

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

D.A.No.363/89

DATE OF DECISION 21.3.91

SHRI PAWAN KUMAR

APPLICANT

VS

UNION OF INDIA AND ORS.

RESPONDENTS

C O R A M :

SHRI N.V. KRISHNAN, HON'BLE MEMBER (A)

SHRI J.P.SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

SHRI D.P.SOOD

FOR THE RESPONDENTS

SHRI P.P.KHURANA

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

J U D G E M E N T

(DELIVERED BY SH.J.P.SHARMA, MEMBER (J))

The applicant filed the application under Sec.19 of A.T.Act, 1985 aggrieved by the order dated 24-1-1989 (Annexure A-10), by which the application for employment as V.M. (M.V.) was rejected on the ground that the applicant has become over aged even after relaxation of one year of Apprenticeship Training.

2. The applicant has prayed that a direction be issued to the respondents to appoint the applicant in the public employment on the post of Vehicle Mechanic training the period from the date of Registration with the Employment Exchange till 31st August, 1988, as relaxed from the actual age of the applicant.

3. The relevant facts are that the applicant is a qualified technician in the trade of vehicle mechanic having passed the trade from the Industrial Training Institute, Pusa, New Delhi. The applicant is sponsored for Apprentice Training during the month of July/August 1987 in the trade of Vehicle Mechanic in 505 Army Base Workshop Delhi Cantt by the Directorate of Apprentice Training. The instructions prescribe that the candidates should not be more than 25 years of age. The apprentice Training commenced on 1-9-1987 and as on that date, the applicant was over aged by about 4 months, his date of birth being 23-5-1962. The applicant was allowed admission in the training, presumably after age relaxation was accorded by the competent authority. He successfully completed the apprenticeship training from 1-9-1987 to 31-8-1988 (Annexure A-7).

4. The provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 makes it obligatory on the part of employer to intimate the vacancies to the Employment Exchange and restrict selections and appointments from the candidates sponsored from the Employment Exchange. The applicant got his name registered on 18-10-1985 with the Employment Exchange, Pusa when his age was about

23 years five months. The applicant on the direction of the Employment Exchange appeared in the trade test of Vehicle Mechanic at the 505 Army Base Workshop Delhi and appeared in the said trade test on 30th August, 1988 (i.e. a day before the Apprentice Training was to end) and in ^{the} Interview on 31st August, 1988 before the Selection Board. The applicant was declared successful in the said test. The applicant was not, however, appointed and was intimated by the impugned letter dated 24th January, 1989 (Annexure A-10) that as he has become over aged even after ignoring the one year period of Apprenticeship Training and hence he cannot be given appointment. Hence the present application.

5. The respondents contested the application and it is stated in the reply that the case of the applicant could not be considered for employment as he has become over aged. The respondents have also denied the contention of the applicant regarding execution of an agreement in the shape of a bond to employ the applicant after the training for a period of five years. However, it is admitted in the reply to para 5(j) of the application that it is obligatory on the part of the employer to intimate the vacancies to the Employment Exchange and restrict selection and appointments from the candidates sponsored by the Employment Exchange. Thus the main objection taken by the respondents is that since the applicant has become over aged, he could not be given appointment. The Annexure (R-3) to the reply of the respondents is the photostat copy of the Raksha Utpadan Vibhag, Directorate General (Industrial Group C & Group D post) Recruitment Rules, 1978. Para 6 of this rule

provides power to relax the rules "where the Central Government is of the opinion that it is necessary or expedient to do so may, by order for reasons to be recorded in writing relax any of the provisions of these rules with regard to any class or category of persons or posts". In the schedule filed as Annexure R-IV for recruitment of vehicle mechanic in column 6, the age prescribed is 18-25 years.

6. We have heard the learned counsel of the parties at length and have gone through record of the case. We have also seen the file maintained by the respondents of Apprentice Training in the year 1988. The only question that arises is whether the impugned order passed by the respondents is arbitrary and also against the principle of natural justice? It is no secret that the applicant was given training in 505 Army Base Workshop. The training was imparted, under the Apprentice Act, 1961 to the applicant in the trade of Mechanic Motor Vehicle from 1-9-1987 to 30-1-1988 and the applicant passed the trade test and was issued a provisional national apprentice certificate (Annexure A-7). Major R.S.Parmar, OIC II Cell also issued a certificate (Annexure A-5) which also shows that the applicant was also trained in Engine Fitting Gun and Turret Section. The departmental file of Apprentice Training shows that in Mechanic Motor Vehicle there were 15 candidates who took the training and only nine were recommended to be absorbed for appointment. The total marks obtained by the applicant including those he

got in social study are 441. It appears from the result that the applicant was declared successful having stood sixth in the order of merit. Thus his name shown among one of those successful candidates who were to be absorbed. In the departmental file of training of Apprentice in the year 1988 at page 236 there is a note which reads as follows. This is dated 30th August, 1988.

"2. Since ITI trained tradesmen are doing Apprentice Training in Base Wksp's, it is our moral duty to ensure that these apprentices get preference over other candidate. One way by which this can be assured is when you send requisitions to Employment Exchange indicate desirable qualification as 'individual having done Apprentice Training in EME Wksp'. Also, in your test, you can keep additional marks for individuals who have done apprenticeship in EME Wksp. Though such details are not spelt out in recruitment rules, any employer can put his own qualifications so long as it is within the over all frame of Recruitment Rules. Kindly ensure that these instructions are meticulously followed for all future recruitment through Employment Exchange."

7. This leaves no doubt that those who are given apprentice training in the Army Base Workshop have to be absorbed. There is also a memo dated 15th November, 1988 at page 262 of the aforesaid department file addressed to

Hd.Qrs. Mechanic Group E.M.E. (Tech Coord.) Delhi Cantt in which Employment Cell SWD has intimated that there were 15 mechanics motor vehicle who were trained from 1-9-1987 to 31-8-1988 and out of them nine apprentices are to be absorbed and will be appointed after medical and character verification. The result shows that the applicant stood sixth in order of merit and was eligible for appointment but subsequently by the impugned order dated January, 1989 the applicant was informed that he could not be appointed as he has become over aged.

8. The applicant was sponsored by the Directorate of Apprentice Training and when he joined the Apprentice training with the respondents he had already attained the age of 25 years, four months. The respondent should have exercised their discretion at that time because as is evident from the above quoted memo dated 30th August, 1988, the applicant was to be given employment against the vacancy if available after completion of the training and passing the trade test. The respondents are therefore now Estopped to take the plea that the applicant has become over aged. Broadly speaking, Estoppel means that under certain circumstances a party be not allowed to show the truth in his favour when he was, by some act or deed or negligence led the other party to believe that something else is the truth. The estoppel, according to Black Stone, happens where a man has done some act or executed some deeds which estops or precludes some from averring anything to the contrary. A person who, by words or conduct, wilfully causes another person to believe in the existence of a certain state of things and

induces him to act on that belief, so as to alter his position for the worse, is estopped from setting up against the other person a different state of things as existing at the time in question. The State or the Government is also bound by the principle of Estoppel. When once the respondents have allowed the admission in the training to the applicant and actually trained him for a period of almost one year at government expenses and also declared him successful in the trade test; also marked him as one of the candidates to be absorbed for appointment, as is clear from the department file, now the plea taken by the respondents that the applicant cannot be given appointment because he has become over aged will be hit by the principles of natural justice and will also be arbitrary and discriminatory. Discriminatory in the sense, that those who secured the lesser marks in the trade test will get an appointment among those nine apprentices who are to be absorbed for employment with the respondents.

9. The learned counsel for the respondents pointed out that there is no provision in the schedule of the Recruitment Rules for relaxation of age but it is not so. Rule 6 quoted above gives power to the Central Government to relax the rule. In our view this rule can be invoked though it applies to relaxation in respect of a class of persons. For the applicant, though only one person is to be treated as a class who was consciously admitted to the Apprentice Training Course despite being over aged. -----

The applicant has filed a note (Annexure 8) written to SWO Gupta "can we help him to overcome his age problem". This note is dated January, 13, 1988 and the impugned letter (Annexure A-10) was issued on 24th January, 1989.

10. The applicant has taken a case also that he has received training in Gun Turret Section and in this connection reliance has been placed on the certificate dated August, 1988 (A-5). Though this fact is denied by the respondents but the certificate issued by Major, OIC TT Cell, cannot be lightly ignored. The issue of this certificate has not been specifically denied by the respondents. In the reply the respondents admitted para 4(g) which refers to certificate (Annexure A-5) issued by OIC TT Cell. When the certificate is admitted by the respondent then the training in armoured vehicle have to be accepted as alleged by the applicant in the application and argued by the learned counsel during the course of hearing. The complex type of sophisticated training of armoured vehicle can only be utilised when the applicant gets his job with the respondents.

11. It is also contended by the applicant that a bond for compulsory service for five years was also executed by the applicant with the respondents and so the respondents cannot now deny employment to him. The learned counsel for the applicant also filed an affidavit of one Radhey Shyam during the course of hearing with the typed proforma which is used in filing up that bond, but

we are not convinced about the genuineness or truthfulness of the statement as a correct fact.

12. In view of the above facts, the applicant has made out a case that by virtue of his having being admitted to training even at a time when he was over aged for service with the respondents, the respondents are now estopped to take this plea and deny the fruits of the training and the result of selection to him. In view of this the respondents are bound to relax the limitation of age in his favour.

13. We, therefore, allow this application and direct the respondents to pass an order of relaxation of age applicant's in the favour and give employment to him as Mechanic Motor Vehicle within a period of three months from the receipt of this order. In the circumstances the parties shall bear their own costs.

J. P. Sharma
J.P. SHARMA 21.3.91
MEMBER (J)

N. V. Krishnan
N.V. KRISHNAN
MEMBER (A)

Pronounced in the open court today 21st. of March, 1991
by me.

J. P. Sharma
21.3.91