

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * * *

Allahabad ; Dated this 7th day of June, 1996
Misc. Contempt Case No. 13 of 1995

IN

Original Application No. 1677 of 1992

District : Allahabad

1. Santosh Kumar Dube son of Sri K.C. Dubey
2. Dinesh Kumar Shukla son of Sri Chhedi Lal Shukla.
3. Arvind Kumar Chauhan son of Sri G.S. Chauhan.
4. Firoj Azhar Hasmi son of Sri Azhar Husain Hashmi.
5. Awadhesh Kumar son of Sri Ramesh Chanera.
6. Surendra Kumar son of Sri Nannoo Mal.
7. Sanjai Kumar Mathur son of Late R.N. Mathur.
8. Rakesh Kumar Malviya son of Sri Babu Lal.
9. Mansoor Alam Ansari son of Sri Gulam Mustafa.
10. Aloston Ross Son of Sri Krishna Shah. *W.L. Terence Ross*
11. *W.L. 23/7/96* Shyam Lishore Shah son of Sri Krishna Shah *W.L. 23/7/96*
12. Mahesh Prasad son of Chhatoo Ram.
13. Ganesh Kumar Sahu son of Ram Chandra Sahu.

All C/o Arvind Kumar Chauhan

R/o Kothi No. 88-CD, Loco Colony,

Northern Railway, Allahabad.

(By Sri O.P. Singh, Advocate)

. Applicants

Versus

1. Sri L.K. Sinha, General Manager,
Northern Railway, Baroda House, New Delhi.
2. Sri A.K. Jain, Divisional Railway Manager,
Northern Railway, Allahabad.

(By Sri BB Paul, Advocate)

. Respondents

W.L.

By Hon'ble Mr. S. Das Gupta, A.M.

This contempt application was filed ~~alleging~~ alleging non-compliance with the direction contained in the order dated 27-6-1994 by which OA No. 1677/92 was disposed of by us.

2. The applicants in the aforesaid OA were apprentice trainees in the Electrical Loco Shed Kanpur. They successfully completed apprenticeship and also passed prescribed trade test on conclusion of their training. They were, however, not given appointment by the respondents. It was stated that even recommendation made by respondent no.2 for appointing the applicants as substitute Khalasis on available vacancy was not acted upon by respondent no.1. In our order dated 27-6-1994, we directed the respondents to take appropriate decision on the recommendations of respondent no.2 to appoint the applicants as substitute Khalasis and also to take steps for filling up of 25% of the vacancies by direct recruitment at the earliest, Keeping in view the fact that in accordance with the orders of the Railway Board, the apprentice trainees of the Railways were ^{eligible} ~~unable~~ to appear for selection alongwith the open market candidates for the 25% of the vacancies in the skilled category.

3. In the contempt application, it was alleged that despite the copy of the Tribunal's ^{order} having been furnished to the respondents and repeated representations from the applicants including personal approaches to respondent no.1 and 2, no action was taken by the respondents to comply with the Tribunal's orders. The contempt

W.P.

proceedings were, therefore, initiated and notices were issued to the respondents.

4. The respondent No.2 filed a counter affidavit stating that another counter reply giving full details of the case was being filed by Sri R.C. Srivastava, DPO, Northern Railway and it was prayed that the said affidavit be referred to for the purposes of the present controversy. It was also submitted therein that if after going through the submissions made in the counter reply filed by Sri R.C. Srivastava, the Tribunal still feels that there has been any wilful disobedience of the orders passed by the Tribunal, he tendered unconditional apology for the same.

5. In the counter reply filed by Sri R.C. Srivastava, it was submitted that none of the applicants was sent for training for the post of substitute Khalasis. However, on receipt of the copy of the Tribunal's orders dated 27.6.1994, the respondents considered the case of the applicants and a reply was issued to them by letter dated 31-1-1995 followed by another letter dated 24-2-1995. It was submitted that by issue of the said letter, copies of which were placed at Annexures-1 and 2 to the aforesaid counter reply, the direction of the Tribunal has been fully complied with. A perusal of the letter dated 31-1-1995, however, reveals that it merely stated that the matter had already been considered by the General Manager in the PNM and, therefore, it did not require being referred again. In the letter dated 24-2-1995, it was stated that there was no obligation on the part of the Railways to provide jobs to the trainees. They can be

who

considered for appointment as skilled Grade-III against 25% quota from open market alongwith other candidates and that at present no post was being filled from open market. It was further stated that ~~in fact it made~~ whenever any selection in the Electrical Shed of Allahabad Division is conducted from the open market against 25% quota, the applicants should also be allowed to be considered for selection.

6. The aforesaid letters clearly failed in implementing the direction of the Tribunal. There was no mention of the directions regarding consideration of the recommendations of respondent no.2 for appointment of the applicants as substitute Khalasis. In fact, the letter dated 31-1-1995 verged on disobedience of the Tribunal's orders since it was mentioned therein that the matter having been considered in the past, no further consideration was necessary.

7. In a supplementary affidavit filed by Sri Sheo Pujan Prasad, DPO, it was submitted that in the earlier counter affidavit, the respondents had omitted inadvertently to place on record the order of the General Manager, Northern Railway, whereby it had been decided to follow the earlier rules for direction on the matters. A copy of the said order of the General Manager, Northern Railway dated 20-10-1994 was placed as Annexure-1 to this supplementary affidavit.

8. The aforesaid letter dated 20-10-1994 stated that in conformity with the directions given by the Tribunal regarding filling of 25% of the skilled posts, the number of posts available in the Division and also

Wf

the instructions issued by office of the General Manager, further action should be taken by respondent no.2. Clearly this letter also fell short of compliance with the Tribunal's directions. The respondents were given further time to make appropriate submissions in this regard.

9. Thereafter a supplementary counter affidavit was filed also by Sri Sheo Pujan Prasad annexing copy of a letter dated 30-1-1996, in which it has been only stated that it has been decided not to give the applicants appointments as substitute Khalasis in the Electrical Shed Allahabad as they were taken as trainees under the Act, 1961. The direction of the Tribunal has two parts. In the first part, a direction was given that the recommendations of respondent no.2 made in 1991 for appointment of the applicants as substitute Khalasi should be considered and appropriate decision taken. After considerable beating around the bush respondents have now come out with this letter dated 30-1-1996 in which the office of the General Manager has decided that the applicants shall not be appointed as substitute Khalasis. It is not at all clear to us why this decision could not have been taken much earlier, when our direction did not make it mandatory for the respondents to appoint the applicants as substitute Khalasis but merely to take a decision in this regard made by the then Divisional Railway Manager. It would appear that the respondents have all along been skating on thin ice having come perilously close to making themselves prone to be punished for wilful disobedience to the Tribunal's orders.

W.C.

10. The second part of the Tribunal's orders directed the respondents to take appropriate steps for filling 25% direct recruitment posts at the earliest. The respondents have stated that they are not going to fill these posts at present but whenever they do so, the applicants shall also be considered alongwith others. Whether or not the available vacancies should be filled, is basically an executive decision. We do not want to force the respondents to fill such vacancies. However, it would be appropriate that we point out to the respondents that a similar controversy recently received the attention of the Hon'ble Supreme Court in ~~which~~ the case of U.P. State Road Transport Corporation Vs. U.P. Paribahan Nigam Shishukhs Beroigar Sangh (1995) II SCC 1. In this case, the Hon'ble Supreme Court had directed that the following should be kept in mind while dealing with the claim of the trainees to get employment after successful completion of their training:-

"(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India V. N.Hargopal would permit this.


(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

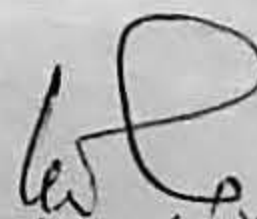
(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

W.C.

11. In conclusion, we must observe that the respondents in this case have not exactly covered themselves with glory in dealing with this matter. The directions given by the Tribunal were unambiguous and straightforward. Had there been any difficulty in implementing these directions, the respondents could have filed an appeal before the Hon'ble Supreme Court. Neither that was done nor were the directions implemented with reasonable expedition. We direct that the entire records of the case be placed before the Railway Board for perusal and for proper action so that there is no repetition of such instances in future.

12. With the above observation the contempt proceedings are dropped. Notices issued are discharged.


Member (J)


Member (A)

Dube/