

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1397 of 1986
(Suit No. 401 of 1982).

Pradeep Kumar Pathak and
another Plaintiffs.

Vs.

Union of India Defendant.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been received by transfer from the Court of III Additional Civil Judge, Dehradun under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. According to the plaint allegations, the plaintiff no.1 was appointed as Topo Trainee Type B (Rep) (in short TTB (Rep)) on 29.1.1979 and the plaintiff no. 2 was appointed as such on 2.2.1979 in the Map Publication Directorate of Survey of India, Dehradun. Both the plaintiffs are diploma holders in Printing Technology and qualified persons in Topographical and Map Reproduction Division and were appointed on suitable positions after completion of 2 years' training and their suitability judged on the basis of trade test. On successful completion of training, the appointees are permitted to appear in trade test for grade IV, grade III and grade II. The

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plaintiff no.1 completed his training on 29.1.1981 and the plaintiff no.2 on 2.2.1981 and thereafter they became eligible for appearing in the trade test. The plaintiffs were permitted to appear in the trade test for grade IV in May 1981 and on their qualifying in the said test, they were promoted in grade IV w.e.f. 1.4.1981. It is further alleged that the plaintiffs are qualified for appearing in the trade test for grade III and grade II. The said tests were going to be held on 11.10.1982, but the department did not permit the plaintiffs to appear in the said test. They accordingly filed this suit on 6.10.1982 for a declaration that they are entitled to appear in the trade test for grade III and grade II to be held on 11.10.1982 or on any subsequent date and the order of the Directorate of Map Publication, Survey of India Dehradun debarring the plaintiffs from appearing in the said test is illegal, void and without jurisdiction and for mandatory injunction to direct the defendant to permit the plaintiffs to appear in the trade test for grade III and grade II on 11.10.1982 or on any subsequent date.

3. It was also alleged by the plaintiffs that under the similar circumstances, some diploma holders of their department had filed writ petitions no.2141 of 1981 and 4590 of 1982 in the Delhi High Court and had obtained the direction to the effect

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that the petitioners be permitted to take the examination but their results may be withheld and will not be declared till further orders from the Court. On the same analogy and parity, the plaintiff_s succeeded in obtaining a direction from the Civil Judge, Dehradun for their appearing in trade test ~~going to be~~ held on 11.10.1982 and they did appear in the trade test for grade III. Its result was, however, to be declared only under the further orders of the Court and has not been declared so far.

4. The defendant contested the suit and in the written statement filed on its behalf, it has been stated that paragraph 12 of the circular order no.435(Admn) issued by the Surveyor General of India provides the necessary rules and the procedures for trade test. According to this circular, a trainee after undergoing 2 years' training on classification is normally placed in the lowest grade applicable to his trade. An employee of grade IV has to spend 3 years in grade IV before he is eligible to appear in grade III test and likewise, an employee of grade III has to spend 2 years in that grade before becoming eligible to appear in grade II test. Further, there are 4 crucial dates, namely, January 1, April 1, July 1 and October 1 on which a trainee can be classified on initial classification but for subsequent promotion, the promotion takes effect from the 1st day of January of a particular year. The

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plaintiffs were initially classified as grade IV w.e.f 1.4.1981 and as per the period laid down in para 6(d) of circular order no.439 (Admn), they could ^{be} eligible to appear in the trade test ~~for~~ grade III only in the year 1984. So there was no question for their allowing in the trade test for grade III going to be held on 11.10.1982. The plaintiffs were not allowed to appear in the said trade test because they were not eligible to appear in the same under the rules and the stay order granted by the Delhi High Court to some other petitioners was on some other grounds and the plaintiffs were not situated in the similar circumstances and they have obtained the interim order from the trial Court wrongly.

5. Neither this suit of the plaintiffs filed in 1982 nor the two writ petitions filed by their colleagues in the Delhi High Court in 1981 and 1982 could be decided before the Central Administrative Tribunal was established. The present suit has come before us by operation of law while the two writ petitions aforesaid stood transferred to the Principal Bench of the Central Administrative Tribunal at Delhi and they were finally disposed of by a single order on 25.11.1986. A copy of the said order has been produced before us on behalf of the plaintiffs and it has been contended that on the same grounds, this Tribunal should direct the defendant to declare the result of their trade test held on 11.10.1982.

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No other point was raised or pressed on behalf of the plaintiffs before us. We will however, like to add that the plaintiffs had prepared an application along with an affidavit, which was filed before us containing the prayer that the respondents be directed to declare the result of the trade test held on 11.10.1982. On our query, the prayer from the application was scored out and it was requested to be read as ^u resume of the case for the sake of our convenience. We will ~~however~~, like to point out that the affidavit in this case has been filed by the plaintiff no.1 Pradeep Kumar Pathak wrongly stating in para 1 that he is the sole applicant in this case. Any way, we are ignoring the application and affidavit and propose to decide the case on merits.

6. Sri K.C.Sinha appearing for the defendant had seen the copy of the judgment of the Principal Bench on which the reliance has been placed on behalf of the plaintiffs and it was contended by him that the facts of the two cases are not similar and the suitable orders may be passed in the case. We will now like to trace the relevant rules of promotion and trade test of the service of the plaintiffs.

It is not in dispute that after initial appointment } there is a training for 2 years and after the training, the trainees are allowed to appear in the trade test. Formerly, the exceptionally qualified

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trainees had an opportunity to jump to grade III on the basis of the trade test and it was not necessary that they should be appointed in the lowest grade IV in the beginning. Thereafter, for further promotion, further trade tests have been prescribed.

7. The copy of the order of the Principal Bench in writ petition nos. 2141 of 1982 and 2325 of 1982 goes to show that the petitioners in those writ petitions were treated as exceptionally qualified and were allowed to appear for grades III and IV trade tests simultaneously but the result of grade IV alone was announced and the result of grade III was withheld. They had filed the writ petitions for directing the respondents to declare the result of grade ^{III} trade tests with consequential reliefs arising from the declaration of the result. The writ petitions were contested and the main defence of the respondents in those cases was that the policy of allowing the trainees ^{to appear} in trade test for grades III and IV simultaneously has been discontinued and the petitioners were not entitled to appear in the trade test for grade III before passing the trade test for grade IV. The petitioners obtained an interim direction to announce the result of grade III test from the Delhi High Court and on the declaration of the result, they were found successful and they further sought a direction from the Delhi High Court directing the respondents to allow the petitioners

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to appear in grade II test subject to the condition that the result of the said test would be withheld until further orders of the Court. Even the result of trade test for grade II was subsequently announced and the petitioners were found to have qualified in the same. Under these circumstances, the question for determination before the Principal Bench was whether the petitioners could be allowed to have the benefit of passing grade III examination.

8. After considering the contentions of both the parties, the Principal Bench held that as the petitioners were entitled to be considered straightway to grade III, they were permitted to appear in the trade test for grade III and as such, there could be no reason to deprive them of the benefit of their passing the trade test for grade III. The petitioners were allowed to appear in the trade test for grade III before the change in the policy and it was accordingly held that they were entitled to be considered for a direction to induct them in grade III on the basis of their success in trade test held in 1981. Regarding the benefit accruing from their passing the trade test for grade II, it was held that all consequential benefits flowing out of the direct induction of the petitioners in grade III will be given to them.

9. The above discussion shows that the facts in the two writ petitions decided by the Principal Bench were not similar to the facts in the suit before us. In those writ petitions all the petitioners were allowed to appear in the trade test for grade IV and grade III simultaneously^{by the department itself} and on that ground, the Principal Bench had taken the view that if the petitioners were not entitled to be considered straightway to grade III, they could not be permitted to appear in grade III test and on being allowed to appear in the test, there was no reason to deprive them of the benefit of passing the same. In the present case, the specific case of the defendant is that as the plaintiffs were not entitled to appear in the trade test for grade III before completion of three years, they were rightly refused to appear in the test going to be held on 11.10.1982. The decision of the Principal Bench has, therefore, no application to the case of the plaintiffs.

10. It has been stated in paragraphs 23 and 24 of the written statement by the defendant that according to the circular order no.439 (Admn.), an employee of grade IV has to spend 3 years in that grade before becoming eligible to appear in grade III trade test and the plaintiffs would become eligible to appear in the trade test for grade III only in 1984. Though no party has cared to file the relevant circular order on record, it appears from the record that the plaintiffs had ^{moved} an application before the trial Court for declaring their result of the trade test for grade III in which they were allowed to appear under

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its orders and on their failing to pass the said test, the permission was sought to appear in another trade test going to be held on 6.9.1983 . This application was rejected by the trial Court on 26.9.1983 with the observation that the rights of the plaintiffs are to be decided in the present suit and if they had a right to appear in the examination, only then, they are entitled for the declaration of the result and without determining the rights of the plaintiffs, the result could not be declared. It was further observed that the plaintiffs could not be permitted to take relief as and when necessary to suit~~y~~ their purpose. The plaintiffs did not go in appeal or revision against that order and we perfectly agree with the view taken by the learned Civil Judge in this connection. The plaintiffs can get the result declared only on proving their right to appear in the trade test held on 11.10.1982.

11. As the only hitch expressed on behalf of the defendant in its written statement in allowing the plaintiffs to appear in the trade test in grade III on 11.10.1982 was that before 1984, they were not entitled to appear in such test. Nothing further has been brought to our notice in this connection. It has ^{not} also been contended that in the meantime, the rules have been changed or the trade test held on 11.10.1982 was of a different type ^{than} and the trade test in which the

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plaintiffs could appear after completing their stay of 3 years in grade IV. We, therefore, feel that though the plaintiffs have failed to prove by any material on record that on 11.10.82 they were entitled to appear in the trade test for grade III, the period of 3 years has expired in the meantime and the result of the trade test in which they had appeared under the permission of the trial Court should be declared now. It is, however, clarified that in case the plaintiffs are found successful in the said test, they will have no right to claim any benefit of their passing the same before the due date according to circular order no.439 (Admn.).

12. The suit is disposed of accordingly without any order as to costs.

Sharma
31.3.87
21.3.1987
MEMBER (A)

Sharma
31.3.1987
MEMBER (J)

Dated 30.3.1987
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