



RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.623 of 1986 (T)

(C.A. No.226 of 1983)

Ahtisham Alam Gauri..... Plaintiff Appellant

Versus

Union of India & Another Defendants Respondents

Hon.Ajay Johri, A.M.

Hon.G.S. Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

Appeal No. 226 of 1983 A.A.Gauri Versus Union of India has been received from the Court of District Judge Jhansi under Section 29 of the Administrative Tribunals Act 13 of 1985. The appeal is against the judgement and decree passed by Munsif IX Jhansi on 30.11.83 in Suit No. 392 of 1982 dismissing the suit. The plaintiff appellant A.A.Gauri (Appellant) was engaged as a Trade Apprentice under the Apprentices Act, 1961 in the Central Railway Workshop at Jhansi. After completing his training he was awarded the National Apprenticeship Certificate. According to him his counterparts were appointed as skilled Artisans on the Central Railway but his appointment was withheld. He sought relief of declaration that he was entitled ^{as to} wages as skilled Artisan with effect from 1.8.80 and a mandatory injunction directing the defendant respondents (respondents) to issue his formal appointment order. According to

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him he has been discriminated against due to some alleged misconduct which is the subject of some Head Quarter Office directions not to absorb him.

2. The defendant-respondents' (defendants) case is that the plaintiff was engaged as apprentice on 28.9.1973 under the Apprentice Act 1961 and had undergone training for three years from 28.9.1973 to 27.9.1976. He qualified for the certificate in the Trade Test in the second attempt in 1977. It is not obligatory to offer an appointment in Railway services to every apprentice who had undergone training. He did not succeed in the trade test in the first attempt, hence he was not taken. Also there were confidential directions from the Head Quarter not to absorb the plaintiff due to his misconduct. In addition, the defendants case was barred by time, by Sections 34 and 41 of the Specific Relief Act.

3. The learned Munsif had observed that it was not incumbent on the respondents to give the appellant employment after completion of the training under the Apprentices Act. The learned Munsif held that there was no relationship between the training under the Act and the giving of employment. The employer has a right to be satisfied about the proficiency to work and conduct of the apprentice apart from his training. Also the appointments depend on vacancies and the comparative merit and the respondents were the best judge of the suitability and merit of the appellant, and thus the appellant had no case.

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4. The learned counsel for the appellant has put emphasis on the alleged 'misconduct' due to which the letter issued by the Central Railway Head Quarters to the Workshop, to check on the possibility of absorption of the appellant in the skilled grade, was withdrawn. His contention was that Section 17 of the Apprentices Act, 1961 lays down the same Discipline and Appeal Rules for the appellant as for corresponding category in the workshops. Section-17 of the Apprentices Act, 1961 reads thus;

" Conduct and Discipline- In all matters of conduct and discipline the apprentices shall be governed by the rules & regulations in force in the establishment in which the apprentice is undergoing training".

Therefore, in terms of this para the appellant should have been afforded reasonable opportunity to defend, himself. There was thus violation of Article 311 of the Constitution. There was discrimination and violation of Articles 14 and 16 of the Constitution as others, similarly placed, have been employed while he was denied the same. According to him the main reason was the alleged misconduct, which has not been disclosed and for which no chance was given to the appellant to clarify his position.

5. The Apprentices Act defines an 'apprentice' as a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship. According to this Act no person is engaged as an apprentice to undergo apprenticeship in a designated trade unless a contract



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of apprenticeship has been entered and it has been registered with the Apprenticeship Adviser. This contract of apprenticeship is terminated on the expiry of the period of apprenticeship training. It is also possible for either party to a contract of app-renticeship to make an application to the Apprenticeship Adviser for the termination of the contract at any stage. The main object of the Apprentices Act, 1961 is to ensure the fullest utilization of existing facilities for training. Every apprentice undergoing apprenticeship in a designated trade is a trainee and not a worker and the provisions of law with respect to labour do not apply to or in relation to such apprentices. Every apprentice who c ompletes the period of training has to appear in a test conducted by the National Council for Training to determine his proficiency in the designated trade and there is no commitment for absorbing him or all the apprentices trained, on successful completion of their training.

6. The appellant has completed his training. He had got a certificate from the National Council for Training in vocational Trade. Having completed the training, he was no more apprentice under the Apprentices Act. The respondents had made an effort to absorb the course completed apprentices and in that background they gave appointment to some of those who had qualified in the first attempt.

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There is evidence to show that the respondents had desired to find an employment for the appellant also and with this end in view, they had written to the other workshops of their system. While this exercise was in progress a letter was issued on 13.4.1981 advising the Additional Chief Mechanical Engineer, ³Pargel³, Matunga and Jhansi Workshop that "Sri Ahtisham Alam Gauri, Ex Course completed Act Apprentice in Fitter Trade from Jhansi Workshop.... should not be appointed in Railway Service under any circumstances." It is clear that the appellant was recruited under the Apprenticeship Scheme in 1973. The period of training was about 3 years. He got his certificate in April, 1977. He was no more an apprentice under the Apprentices Act. The learned counsel for the appellant has taken a plea that the respondents have not given him employment on account of misconduct and if any misconduct has been committed by him he was covered by Section of the Apprentices Act and should have been subjected to disciplinary action under D&A Rules of the Railways before being denied appointment. From what has been said in the para above, it is clear that the appellant was no more an apprentice. He completed the apprenticeship in 1977. Therefore, he had committed some misconduct in his capacity as an outsider which was taken notice of by the defendants and on account of which the defendants were forced to cancel their letter of 27.8.1980 and brand him as not suitable to be appointed in railway service in any circumstances. There was no guarantee of absorption of the course completed act

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apprentice. We, therefore, do not agree with the contention of the learned counsel for the appellant that he should have been given employment on completion of his training. The administration had the discretion to consider the candidature of an appointee and they were fully competent and had to get themselves fully satisfied of the suitability of the candidate for employment in a service under them.

7. The contract of apprenticeship entered into on 28.9.1973 by the appellant does not in any para give any guarantee of employment on the completion of the training. As a matter of fact (page 23-8/3) in para 5 it has been said:

" It shall not be obligatory on the part of the Railway Administration to offer any employment to the apprentice on completion of the period of his apprenticeship training in their establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the Railway Administration."

Therefore, as far as the finding of the learned Munsif on this point is concerned, we do not find any force in the challenge of the appellant for setting aside the judgment on this account.

8. Reliance has been place by the learned counsel for the plaintiff on the Hon'ble Supreme Court's judgment in a case NARENDRA KUMAR and others Versus STATE OF PUNJAB and others (Civil Appeal no. 4720 of 1984) F.L.R 1985(50) S.C.,132, wherein it has been held that despite the provision contained

in sub-section(1) of Section 22 of the Apprenticeship Act, 1961 that the employer was under no obligation to offer suitable employment to the apprentice, ³ this provision was subject to the non-obstante clause in sub-section(2) of Section 22 which reads as follows:

"Notwithstanding anything in sub-section(1) where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract".

Para 4 of the observations made in this judgment reads as follows:

" This sub-section leaves no doubt that, despite the provision contained in sub-section(1), the employer is under an obligation to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training. Indeed, when such an offer is made, the apprentice on his part is bound to serve the employer in the capacity in which he was working as an apprentice."

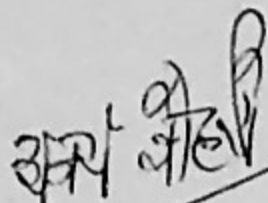
In the case of the plaintiff the contract of apprenticeship executed under the Apprenticeship Act, 1961, which is placed at paper No.23-8, does not provide for absorption as no condition similar to the one observed by the Hon'ble Supreme Court exists in the contract. We are, therefore, not inclined

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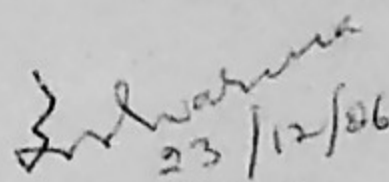
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to accept the plea taken by the learned counsel
for the plaintiff on the basis of this judgment.

9. In the result, the petition (Appeal no. 226
of 1983) is dismissed with no order as to costs.



Administrative
Member.


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Judicial
Member

RKM/ 23.12.1986