

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 619 of 1997

Allahabad this the 2<sup>nd</sup> day of May, 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Shri Mukesh Kudesia S/o Prasad Murari Kudesia, R/o 4/406  
Pati Ram Gali Kutchery Ghat, Agra, Pin Code-282004.

Applicant

By Advocate Shri M.K. Sharma

Versus

1. Commandant 509. Army Base Workshop, Agra Cantt. Agra, Pin . 282001.
2. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
3. Regional Employment Exchange Officer, Agra.
4. Director Training & Employment, U.P., Lucknow.
5. Sri Vinod Kumar S/o Shri Ghanshyam Singh, R/o 38/48/410 Nai Abadi, Gopal Pura, Agra Cantt. Pin 282001.
6. Sri Luxmi Kant Sharma S/o Shri Jagdish Prasad Sharma, R/o 37 A/52 B Madhu Nagar, Agra Cantt. Pin-282001.
7. Sri Kapil Yadav S/o Shri Sardar Singh Yadav 17, Himanchal Colony, Deori Road, Agra Cantt. 282001.
8. Sri Vinod Kumar S/o Shri Radhey Shyam, R/o Tundpura, Agra Cantt. 282001.
9. Shri Prasoon Kumar Saraswat S/o Shri Krishna Gopal Saraswat, Instrument Mechanic, Tele Type, Token No.7206, 509 Army Base Workshop, Agra Cantt. 282001.

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10. Shri Shri Kant, S/o Shri Shri Prakash Sharma,  
Instrument Mechanic, Tele Type, Token No.6207, 509  
Army Base Workshop, Agra Cantt. 282001.

Respondents

By Advocate S/Shri Amit Sthalekar, K.P. Singh

O R D E R (Oral)

By Hon'ble Mr. A.K Bhatnagar, Member (J)

By this O.A. the applicant has prayed for the following reliefs:-

- "(i) to call forth the records from the respondents.
- (ii) To issue an order in nature of Certiorari setting aside entire process selection including all appointments in pursuance thereto including appointment of candidates mentioned at serial no.(a) to (o) of list dated 13.06.97 & appointment letter dated 12.06.1997 (vide Annexure A-1) and intimation dated 22.4.97 (vide Annexure A-2) and April 1997 (vide Annexure A-3) to the unreserved category (i.e. General Category) of the post in trade of Instrument Mechanic in 508 Army Base Workshop Agra which were notified by respondent no.1 on 22.1.97 and tests were held on 24<sup>th</sup> and 25<sup>th</sup> Feb. 1997 but to conduct selection process afresh and further issue an order in nature of certiorari setting aside the entire process of selection to the unreserved Category (i.e. General Category) of post in trade of Instrument Mechanic(Elec.) in 509 Army Base Workshop, Agra which was notified by Employment Exchange on 29.5.97 vide (Annexure A-10) and regarding with written examination and interview have been held from 25<sup>th</sup> June 1997 to 27<sup>th</sup> June 1997 but to conduct the selection process for the post afresh.
- (iii) To issue an order nature of mandamus commanding respondent no.1 to consider the applicant for appointment in 17 vacancies in post of Instrument Mechanic in 509 Army Base Workshop Agra which were notified to the Regional Employment Exchange in January 1997 (Dt. 22.1.97 Vide Annexure A 4) and May 1997 (Vide Annexure A 10) after giving the benefit of reservation for trained apprentice of 509 Army Base Workshop weightage and preference to the applicant for being trained apprentice from 509 Army Base Workshop and not requiring

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the applicant to be sponsored by the applicant to appear in any written examination.

(iiia) to set aside the order dated 16.11.98 and also set aside the letter dated 05.11.98 in as much it requires the petitioner to appear in written examination.

(iiib) to set aside the entire selection process held for the posts in trade of Instrument Mechanic in 509 Army Base Workshop held on 24<sup>th</sup> & 25<sup>th</sup> Nov. 1998 (in relation to which the letter dated 05.11.98 was issued to the petitioner) and direct the respondents to conduct the selection process afresh by considering the candidature of the petitioner and not requiring the petitioner to appear in written examination.

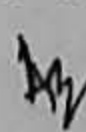
(iv) to issue any other order or direction as this Hon'ble Tribunal may deem fit and in the circumstances of the case.

(v) to award costs through out to the applicant."

2. The brief facts giving rise to this O.A., as per the applicant, are that the applicant passed All India Vocational Training Examination in the trade of Instrument Mechanic. Thereafter, applicant worked as Apprentice in 509 Army Base Workshop and successfully completed the apprenticeship training in 509 Army Base Workshop Agra in Instrument Mechanic from 10.06.1993 to 09.06.1994, which is evident from the certificate filed as annexureA-2.

3. That the Government of India had issued a Government Order dated 23.03.1983 desiring 50% reservation in vacancies for apprentice trainees. This fact was brought to the notice of Hon'ble Supreme Court in Civil Appeal No. 4347-54/1990, decided on 12.01.95 reported in A.I.R. 1995 S.C. 1115 in the case of U.P.S.R.T.C. Vs. U.P. Parivahan Nigam Shishukha Berozgar Sangh) 1995 (2) S.C.C. 1. The Hon'ble Supreme Court gave certain directions in this case:-

"(a) other things being equal a trained apprentice should be given preference.



- (b) trainee would not be required to get his name sponsored by any employment exchange;
- (c) benefit of relaxation of age bar should be given;
- (d) trainees will not be required to appear in any written examination."

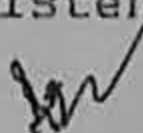
4. In January 1997 the respondent no.1 notified to the Employment Exchange about 16 vacancies in the post of Instrument Mechanic in general category in 509 Army Base Workshop (annexure A-4). Consequently, the applicant submitted his application dated 10.02.1997 inter-alia to the effect that he had completed apprenticeship training as required and in view of Judgment of Hon'ble Supreme Court in U.P.S.R.T.C. case (supra), he is entitled for his appointment on the post of Instrument Mechanic (annexure A-5). On 15.02.1997 the applicant contacted respondent no.1 and submitted that he was a trained apprentice, therefore, he is qualified and eligible for all sub branches of Instrument Mechanic i.e. Electrical, Optical, General and Tele Typing and further in terms of Judgment of Hon'ble Supreme Court, he is not supposed to appear in the written examination along with other non-apprentice candidates. Although the applicant was eligible in all the branches of Instrument Mechanical but his claim was illegally confined to the Optical branch of Instrument Mechanical. The respondent no.1 did not publish the result of the test, which was held on 24<sup>th</sup> and 25<sup>th</sup> February 1997 and only selected candidates were informed of their results through letters but no communication has been sent to the applicant. The father of applicant submitted a representation on 03.05.1997 to respondent no.1 for compliance of the Judgment of Hon'ble Supreme Court. Again one post of Instrument Mechanical/Electrical in general category was notified but the name of the applicant was not

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sponsored by the Employment Exchange on the pretext that his name had already been sponsored on earlier occasions. As soon as the applicant came to know about the date of examination, which was going to be held on 12.06.1997 onwards, he immediately applied through fax on 10.06.1997 requesting the respondents to consider him by giving benefit of decision of Hon'ble Supreme Court without taking any written examination. When no action was taken by the respondents, in the light of Supreme Court decision, similarly situated apprentice trainees filed various O.As in this Bench of Tribunal including the present O.A. filed by the applicant, in which notices were issued and interim orders were passed.

5. Learned counsel for the applicant pressed the grounds taken in paragraph no.5 (1) to paragraph no.5(7) of the O.A. and submitted that the applicant is trained apprentice from 509 Army Base Workshop so he is entitled for weightage in appointment. The applicant being a trained apprentice is not required to undergo any written examination in view of decision of Hon'ble Supreme Court in U.P.S.R.T.C. case (supra). Learned counsel for the applicant invited our attention on paragraph no.4.49 to 4.67 and submitted that some candidates who have not qualified apprentice training in Instrument Mechanic, were appointed in the trade of Instrument Mechanic. Moreover some candidates who have passed apprenticeship in different trades have been appointed in pursuance of the written examination and interview held in January, February 1997. These paragraphs of the O.A. have not been controverted by the respondents in their counter affidavit so they are deemed to be admitted. Learned counsel finally submitted that applicants were exempted from the written examination till the circular dated 14.05.1998 came into existence and in view of the



Judgment of Hon'ble Supreme Court, the applicant is entitled for the relief claimed in this O.A.

6. On the other hand learned counsel for the respondents invited our attention on paragraph C of short counter affidavit and submitted that as per recruitment rules candidates for direct recruitment are subjected to undergo trade test/written examination. Accordingly, the programme of the same was placed on notice board of this unit. The trade test/written examination followed by practical test and viva voce were scheduled to be held on 25, 26 and 27 February 1997. The applicant appeared in the said examination but he failed so he could not find place in the merit list for selection. Learned counsel further submitted that this controversy had been resolved in the bunch of O.A. in the ratio of landmark Judgment of the Apex Court in U.P.S.R.T.C. and others (supra) by order dated 10.11.1998, filed as annexure CA-6. Learned counsel for the respondents further submitted that by letter no.B/03251/BME Civ-2/379/C/98/D(O-II) dated 14<sup>th</sup> May 1998, the exemption from written examination has been waived off. Learned counsel for the respondents placed reliance on the case of U.P. Rajya Vidyut Parishad Welfare Association and others Vs. State of U.P. and another J.T. 2000(6) S.C. 227.

7. We have heard the learned counsel for the parties and perused the record as well as the case law cited by the counsel.

8. We have seen the letter dated 17.08.1998 filed along with short counter affidavit of the respondents referred to the Chief of Army Staff by the Under Secretary to the Government of India, in which amended para-2(e) of letter dated 14.08.1998 has been quoted, which mentions as follows:-

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"Para-2(e)

Delete the words - 'except that the trainees would not be required to appear in any written examination."

9. We have also gone through the order dated 10.11.1998 in O.A. No. 109 of 1997 along with connected matters, which has been given in the light of Judgment of Hon'ble Apex Court in U.P.S.R.T.C. Case(supra). On page 3 it has been clearly held as under:-

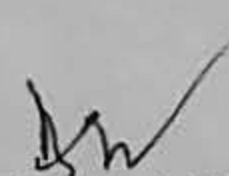
"The third criteria is that an apprentice would only be entitled to preference over a direct recruit if other things are equal. This means that an apprentice would have to compete with a direct recruit in the selection process and if both of these are found to be equal or obtain equal marks, the apprentice would be given the appointment. The apprentice shall have to participate in the selection process for this purpose which would require on the part of the apprentice to make an application as and when the post is advertised. This is necessary because candidature is voluntary. Since the recruitment process is time bound as filling up of vacancies is of utmost importance to any organization for proper functioning of that organization, the apprentices would have to adhere to the time schedule prescribed for the process. This would involve making application on or before the last date and participating in written practical and interviews as scheduled by the recruiting agency."

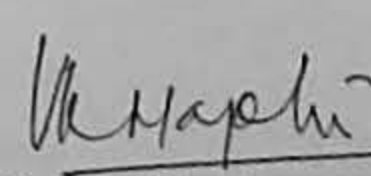
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10. We have also gone through the case of U.P. Rajya Vidyut Parishad Apprentice Welfare Association & Anr. Vs. State of Utter Pradesh & Ors. JT 2000(6) SC 227. The Hon'ble Supreme Court has held as under:-

"We are, therefore, of the opinion that the view taken in Manoj Kumar Mishra's case as also the view taken by the Full Bench in Arvind Gautam's case, (supra) is a correct one and that apprentices have to go through the procedure of examination/interview and that they are however entitled to the benefits of entries (i) to (iv) laid down in Transport Corporation Case [ (JT 1995 (2) SC 26 =1995 (2) SCC 1)]."

10. Under the facts and circumstances and in the light of Judgments cited above, we are of the view that present case is fully covered by the order of this Tribunal dated 10.11.1998, therefore, applicant in this case had to compete with direct recruitee in the selection process and if both of these were found to be equal or obtained equal marks, then the applicant would have been entitled for claiming preference in appointment. Accordingly, he had to participate in written, practical and interview as scheduled by recruitment agency. In the present case, applicant appeared but failed, so he is not entitled for any relief, claimed for in the O.A. Therefore, O.A. fails and accordingly dismissed being bereft of any merit. No order as to cost.

  
Member (J)

  
Vice Chairman

/M.M./