of plumbing which falls under category 'B' in the said regulation for medical examination of candidates for appointment in "SAIL". In the medical Examination Md. Elias Khan has been found fit only for category 'C' Posts in the non-works area, listed in above. Para, which does not include any posts on which his skill in plumbing made can be utilised in the interest of work of the company. Moreover there is no requirement of manpower in any post listed in the said category. 'C' In fact that

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is a thrust area for reduction of manpower in our on going effort to optimise manpower in DSP as per corporate strategy.

2. It is therefore, found that there is no scope to appoint Md. Khan either in works area or in non-works area in DSP.

As per directive of the Hon'ble High Court the considering of your case by respondent authority of DSP is communicated to you.

Thanking you,

Yours faithfully,

Sd/- Nilotpai Roy  
( Nilotpai Roy )  
General Manager I/C(P&A)



We find:

- (a) That, the respondents had carefully distinguished the cases of the petitioner/applicant with that of other three candidates of 1994 batch. The other three candidates were 'colour blind' and were allowed to join as trade apprentices in "non-works" area whereas the petitioner/applicant, having poor vision, was found fit only for "non-works" area in category "C" posts.
- (b) The respondents analyzed the results of the medical examination as per their extant Regulation (6.2.4.2 - VIII) and 6.3.3.2. The applicant's visual disabilities culminated in his ineligibility for appointment in "works area" in the interest of safety of the plant.
- (c) The said Regulations entitled him for appointment in Category "C" post. "Plumbing", in which the

petitioner/applicant had trained, was not included in Category "C".

- (d) Further, as VRS had already been introduced in DSP as a part of corporate strategy for rationalization, there was no scope to appoint the applicant in non-essential posts.

Hence, it is well established that the applicant could not have been appointed prior to Hon'ble Court's orders in WP. No. 14939 of 2002 as his medical status did not entitle him to any post in "works area" on grounds of safety and Category 'C' posts in "non-works" area in which he was reportedly fit, did not include the trade in which he was trained as an apprentice. Herein we would refer to the observations of Hon'ble Court dated 28.11.2001 in WP No. 5438 of 2001 which noted as follows:-



"..... Admittedly, poor vision would be a hindrance for performance of work in the work area, which may not only endanger the life of the petitioner and property of the respondents but also of the lives of other co-workers.

Unless one possesses the standard of health and is medically fit, one cannot claim appointment. At the same time, Section 22 of the Apprenticeship Act prescribes that such apprentice does not ensure employment. It does not create a right in favour of the workman nor an obligation on the part of the employer. The offer of apprentice itself contained a clause which proves that the petitioner by reason of said apprenticeship cannot claim employment. The position in law is well settled. In any event, a training of apprentice does not entitle a workman to be absorbed nor it confer a right of appointment in favour of the workman. Neither it creates any obligation on the part of the employer to give appointment to the petitioner after successful completion of apprenticeship."

While on this issue, we would refer to the Hon'ble Apex Court's directions in *Lt. CDR. M. Ramesh v. Union of India & ors. (2019) 1 SCC (L&S) 213* reiterated in *Dinesh Kumar Kashap v. Union of India & ors. (2019) 3 SCC (L&S) 693*, in which the Hon'ble Apex Court had ruled that it is not incumbent upon employers to fill all posts but such discretion should not be arbitrary, capricious and whimsical. In the instant matter, the respondent authorities explained that the Company was rationalizing category 'C' posts, Category 'C' posts did not include plumbing and also there was no need to engage a plumber.

5.3. We note therefore that the applicant was appointed on 24.11.2006 to comply with the orders of the Hon'ble Court in WP No. 14939 of 2002 (Single Bench) subject to outcome of appeal in FMA No. 696/2007. The appellate court issued its orders on 11.12.2008 and the authorities issued the regularization orders on 4.2.2009 in compliance.

5.4. The petitioner/applicant therefore cannot claim any benefits viz-a-viz candidates engaged prior to February, 2009 as because his regular appointment commenced w.e.f. 4.2.2009.

5.5. It is not the petitioner/applicant's case that initial appointment of Jr. Technicians in DSP starts in scale S-4. Regulations of the respondent company also demand that the employees move up a career ladder Grade S-I onwards. The petitioner/applicant has not brought before us any regulation to the contrary that establishes that S-4 is the appropriate grade for the initial appointment of Junior Technician. Rather he has himself averred that all 55 candidates were appointed in 1999 in S-I grade.

5.6. The applicant accepted his initial offer of appointment in 24.11.2006 but he kept silent till January, 2008, before objecting to his grade. The arguments of his Ld. Counsel that, being vulnerable, he had no option but to accept such offer does not appear to be convincing as he could have accepted the offer of appointment without prejudice. It is noted here that the respondent authorities, however, had offered him such appointment without prejudice to their rights and contentions in their appeal.

5.7. The appellate court's orders were the final orders on the petitioner's prayer for being appointed in Grade S-4 and appellate court, while passing its orders, categorically observed as follows (emphasis supplied):-

" Going through the offer of appointed dated 24<sup>th</sup> November, 2006, we find that the writ petitioner was offered appointment as Junior Technician, S-I grade in Non-works area of Durgapur Steel Plant. Although the learned Single Judge



directed the concerned authority of the appellant company to absorb the petitioner as Trade Apprentice belonging to that particular batch where fifty five candidates were given appointment out of fifty six, the said authority of the appellant company, however, issued offer appointment to the writ petitioner as Junior Technician, Grade - I and the said writ petitioner also accepted such appointment without raising any objection. Therefore, both the offer of appointment made by the appellants and acceptance thereof by the respondent/writ petitioner are not strictly in terms of the order under appeal passed by the Learned Single Judge.

The learned Counsel representing the appellants, however, fairly submits that since the said writ petitioner has been working for a considerable period, the said appellants are not inclined to remove him from the job at this stage but his service would be regularized subject to the result of this appeal.

Ms. Debjani Sengupta, Learned Counsel representing the respondent/writ petitioner submits that the said writ petitioner should be absorbed in S-IV grade instead of S-I grade.

We are not inclined to enter into the aforesaid dispute as the concerned authority of the appellants offered appointment to the post of Junior Technician, S-I grade to the respondent/writ petitioner and the said writ petitioner had accepted the same on his own accord without any specific reservation.

In any event, we appreciate the gesture of the concerned authorities of the appellants and dispose of this appeal by directing the appellants herein to regularize the appointment of the writ petitioner in an appropriate grade and scale at an early date but positively within a period of four weeks from date."

The Hon'ble Court appreciated the gesture of the appellate respondents that he was offered appointment in S-I grade. The Hon'ble Appellate Court also noted that the Writ Petitioner had accepted the same on his own accord without any specific reservation. Accordingly, while directing regularization, there was no indication or orders by the Hon'ble appeal court that the petitioner/applicant was to be regularized in any other grade.

5.8. The respondent authorities had made it clear, that, as per rules, all initial entrants have to be engaged in S-I grade and, there is no scope under their extant rules to appoint a new entrant in S-4 grade and that all others who had been engaged were initially in S-I Grade who gradually moved up to subsequent grades in their years of service. The respondents have painstakingly explained that others were engaged as per their eligibility in both "works" and "non-works" area as per actual requirement of the trades and availability of vacancies, vis-à-vis the



applicant who was trained as a plumber and whose skills were neither listed nor required in the respondent company.

5.9. The applicant's averments that he was twice deprived does not hold good. The applicant was not initially engaged as a trade apprentice as he failed in the medical examination. He was initially appointed vide orders of the Hon'ble Court's dated 8.6.2006 and thereafter regularized vide Hon'ble Appeal Court's orders dated 11.12.2018. The fact that he did not object to S-I grade at the initial point of entry on account of his vulnerability is contradicted by his unconditional acceptance.

5.10. The fact that the applicant was offered S-3 grade after a period of 8 years as compared to others who were offered after a period of 18 months is not correct as because the applicant was regularized only in the year 2009 whereas the other incumbents were regularized right after qualifying in the trade test and medical examination. The fact that others have been engaged despite being medically unfit has been explained by the respondent authorities in justifying the need of such trades, availability of vacancies and medical fitness of cited candidates.

5.11. In (i) **Madhya Pradesh Electricity Board v. S.S. Modh, JT 1997 (7) SC 682;**

(ii) **Transmission Corporation of A.P. Ltd. v. P. Surya Bhagvan, (2003) 6 SCC 353;**

(iii) **Safai Mazdoor Sangh v. Municipal Corporation, 1995 Supp (1) SCC 227;**

(iv) **Syndicate Bank v. Shankar Paul, 1997 (4) SLR 802 (SC);**

(v) **Union of India v. Kishan Gopal Vyas, (1996) 7 SCC 134;**

(vi) **K. Gopinathan v. Union of India, (1992) 4 SCC 701;**

(vii) **Government of TN v. G. Mohamed Ammenudeen, (1999) 7 SCC 499."**

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The Hon'ble Apex Court had laid down the set of consistent principles of absorption as follows:-

(1) The claimant for absorption must be qualified to hold the post.

The relevant date for determining the eligibility criteria for the purpose of absorption is relatable to the point of time of leaving the service by the ex-employees.

(2) The staff requirement and financial burden on the employer will have to be considered.

(3) Absorption cannot be made where it would amount to disregarding appointment rules.

(4) The mere inclusion of a name in the panel for absorption does not confer any right to seek permanent absorption.

(5) Basic pay cannot be reduced on absorption.

(6) Formulation of a scheme for absorption.



In the instant case, the applicant had failed in his medical examination and, hence, at the outset, was not qualified as to be eligible for appointment in the respondents' company. The respondent authorities were shy in engaging an incumbent suitable for a non-priority area as they were undergoing a rationalization process in order to reduce their financial expenses, particularly, in the case of non-essential staff. Accordingly, the first three conditions not having been satisfied in the case of the petitioner/applicant in 1999, his claims for S-4 Grade vis-à-vis other incumbents who were absorbed upon qualifying in examinations, subject to availability of vacancies and requirement of their skills, cannot be entertained.

5.12 Further, in ***State of UP and others v. Raj Kiran Singh (1998) 8 SCC 528*** it was held that continuance in service under interim orders of

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the Court does not improve claim of regularization. In particular, the Hon'ble Court held as follows:-

"..... Besides, merely because a person continues under the interim orders of the Court, such continuance to the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularization. It is only an interim arrangement pending decision by the Court and cannot disturb the position in law or equities, as on the date of the petition."

### CONCLUSION

6. In this case, the applicant was engaged as a trade apprentice upon directions of the Hon'ble Court and was allowed to appear in the trade test by virtue of interim orders. The matter was finally adjudicated upon in appeal in FMA No. 696 of 2007 wherein the Hon'ble Court noted that the applicant had accepted his S-I grade without any objection.



Accordingly, the petitioner/applicant cannot claim benefit of enhanced grade S-4 as such claim is not supported by the extant regulations of the respondent authorities. We are hence of the considered view that the applicant was correctly regularized in the post of Jr. Technician in S-I grade in authority's orders dated 4.2.2009.

7. The O.A. is dismissed. There will be no orders on costs.

M.A. No. 350/00719/2018 for early hearing of the O.A. is disposed of accordingly.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

**SP**