

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No. 638 of 1998

ALLAHABAD THIS THE 27 [✓] DAY OF SEPTEMBER. 2005.

**Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr. K. B.S. Rajan, Member-J.**

Bijay Kumar Mali, Aged about 50 years, S/o late Bir Bhandra Mali, r/o 233/4, Juhi Lal Colony, P.O. Juhi, Kanpur.

.....Applicant.

(By Advocate : Sri S. Goswami
Versus.

1. Union of India through Secretary Ministry of Labour, Secretary Labour (DGE&T), New Delhi.
2. Directorate of Apprenticeship and Training (DGE&T), New Delhi, Shram Shakti Bhawan, Rafi Marg, New Delhi.
3. Director, Advanced Training Institute, Udyog Nagar, Kanpur.
4. Sri A.K. Jana, STA (Mech), C/o Advanced Training Institute, Udyog Nagar, Kanpur.

.....Respondents.

(By Advocate : Sri J.N. Sharma.)

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BY K.B.S. RAJAN, MEMBER-J

The question involved in this case is whether the post of Senior Technical Assistant, (STA for short) which is a selection post, should be filled up by considering all the Junior Technical Assistants irrespective of trade discipline (of course within the zone of consideration) or should it be restricted to a particular trade. The applicant who belongs to Draftsmen wing with Diploma in Engineering and with certain training in Machine Tool Maintenance contends that for the post

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of STA in NC/CNC * the respondents cannot restrict the selection within Turner/Machinist/Die Maker trade but should have enlarged the same, while the respondents contend that as per the decision of the Head of NC/CNC the person best suitable would, in the order of priority be from the Turner Trade, the Machinist Trade or the Die Making Trade and as such the private respondent has been selected.

2. Facts Capsule:

(a) The applicant was inducted in the service of the Respondent in 1975 as Draughtsman Mech. In 1975 and was later on promoted as J.T.A. in August 1985. As per the provisions of the Recruitment Rules, the next promotion is S.T.A. and the conditions of promotion are as under:-

- (i) Vocational Instructors or Junior Technical Assistant or Maintenance Electrician or Store Keeper (Technical) the trade with 5 years regular service in any of these grades/posts in the unit, or
- (ii) Vocational Instructors (Drawing/ FitterGeneral/Machinist/General/Arithmetic/ visual Bid Motor Driving/Allied Trade) with 5 years regular service in any of these grades/posts in the unit, or.
- (iii) Junior Maintenance Mechanic/ Senior Draughtsman (scale 425-700) skilled worker (Scale 425-700) Photographer cum-Developer with 5 years regular service in the grades/post in the unit, or.

Note: The incumbents of the posts mentioned in item (ii) (iii) above will be considered for promotion only after the vocation Instructors who were holding the post of Senior

[Signature]

Instructors on 26.5.70 have been considered.

(b) This was subsequently amended in 1986 to include the following:-

- (i) Vocational Instructors, Junior Technical Assistant, Maintenance Electrician, Store Keeper, Film Cameraman, Visual Aid Artist with 5 years regular service in any of these grades/posts in the unit fulfilling the trade requirement, failing which,
- (ii) Persons with 7 years of combined service (regular) in the grades/posts under (i) above and grades/posts mentioned under (iii) below in the unit fulfilling trade requirements, failing which,
- (iii) Junior Maintenance Mechanic, Senior Draughtsman (Pay scale Rs. 425-700), Commercial Artist.

(c) In 1995 a new post of S.T.A was created for the NC/CNC wing and its first incumbent was selected in the same year and on his retirement, the Department sought the advice of the Head of the NC/CNC wing as to which of the trade would be most suitable for holding the post of STA. The Head of the NC/CNC unit recommended in order of priority, the trades of Turner, Machinist and Die Maker, vide noting dated 8th August, 1997 annexed as Annex 3 to MA 1079/05. On the basis of the same the Respondents conducted a DPC in which only two JTAs (one from Turner and the other from Machinist) were considered and Respondent No. 4 who was

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from Turner Trade was selected and promoted. In fact, earlier also the incumbent was from the Turner trade and the DDT (NC/CN) specifically mentioned the fact of the earlier turner Trade JTA having been found useful in his opinion dated 8th August, 1997. The same was communicated to the DPC also and the DPC had selected the respondent No. 3. The applicant being aggrieved by the non consideration of his case had moved this Tribunal.

(d) The respondents have contested the OA. According to them, the post being exclusively for NC/CNC, the opinion of the head of that unit was consulted and since Turner Trade was the first choice, the DPC selected the private respondent. The private respondent had also filed his reply justifying the selection by the DPC.

3. The question for consideration is whether the selection was as per the provisions of law.

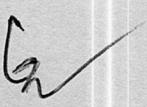
4. Arguments were heard, when the counsel for the applicant and the official respondents had made their submission. The counsel for the applicant had submitted that earlier at different stations, for selection to the post of STAs, JTS from different trades were promoted and the respondents are

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adopting pick and choose method instead of following the provisions of the Recruitment Rules. Counteracting the same, the counsel for the respondent submitted that in fact the Recruitment Rules talk of respective trade and depending upon the unit to which the post of STA has been sanctioned, persons from the particular trade were considered and promoted.

5. It is undisputed that the post of STA does not have any qualifying term such as STA(Turner) or STA (Machinist) etc., It is S.T.A. simpliciter. And the recruitment rules also do not specifically mention a particular trade. Further the post of S.T.A. is a selection post and as such, the wider the field of choice better the selection. But in so far as the case in hand is concerned, there were only two individuals considered, whereas the minimum required is at least three for one post. In this regard it would be appropriate to refer to the decision of the Apex Court in the case of **R.S. Ajara v. State of Gujarat, (1997) 3 SCC 641**, wherein it has been held as under:-

22. Similarly as regards the right to promotion it may be stated that the select list which was prepared on 24-10-1989 for the promotion on the post of Deputy Conservator of Forests and which was approved on 19-7-1990 has been rightly found to be defective by the learned Single Judge since the selection was to be made for 15 posts and as per the Handbook published by the General Administration Department, Government of



Gujarat under the heading "Classification of Posts for the purpose of Promotion" 45 candidates were required to be considered from the cadre of Assistant Conservators of Forests and the Departmental Promotion Committee which prepared the select list on 24-10-1989 and considered only 23 candidates from the cadre of Assistant Conservators of Forests. The said select list was, therefore, rightly found to be invalid by the learned Single Judge.

6. Again, when the recruitment rules are silent about the particular trade, opinion of the Head of Unit NC/CNC should not have been taken into account. In fact to a pointed question to the counsel for the respondent as to whether in respect of the earlier incumbent (i.e. when the post was filled in 1995) whether such a doubt was created as to which of the trade the J.T.A. should belong, there was no assertive reply forthcoming. In other words, in 1995 the department seems to have adopted one method and in 1997 another one. This is not valid and the same affects the equality clause of the Constitution. The respondent ought to have considered all the first three of the JTAs in the combined seniority, and should have selected, subject to fulfillment of other requirements, including the qualification etc.,

7. In the end, the OA succeeds. The order dated 29-09-1997 selecting respondent No. 4 as STA in NC/CNC is quashed and set aside. The order dated

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04-08-1998 of rejection of the applicant's representation is also quashed and set aside. Respondents are directed to convene a review DPC in which the senior most JTAs from all the trades, subject to a ceiling of 3 or more as may be prescribed by the DPC be considered and the one who is most suitable be promoted as S.T.A. It is made clear that till the final selection is made, respondents shall not revert the private respondent from the said post. Time limit calendared for compliance is eight months from the date of communication of this order. No cost.



MEMBER-J



MEMBER-A

GIRISH/-