

Central Administrative Tribunal
Principal Bench: New Delhi

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OA-384/99 ✓
OA-390/99

New Delhi this the 2nd day of February, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

OA-384/99

Vinod Kumar Sharma
S/o Shri Gaya Prasad Sharma
R/o 42 Indra Colony
Shahganj: Agra.

...Applicant

Versus

1. Union of India
Through its Secretary
Ministry of Defence
New Delhi.
2. Director General of EME
D.H.Q. P.O. New Delhi
3. Master General of Ordinance Branch
D.H.Q. P.O. New Delhi
4. 509 Army Base Workshop
through its Commandant
to be served through
Director General of EME
DHQ P.O. New Delhi.

...Respondents

OA-390/99

Shri Bhagwan Verma
S/o Shri Jagdish Pal Verma
Near Police Station
Shamsabad: Agra (UP)

Versus

1. Union of India
Through its Secretary
Ministry of Defence
New Delhi.
2. Director General of EME
D.H.Q. P.O. New Delhi
3. Master General of Ordinance Branch
D.H.Q. P.O. New Delhi
4. 509 Army Base Workshop
through its Commandant
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DHQ P.O. New Delhi.

...Respondents

(By Advocate: Shri Rajesh Tyagi, for applicant
Shri Madhav Panikar, for
respondents)

CAJ

ORDER (Oral)

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By Reddy, J. -

The question that is involved in this case is whether the Trained Apprentices are entitled to be considered for selection in a Direct Recruitment without undergoing the admission test as may be prescribed in the relevant Service Rules, along with other non-trainees?

1. The applicants are Trained Apprentices, having completed their apprenticeship training in 1996-97 from 509 Army Base Workshop. An advertisement has been issued by the respondents for various posts including Telecommunication Mechanics to be filled through direct recruitment. In the said advertisement the trained apprentices were required to undergo the trade test alongwith the non-apprentices, to be considered eligible for selection. Placing reliance upon the judgment of the Hon'ble Supreme Court in UPSRTC Vs. U.P. Parivahan Nigam Shikshuk Beroigar Sangh and others, AIR 1995 SC 1115, the applicants submit that they are not liable to sit in the trade test and their cases should be considered alongwith others without the requirement of the appearance in the trade test. Learned counsel also relies upon the judgments in OAs No. 375, 378 & 381 of 1997 and 2956 of 1997 of the Principal Bench of the Tribunal where it was held that the trained apprentices should be considered on preferential basis and concerned rules should be modified so as to have the

directions passed by the Apex Court. It is also submitted by the learned counsel that as the respondents had violated the orders of the Tribunal in the above OAs the applicant filed CCP Nos. 86, 87 & 88 of 1998 and the Tribunal found that there was a clear violation of the orders of the above OAs but the respondents escaped the punishment only after they tendered apology. 17

2. The respondents on the other hand, relies upon the Full Bench judgment of the High Court Allahabad Arvind Gautam Vs. State of U.P. and others, 1999 (2) UPLBEC 1397, where the Full bench has interpreted Hon'ble Supreme Court judgment in UPSRTC's case AIR 1995 SC 1115 (supra). Paragraph-12 and 13 of the judgment were considered and interpreted to mean that the apprentice shall have to appear in the competitive test as may be prescribed in respect of the particular selection and if after the competitive test any apprentice trainee gets equal marks with a non-apprentice candidate, then only preference has to be given to the said apprentice trainee. Learned counsel for the respondents, therefore, contends that in view of the clear enunciation of the Full Bench of the Allahabad High Court as to the meaning of the judgment of the Supreme Court, even the applicants shall have to appear in the trade test.

3. We have given careful consideration to the contentions raised by the learned counsel on either side.

C. J.

4. The issue that has to be decided in this OA is whether the trained apprentices are liable to sit in the entrance examination/trade test for the purpose of selection in the direct recruitment of the Telecommunication Mechanic post. It is not in dispute that as per the service conditions the selection shall have to be made out of the candidates who were found successful in the trade test. But the applicants, without appearing in the test, claimed that they should be considered for selection, relying upon the ratio in AIR 1995 SC 1115. 18

5. An identical question has come up for discussion before the Hon'ble Supreme Court in AIR 1995 SC 1115.

6. In para-12 of the judgment the Hon'ble Supreme Court has summarised as to the principles which are to be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training as under:-

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 Vs. 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

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aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

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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 persons trained later. In between the trained apprentices, preference shall be given to those who are senior".

7. In so far as the cases of the trainees before the Supreme Court are concerned they were directed to be decided as in para-13, as follows:-

"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".

8. The combined reading of para-12 & 13 appears to present different meanings, of the ratio of the judgment. While disposing of the OAs No. 378 and 381/97 by order dated 13.10.97 and CP-351, 352/98 disposed of on 13.8.99, the Tribunal has taken the view that the trained apprentices need not sit for the trade test/entrance examination in view of the judgement of the Supreme Court. The Allahabad High Court in Manoj Kumar Mishra Vs. State of U.P. a Division

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Bench, has taken a view on the ratio of the UPSRTC case, that trained apprentices also should sit in the entrance examination. However, recently, in the Full Bench of the Allahabad High Court in the case of Arvind Gautam Vs. State of UP & Others (supra) the questions that were referred to the Full Bench are as follows:-

"A perusal of the reference order indicates that the questions which fall for consideration are as follows:-

1. to examine and decide whether the directives of the judgment of Supreme Court in the case of UP State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishuksha Berozgar Sangh and others reported in JT 1995 (2) SC 26. (1995) 1 UPLBEC 203 (SC) AIR 1995 SC 1115, should be confined to UPSRTC or they are applicable to all departments or all corporations.

2. to consider the judgment of the Division Bench in Vivek Guptrishu Vs. State of UP and others (Writ Petition No. 37922 of 1997 decided on 12.11.1997).

3. to consider the matter in the context of Article 16 of the Constitution and

4. to decided whether the circular dated 12.9.96 has proceeded on a misconception".

9. The Full Bench after consideration of

these questions held as follows:-

"In our view the expression "other thing being equal" in paragraph 12 and absence of exemption from competitive test in the said paragraph leads to the conclusion that all persons (including the apprentices) have to appear in the competitive test, as may be prescribed in respect of the particular selection and if after the competitive test any apprentice trainee gets equal marks than a

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non-apprentice candidate, then only preference is to be given to the said apprentice trainee".

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Ultimately the question No.1 was answered as follows:-

" Hence the answer to question No. 1 is that the directives of the aforesaid judgment of the Supreme Court as contained in paragraph-12 of the said judgment in the case of UP State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishuksha Berozgar Sangh (supra), is not confined to UPSRTC alone but they are applicable to all departments and corporations, but the directives in paragraph 13 of the said judgment apply strictly to the persons whose cases came up for consideration before the Apex Court in the said matter and not to others".

10. In view of the above clear interpretation as to the meaning of the judgment of the Hon'ble Supreme Court (supra), we are left with no other alternative except to hold that the applicants have to go through the trade test in order to seek selection in the direct recruitment in the post of Telecommunication Mechanic. The OAs, therefore, fail and are liable to be dismissed. OAs are dismissed. No costs.

11. As the applicants have not appeared in the trade test, respondents are directed to allow the applicants to appear in the trade test and consider their cases against the vacancies that are kept vacant by an interim order in this Tribunal, subject to their performance in the trade test.

Shanta Shastri
(Mrs. Shanta Shastri)
Member (A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.