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THE CENTRAL ADMINISTRATIVE TRIBUNAL-ALLAHABAD BENCH-ALLAHABAD.

O.A. NO. 710/87.

K.K. Barua and others..... Applicants.

Versus

Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C. Srivastava-U.C.
Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr. K. Obayya - A.M.)

This application under Section 19 of the Administrative Tribunal's Act 1985 has been filed for direction to the respondents to designate the applicants as Machinists-B and to grant all consequential benefits of pay, seniority etc. from the date of the initial appointment as Labourer - B in the Ordinance Equipment Factory Kanpur.

2. The case of the applicants is that their names were sponsored by the Employment Exchange for the post of Machinist-B in the Ordinance Equipment Factory, Kanpur. They appeared at the trade test and interview held during the year 1980 and on the basis of their selection, they were given employment on different dates between 19.5.90 to 14.7.90. According to them at the time of initial appointment, they were told that to start with they would be designated as Labourer - B after working for 89 days, they would be adjusted as Machinist - B. On this assurance they joined as Labourer - B. Though they have been ~~xxx~~ performing the duties of Machinist. The Management failed to honour their commitment, and they are kept on as Labourer-B only. They made presentations to the management in this regard, but these representations were rejected.

3. The respondents contested the case by filing a counter affidavit in which, while it is admitted that applicants along with other candidates sponsored by Employment Exchange appeared for the interview and trade-test, but more of them failed to qualify, as they were found not suitable for the posts of Machinist-B, they were offered the posts of Labourer - B, as

there was need for these posts. The applicants accepted the offer and thereafter they were appointed as Labourer - B. The respondents deny that applicants were found suitable at the Trade-Test for the post of Machinist. It is also denied that there was any commitment given to the applicants that they would be treated as Machinist-B. The appointment letters clearly indicated the terms and conditions, and the service of the applicants were liable to be terminated after 89 days. Only such candidates who accepted these terms and conditions were asked to report for duty. The applicants joined duties willingly accepting above terms and conditions and in due course, they were absorbed on regular basis as Labourer-B.

4. In the rejoinder it is stated that the names of the applicants were sent for the post of Machinists for which they were found suitable and appointed.

5. We have heard the learned counsel for the parties. We have carefully gone through the record. The appointment order and conditions thereon indicate clearly that the appointment was offered to the applicants as Labourer-B in a Casual capacity for a period not exceeding 89 days. The appointment was liable for termination at any time during the period without any notice. The terms further stipulate that the offer of appointment will stand automatically cancelled, if the candidates do not report for duty within three days by accepting the terms and conditions. From this it is evident that the applicants were appointed only as Labourer - B and not Machinist. In the circumstances we hold that the offer of appointment was only on the post of Labourer-B and the applicants were required to join their duty only in case they were accepting the terms and conditions of appointment.

6. The learned counsel for the respondents referred to the cases of Vijay Kumar Bhatnagar Versus Union of India

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(T.A. No. 1148 of 1986), O.A. No. 488 of 1987 Ram Kumar Sharma Versus Union of India and T.A. No. 1111 of 1986 Ram Sunath Singh Versus Union of India decided by the Allahabad Bench of the Tribunal. In one case T.A. 1148 of 1986, the bench ^{constituted} ~~constituted~~ of one of us (Hon'ble Mr. K. Dayya). In all the above cases the issue involved was the same as in the instant case. The applicants there also appeared for the interview for the post of Machinist-B, but they were posted as Labourer-B, and their claim that their selection was to the post of Machinist-B and accordingly they should be deemed to be appointed to the post of Machinist-B, was rejected and the cases dismissed on the ground that the terms and conditions of appointment clearly indicated their appointment to only as Labourer-B and not Machinist-B. The same is the position in this case. The applicants whose appointments were as Labourer-B have no right to the post of Machinist-B which is a selection post without passing of the prescribed Trade-test. They will acquire eligibility for promotion only after passing the trade-test and Empanelment in selection in their turn and not earlier. The application is without any merit and liable to be dismissed and accordingly it is dismissed with no order as to the costs.

Member (A).

Dt: July 7, 1992.

(DPS)

Vice Chairman.