

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 5th day of February, 1999

DURAM :-

Hon'ble Mr. S. Layal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

1. Original Application No.849/1998

District : Kanpur

Kamlesh Chandra Shukla
S/o Sri Subedar Shukla
R/o Z-1/147, Hemant Vihar Barra-2,
Kanpur.

(Sri S.D. Singh, Advocate)

..... Applicant

Versus

1. Union of India through the Secretary
Ministry of Defence, New Delhi.
2. Director General,
Ordnance Factories,
Government of India, Ministry of
Defence Production, 10-A, Auckland Road,
Calcutta-700001.
3. General Manager,
Ordnance Factory, Kanpur.

(Sri Prashant Mathur, Advocate)

..... Respondents

A N D

2. Original Application No.278/1995

District : Kanpur

1. Naval Kishore Singh
S/o Sri Kanchan Singh
R/o G-1/99, Armapur Estate, Kanpur
2. Ram Kishore Shukla
S/o Sri Ram Narain Shukla,
R/o 127/263, W-1, Saket Nagar,
Kanpur.

(Sri S.D. Singh, Advocate)

..... Applicant

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.

2. Director General, Ordnance Factories, Government of India, Ministry of Defence Production, 10-A, Auckland Road, Calcutta-700001.
3. General Manager, Ordnance Factory, Kanpur.

(Sri Amit Sthalekar, Advocate)

... . Respondents

AND

III. Original Application No. 856 of 1997

District : Kanpur

1. Ramesh S/o Sri Vasudeo R/o 187/7, Vijay Nagar, Kanpur.
2. Rajendra Prasad Yadav, S/o Sri Harihar Narh R/o G-1/264, Armapur, Kanpur

(Sri S. N. Singh, Advocate).

... . Applicant

versus

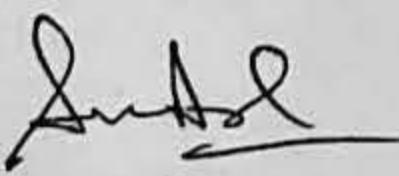
1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Director General, Ordnance Factories, Government of India, Ministry of Defence, Production, 10-A, Auckland Road, Calcutta-700001.
3. General Manager, Ordnance Factory, Kanpur.

(Sri Prashant Mathur, Advocate)

... . Respondent

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M.


The prayer of the applicant in all these OAs is to direct the respondents to give appointment to the applicants against the existing vacancies in the respective trades in Ordnance Factory or any other sister Factory.

2. The facts of these OAs are identical and similar. Therefore, we decide all these OAs by one single and common order.

3. The facts of these OAs in brief as stated by the applicants are that the applicants of OA No. 278/1995 - Naval Kishore Singh and Sri Ram Kishore Shukla have completed three years apprentice course in the trade of Fitter and Turner in the year 1983. The applicant of OA No. 856/1997 Ramesh has completed three years apprentice course in Wright Machine (Maintenance) and Sri Rajendra Prasad Yadav has completed apprentice course as Turner. The applicant of OA No. 849/98 - Kamlesh Chandra Shukla has completed three years course as Turner in the year 1983.

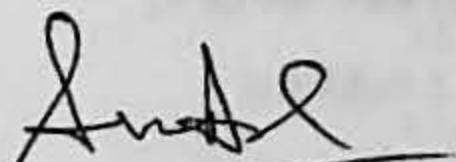
4. The applicant of OA No. 278/1995 and the applicant of OA No. 856/1994 appeared in the selection test and interview/viva voce in the year, 1986 but because of the ban imposed by the Central Government on new appointments, the applicants were not appointed. In the year, 1995 the Government of India lifted the ban partially and invited applications but instead of giving appointment to apprentice, invited names from Employment Exchange. It is also stated that in U.P. State Roadways Transport Corporation Vs. U.P. Paribahan Nigam Shikshak Barojgar Sangh, the law laid down by the Apex Court about apprentice and the GOI Min.of Def vide letter dated 14-5-1996 also issued instructions to comply with the judgement of the Hon'ble Supreme Court. It is stated further that the respondents have invited applications for the selection but the applicants were not invited for the selection and juniors to the applicants were invited for selection. It is also stated by the applicants that they have completed successfully the selection held in 1986. Now they have become overage.

Ansible

If they are not appointed they will suffer irreparable injury. Therefore, the applicants of all the above OAs sought the relief as prayed for.

5. A counter affidavit was filed. It is stated that as per direction, after successful training, no employment guarantee was given to the applicants. It is admitted that out of 72 ex trade apprentice 71 were found fit for government job but Govt. of India imposed complete ban on fresh recruitment. Therefore, the applicants could not be provided employment and consequently entire list was cancelled vide letter dated 8-9-1992. It is stated that for 10 sanctioned vacancies for semi-skilled grade 8 vacancies were earmarked for Grinder Trade and 2 for operating NC/CNC Machines and persons having experience in the Grinder Trade were called for test/interview and applicants who were having experience/training in Fitter/Operating Trade other than the required trade were not eligible for the appointment. Hence they were not called for. It is further stated in the counter affidavit that merely on the basis of Intermediate Examination passed by the applicants, the applicants cannot seek appointment in respondent's Factory and it was not obligatory on the part of respondents to offer appointment to ex-trainees selected during the year 1986 and there is no admission by the respondents as such. It is also stated that maximum age limit for the appointment on semi-skilled grade as per latest SRO is 30 years relaxable as per Rules and the present petition is devoid of any merit. Therefore application is liable to be dismissed as such.

6. A rejoinder affidavit was also filed reiterating the facts as stated in the OA.

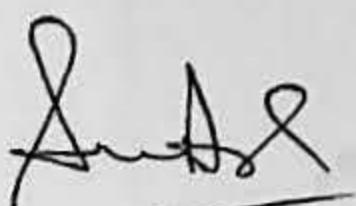


7. Heard learned counsel for the applicants and learned counsel for the respondents and perused the whole record carefully.

8. vide order dated 31-3-1998, this Tribunal issued an order to direct the respondents to consider the applicants against the vacancies and not to declare the results till the judgement is pronounced.

9. As regards the contention of the applicants for giving appointment on the basis of selection in the year, 1986 is concerned, Sri Kamlesh Chandra Sharma, the applicant in OA No.84998 did not participate in the said selection test. It is an admitted position that the applicants of OA No.278 of 1995 and the applicant of OA No.856/1997 appeared in the selection test in the year, 1986 and were declared successful but because of the ban imposed by the Central Government on new appointment the applicants were not given appointment and after waiting for pretty long period the entire selection list was cancelled by the letter dated 18-9-1992.

10. It is settled principle of law that merely by having a name in the selection list/panel, the person concerned does not get a right of appointment. In State of Bihar & Ors. Vs. Secretariat Asst. Successful Examinees Union 1986 & Ors. (1994) 1 SSC 126, Hon'ble Supreme Court held that a person having been selected, does not, on account of being empanelled alone, acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for purposes of appointment and by itself does not amount to selection or creating right to be appointed unless relevant rules stated to the contrary.

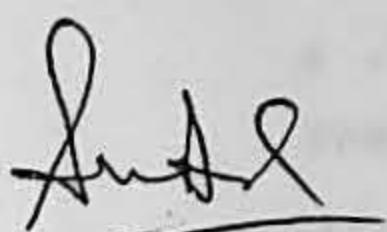


11. In *Shankarsan Dash Vs. UOI J. I.* 1993 SC P.380, it was held that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.

12. In *Ashok Kumar Sharma Vs. UOI & Ors*, OA No.139/1992 decided on 12-11-1997 by Allahabad Bench, it was held that if a person is selected after going through the process of appointment and could not be appointed because of ban on fresh recruitment and non-appointment does not lack bonafides it is in no manner arbitrary and the applicant cannot claim appointment as a matter of right.

13. In *U.P. State Transport Corp Vs. U.P. Parivahan Nigam Shikshak Berojgar Sangh*, (1995), 2 SCJ P.1, it was held by the Hon'ble Supreme Court that :-

- (i) other things being equal, a trained apprentice should be given preference over direct recruits.
- (ii) for this, trainee would not be required to get his name sponsored by any Employment Exchange.
- (iii) 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 rules concerned. If service rules are silent on this aspect, the relaxation to the extent of period for which the apprentice has gone



training would be given.

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

14. If we consider the instant cases on the basis of the law laid down by the Hon'ble Supreme Court for this purpose, it appears that in the instant case the list of selected candidates was cancelled after waiting for pretty long time in the year, 1992. Therefore, there could not be any lack of bonafides on the part of the respondents. Hence, the applicants did not acquire any indefeasible right to be appointed on the posts on the basis of selection made in the year, 1986.

15. It is also clear from the pleadings of the parties that at the time of apprentice training, applicants were not given guarantee for the employment and they can seek protection only on the basis of the law laid down by the Hon'ble Supreme Court in U.P. State Transport Corpn (Supra). In view of the law laid down by the Hon'ble Supreme Court in this respect, we are of the opinion that the applicants have no case and all these OA Nos. 849/98, 278/95 and 856/97 are liable to be dismissed.

16. We, therefore, dismiss OA Nos. 849/98, 278/95 and 856/97 and vacate the interim order dated 4-3-1998.

17. There shall be no order as to costs.

Prepared By:

V.W

12/2/99

Sd/-
Member(T)

Sd/-
Member(A)