

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 118/2012

Reserved on : 07.07.2020
Pronounced on : 10.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

1. Kishan Lal S/o Chirangi Lal, aged around 43 years, R/o Kastoor Sadan, Bas Stand Colony, Gangapur City, District Sawai Madhopur (Rajasthan).
2. Mahendra Singh S/o Munshi Lal, R/o Roopbas, District Bharatpur (Rajasthan).
3. Mohammed Rafiq S/o Deen Mohammed, R/o Chuli Ki Bagichi, Nehru Shiksha Sansthan, Gangapur City, District Sawai Madhopur (Rajasthan).

...Applicants.

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through its General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. The Senior Divisional Mechanical Engineer, West Central Railway, Kota Division, Kota.
4. The Chairman, Railway Recruitment Board, Nehru Marg, Near Ambedkar Circle, Ajmer (Rajasthan).
5. Regional Director, Regional Director of Apprentice Training, 3rd Floor, A-Wing, New CGO Building, NH4, Faridabad-121001.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Dinesh Sharma, Member (A):

In the instant OA, the applicants have prayed for passing appropriate order directing the respondents to give appointment to them along with all consequential benefits in pursuance to the advertisement dated 17.03.2007 (Annexure A/5). The main ground for seeking such direction is the order passed by this Tribunal in OA No.320/96 decided on 04.02.1998 (Annexure A/3). The applicants claimed that they were trained as Apprentices under the Apprentice Act, 1961 by the respondent Railways. Their period of training was from 30.06.1986 to 30.05.1989. However, they have not been given appointment (Refer Annex A/1) on grounds of their being over aged and not fulfilling the required qualifications. This is in violation of clear instructions in the aforementioned order of the Tribunal. The applicants had earlier approached the Hon'ble High Court of Rajasthan by way of D.B. Civil Contempt Petition No.120/2008 in D.B.Civil Writ Petition No.5205/1999 (Annexure A/6). This D.B. Contempt Petition was decided by the order of the High Court dated 17.02.2011 in which the Hon'ble High Court refused to adjudicate within the scope of parameters of contempt jurisdiction. However, it was left open to the applicants to file appropriate application before the Tribunal against the rejection of their

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candidature following the aforementioned advertisement. The main argument of the applicants is that the respondents should have considered them for direct recruitment since they were taken as Apprentice and, therefore, there should have been no question of either age or other educational qualifications which were relevant only for other candidates and not for the Apprentices.

2. A reply has been filed by respondents No.1 to 4 in which they have denied the claim of the applicants. It is alleged that the O.A. has been filed beyond the period of limitation. It is also alleged that the applicants did not have the required qualification as advertised and they were also over aged since they were above 43 years. This makes them over aged even after giving three years upper age relaxation to the extent of their apprentice training. This decision was informed to the applicants and it is in no way in violation of either the orders of this Tribunal or the Hon'ble High Court and hence the O.A. deserves to be dismissed.

3. A rejoinder was filed by the applicants in which they have reiterated their claim and stated that the respondents did not consider the candidature of the applicants in the light of the judgment of the Hon'ble Supreme Court in **U.P. State Road Transport Corporation & Anr. Vs. U.P. Parivahan Nigam Shishukha Berozgar Sangh & Ors.** (1995) 29 ATC 171 on the

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basis of which this Tribunal had passed direction in OA No.320/96. Such rejection (merely on the ground of lack of qualification and over age) is in violation of the direction of the Hon'ble Supreme Court.

4. A reply has also been filed on behalf of respondent No.5 (Chairman, Board of Apprentice Training, North Region) in which it is stated that the O.A. is barred by limitation and that the answering respondent is not concerned with the dispute raised by the applicants in the present O.A.

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The learned counsel for the applicants argued that the case has been filed within the period of limitation since there was already contempt proceedings pending before the Hon'ble High Court when the impugned order rejecting the applications of the applicants was passed. The applicants had also filed OA No.482/2011 (Annexure A/7), which was within the period of limitation, but it was allowed to be withdrawn because of pendency of the case before the Hon'ble High Court. The learned counsel reiterated the arguments mentioned in the O.A. about there being no need to examine the issues relating to qualifications or age in matters of apprentices which were covered by the aforementioned decisions of this Tribunal and the

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Hon'ble Supreme Court. The applicants have been pursuing this matter for almost two decades and therefore cannot be said to be sleeping on their right. They became over age because of the respondents not considering their case despite clear orders from this Tribunal. It was also argued that the Hon'ble High Court had granted liberty to the applicants to pursue this matter before this Tribunal in the Contempt Petition. Learned counsel for the respondents insisted that the case was hopelessly barred by period of limitation for which not even an application for condonation of delay was filed. He also argued that the applicants did not fulfil the specific condition provided in the advertisement and were now seeking a direction to get appointment following the same advertisement. It was argued that the job application of the applicants could not be accepted because of the reasons given in the impugned order which are valid reasons. The applicants have not denied that they did not have the required qualification and were over aged. There is no direction of any higher court to accept such applications even when the applicants did not fulfil the specifically prescribed conditions.

6. After going through the pleadings and hearing the arguments, it is clear that the claim of the applicants is based on their having received training under the respondent Railways' Apprentice Act almost three decades before now. Their application for consideration under direct recruitment quota was

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rejected because of their being over aged and for not having the requisite educational/technical qualifications at the time of the application. The applicants have claimed that this cannot be a ground of rejection for Apprentices in the light of the decision of this Tribunal in OA No.320/96 where it was specifically mentioned: "we direct the respondents to consider the cases of the applicants for appointment in the Skilled Artisan Categories against the 25% direct recruitment quota to be filled up from open market as and when vacancies are advertised and the applicants submit their applications against such vacancies. While considering the cases of the applicants, the respondents shall specifically keep in view the observation of the Hon'ble Supreme Court in para 12 of the judgment (supra)." This decision of ours quotes paras 11 and 12 of earlier judgment of the Hon'ble Supreme Court in UP State Road Transport Corporation and Anr. (supra) and we are reproducing the same:-

"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 of their training:-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

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(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. N. Hargopal 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 service rule concerned. 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 training institute would maintain a list of the persons trained yearwise. 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. After carefully going through the above-mentioned decision, we find that there is nothing in these decisions which mandates the respondents to select the Apprentices even if they do not have the qualification required to be met as per their employment notice. These decisions require an application to be considered even if the name is not sponsored by any employment exchange. They also mandate relaxation in age bar to the extent of the period for which the Apprentice has undergone training. In the absence of any clear instructions in these decisions, about ignoring the qualification or the age completely in case of Apprentices, we cannot accept the claim of the applicants to have themselves appointed following the advertisement made in the 2007. The O.A. is apparently barred by period of limitation for which not even a request for condonation of delay has been made. However, taking into account the fact that the applicants

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have been pursuing this matter before various judicial fora, we are not inclined to dismiss this O.A. on ground of limitation alone. However, as detailed above, we see no merit in the claim of the applicants to get themselves selected only on ground of their having been Apprentices earlier without fulfilling the other conditions required to be fulfilled as per the vacancy notification/advertisement. We do not find anything in our earlier decision (OA No.320/96) or in the decision of the Hon'ble Apex Court in UP State Road Transport Corporation case (*supra*), to support the claim made by the applicants. The O.A. is therefore dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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