

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.350/98 in
OA No.2956/97

CP No.351/98 in
OA No.378/97

CP No.352/98 in
OA No.381/97

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New Delhi this the 13th day of August, 1999.

Hon'ble Mr Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

C.P. No.350/98 in OA No.2956/97

Mukesh Kulsreshtha,
R/o 20-A, Keshav Kunj,
Pratap Nagar,
Agra, U.P.

...Petitioner

(By Advocate Shri Rajesh Tyagi)

-Versus-

1. Sh. Arun Kumar,
Defence Secretary,
Government of India,
New Delhi.

2. Lt. Gen. J.S. Dhillon,
PVSM, VSM,
Master General of Ordnance Branch,
Army Headquarters,
DHQ P.O. New Delhi.

3. Lt. Gen. M.R. Kochher,
AVSM,
Director General of EME Branch
(EME-CIV)-3,
Army Headquarters,
DHQ; PO; New Delhi.

...Respondents/

...Contemners

(By Advocate Shri Madhav Panikar with Sh. H.K. Gangwani)

C.P. No.351/98 in O.A. No.378/97

Shri Ashish Kapoor,
S/o Shri K.C. Kapoor,
R/o 174, Defence Estate,
Bundu Katra,
Agra.

...Petitioner

(By Advocate Shri Rajesh Tyagi)

-Versus-

1. Sh. Arun Kumar,
Defence Secretary,
Government of India,
New Delhi.

2. Lt. Gen. J.S. Dhillon,
PVSM, VSM,
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Director General of EME Branch
(EME-CIV)-3,
Army Headquarters,
DHQ; PO; New Delhi.

... Respondents/
... Contemnors

(By Advocate Shri Madhav Panikar with Sh. H.K. Gangwani)

C.P. No.352/98 in O.A. No.381/97

Manhar Saxena,
S/o Shri S.C. Saxena,
R/o 37/58, Bundu Katra,
Gwalior Road,
Agra (UP).

... Petitioner

(By Advocate Shri Rajesh Tyagi)

-Versus-

1. Sh. Arun Kumar,
Defence Secretary,
Government of India,
New Delhi.

2. Lt. Gen. J.S. Dhillon,
PVSM, VSM,
Master General of Ordnance Branch,
Army Headquarters,
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Director General of EME Branch
(EME-CIV)-3,
Army Headquarters,
DHQ; PO; New Delhi.

... Respondents/
... Contemnors

(By Advocate Shri Madhav Panikar with Sh. H.K. Gangwani)

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By Reddy, J.

As the three Contempt Petitions (CPs) arise out of orders involving the same issue, they are disposed of by a common order, as under:

2. The petitioners are applicants in the above three OAs. The respondents sent a requisition to the Employment Exchange

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for direct recruitment to the post of Telecommunication Mechanics in the various Army Base Workshops. The petitioners, who are trained apprentices in the Telecommunication Mechanic trade, challenged the aforesaid requisition before this Bench of the Tribunal in the above OAs. The OA Nos. 378 & 391/97 were disposed of by a common order dated 13.10.87, giving the following directions:

"These three OAs are disposed of with a direction to the respondents that if and when they make direct recruitments to the posts of Telecommunication Mechanics they should consider the claims of the applicants for preference for appointment to those posts, in the light of the Hon'ble Supreme Court's ruling, referred above, to the extent that the said ruling is applicable to the facts and circumstances of these particular cases. In this connection pointed attention of the respondents is invited to para-12 (1) of that ruling extracted above, which states that "other things being equal, a trained apprentice should be given preference over direct recruits."

OA No.2956/97 was disposed of on 24.8.98, following the above decision.

3. Complaining that the above directions were not complied with by the respondents, the above CPs have been filed. It is contended by the petitioners' counsel that the respondents have not at all considered the cases of the applicants against the vacancies of the Telecommunication Mechanics and have appointed two outsiders who are not apprentices, in derogation of the directions of the Tribunal. It is, therefore, contended that the respondents are liable for taking action under the provisions of the Contempt of Courts Act.

4. The respondents have filed the counter-affidavits. The thrust of their case is that unless the petitioners pass the trade/entrance test, conducted by the respondents in accordance with the Recruitment Rules, the petitioners will not acquire eligibility to be considered for appointment. Unless they appear and succeed in the said examination, their cases cannot, at all,

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be considered, let alone considering their case on preferential basis. Further, it is stated that the verdict of the Supreme Court in **U.P.S.R.T. Corpn. v. U.P. Parivahan N.S.B. Sangh** (AIR 1995 SC 1115) cannot have any application to the applicants.

5. The only question that falls for consideration in this case, is whether the respondents have violated the directions issued by the Tribunal. The petitioners had undergone training in the Army Base Workshops for the posts of Telecommunication Mechanics, claim that they are entitled for preferential rights of appointment for the posts of Telecommunication Mechanics. According to them they are entitled as per the judgement of the Tribunal for appointment without routing through the Employment Exchange and without sitting for the trade/entrance test conducted by the respondents for the non-trainee candidates. The Tribunal, while disposing of the OAs, directed the respondents to consider the applicants claim in accordance with the judgment of the Supreme Court in **U.P.S.R.T. Corpn.'s case (supra)**. The respondents, however, have now taken the stand that unless the petitioners had appeared and gone through successfully the trade test they are not entitled even for consideration. Hence, the crucial question involved is whether the applicants are liable to sit for the trade/written test along with other general candidates. Before we proceed further, it is necessary to consider the ratio laid down by the Supreme Court in the above case. The trainees, in the above case approached the High Court of Allahabad claiming preference in the selection of certain posts. Directions have been issued by the High Court in favour of the trainees. The Corporation was also directed to appoint the trainees. Questioning the judgement of the Allahabad High Court the Corporation carried

the matter before the Supreme Court. The Supreme Court partly allowed the appeal and set aside the direction given by the High Court to appoint the trainees. However, considering the provisions of the Apprentices Act, 1961 (for short, Act) and the Apprentices Rules (for short, rules) the Supreme Court, after an exhaustive discussion as to the intendment of the Act and Rules and the idea behind investing the resources of the State for the purpose of training candidates, enunciated the following principles at paragraph-12:

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

Reverting to the present case, the Tribunal, while disposing of the OAs, directed the respondents to act according to the above principles laid down by the Supreme Court in the matter of appointment of the petitioners. It is true that in the judgement of the Tribunal the respondents' attention was drawn particularly to paragraph 12 (1) of the decision where it was stated that preference be given to the trained apprentices over direct recruits.

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6. The Supreme Court in **U.P.S.R.T. Corpn.'s (supra)** case considered the important provisions of the Apprentice Act at length and observed that the Legislature did desire and make adequate provisions to see that the competent person receive due training to cater to the need of increasing demand for skilled craftsman on one hand and to improve the employment potential of the trainees on the other. Further, during the period of training the apprentices were put under a discipline akin to that of regular employee and trainees are in all matters of conduct and discipline are governed by the Rules and Regulations applicable to the employees of the corresponding category in their establishment in which the apprentice is undergoing training. Thus, trainees are treated as akin to regular employees.

7. Therefore, it should be said that the trainees have already undergone the training necessary for the post of Telecommunication Mechanics and the question of putting them to any test, written or otherwise by the respondents to find out their aptitude for the post, in our view, is wholly irrational. What was intended or required to see is to employ their services if they are otherwise fit as per the service regulations in the post concerned, in preference to non-trained direct recruits. Any other method by which the trainees are sought to be excluded would be to deprive the Nation of the time, money and energy spent on the trainees. In fact the Supreme Court while disposing of the **U.P.S.R.T Corpn.'s case (supra)** categorically stated in paragraph-13 thus:

"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

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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."

The respondents without considering the applicants for appointment, are now putting forward a totally different plea that the applicants are liable to follow the recruitment rules along with other candidates, non-trainees, to sit in the examination which is the mandatory requirement under the recruitment rules. No such plea was raised in the OAs. It is their case that in view of the amendment in the recruitment rules, the trade test is a pre-requisite even for trainees for consideration for recruitment and the exemption given earlier for such requirement was deleted. Admittedly, the applicants have not even applied to sit in the examination, hoping that they would be considered without going through any such examination in view of the judgement in their favour and also in view of the decision of the Supreme Court in the aforesaid case. In our view the stand of the respondents is wholly untenable and opposed to the ratio laid down by the Supreme Court. The learned counsel for the respondents, however, relies upon the decision of the Allahabad Bench of the Tribunal in OA-153/97 and batch. The Allahabad Bench has not considered paragraph-13 of the Supreme Court judgement at all. If the view taken by the Allahabad Bench is accepted, the purpose of the training would be defeated. It is not in dispute that the trainees have already passed the trade test and their aptitude for the post was already ascertained by the respondents and after training is completed, it should be treated that they are ready for taking in the job as and when they are recruited, provided they come within the age requirement alone. No other requirement should be insisted upon for the trainees. They are entitled, as per paragraph 12 (1) of the principles laid down by the Supreme Court, for preferential treatment over the direct recruits. The

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Supreme Court, therefore, applying the principles laid down in paragraph 12 (1) to (4) to the facts of the case before it made it abundantly clear that they should not be required to sit in any further examination. In view of the above clarification made in paragraph-13 and the principles laid down in paragraph- 12 of the Supreme Court's judgement the view taken by the Allahabad Bench cannot be accepted.

8. Since the respondents justify their stand in view of the amended Service Regulations and the judgement of the Allahabad Bench of the Tribunal, it cannot be said that they had deliberately violated the judgement of the Tribunal in the above OAS.

9. In the circumstances, we direct the respondents to consider the claims of the petitioners for appointment to the posts of Telecommunication Mechanics, without the requirement of appearing for any written examination, forthwith. The CPs are accordingly closed and the notices issued to the respondents are discharged. No costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

'San.'

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

Original judgement in C/350/98 in 842556/97.

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