

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 943 of 1995

Allahabad this the 31st day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)
Hon'ble Mr. S.L. Jain, Member (J)

Anoj Shukla, son of Sri Ganesh Prasad Shukla, resident
of A/1/18, Gaighat, Varanasi.

Applicant

By Advocate Sri G.D. Mukherjee

Versus

1. The Union of India through the Chairman, Rail Bhawan, New Delhi.
2. The General Manager, Diesel and Locomotive Works, Varanasi.
3. The Honorary General Secretary, D.L.W. Sports Association, Varanasi.

Respondents

By Advocate Sri Amit Sthalekar

ORDER

By Hon'ble Mr. D.S. Baweja, Member (A)

This application has been filed with the prayer to direct the respondents to issue appointment letter to the applicant. The applicant was selected as Act Apprentice under the Apprentice Act, 1961 for undergoing 3 years of training from 25.6.91 to 24.6.94 in Diesel Locomotive Works (for short D.L.W.), Varanasi. The applicant claims that he is an outstanding cricket

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(1)

player and the respondents have been utilizing services of the applicant to play in various local as well as inter-railway cricket tournaments. The applicant claims that he has been treated as a regular employee appointed as Machinist w.e.f. 25.6.91 and on this basis the applicant ^{could} play in inter-railway cricket tournaments where only regular employees are eligible to participate. The applicant also submits that he has been sanctioned special casual leave for participating in various tournaments which is admissible only to the regular employees. However, the respondents have not given the appointment on regular basis and being aggrieved by the same, the present application has been filed on 12.9.95.

2. Through the amendment application, the applicant has brought on record the additional averments with regard to the selection conducted in the year 1995 through which 3 persons have been appointed against the sports quota and the applicant alleges that although the services of the applicant were utilised for playing cricket in various tournaments, he was not called for ^{given} the selection and appointment.

3. The respondents have filed counter-affidavit strongly contesting the averments of the applicant. The respondents refute the contention of the applicant that he was ~~regularly~~ appointed as Machinist on 25.6.91 on a regular basis. The respondents further submit that the applicant was selected as an Act Apprentice for training for a period of 3 years in D.L.W., Varanasi and the applicant was allowed to take part in extra curricular activities including sports alongwith the

regular employees as a part of training and development of the personality of the Apprentices. This participation in sport does not give any right of being regular employee. As regard the sanction of the special casual leave, the respondents submit that the applicant was allowed to participate in the various events, treating his absence during the training period as a part of training and no special casual leave was sanctioned to him. The respondents further contend that as per the provisions of the Apprentices Act, 1961, there was no promise made to him for giving appointment on completion of training. The applicant had made a representation on 06.3.95 followed by a representation of his wife on 10.4.95 for appointment of the applicant on sports quota for the game of cricket. The trial was scheduled to be held on 28.6.95 and 29.6.95. The applicant was given an intimation by sending a letter dated 10.6.95 under certificate of posting. Twenty nine cricket players participated in the trial on 28.7.95 but the applicant did not attend the same. In spite of reasonable opportunity-- being given to the applicant for selection, the applicant did not avail the same. Keeping these facts in view, the respondents plead that there is no prima-facie case and the present O.A. deserves to be dismissed.

4. The applicant has filed the rejoinder-affidavit controverting the pleadings of the respondents and re-affirming his averments made in the O.A. The applicant denies ^{receiving} of any intimation with regard to trial test which was proposed to be conducted on 28.6.95 and 29.6.95.

2. We have heard Sri Siddhartha Srivastava proxy counsel to Sri G.D. Mukherjee, counsel for the applicant and Sri Amit Sthalekar, counsel for the respondents. The material brought on record has also carefully gone into.

6. The thrust of the averments made by the applicant is that the applicant had been participating in the various local as well as inter-railway cricket tournaments on behalf of D.L.W. wherein he could participate only if he was a regular employee. The applicant relying upon the letter dated 24.2.93, asserts that the applicant is shown as regularly appointed as a Machinist from 25.6.91 while issuing the certificate for inter-railway cricket championship. Considering the facts of the case as brought out by the respondents in the counter-affidavit and by the applicant, the contention of the applicant is not tenable. It is admitted fact that the applicant was selected as an Act Apprentice to undergo 3 years of training in D.L.W. commencing from 25.6.91. There is also no denial from the facts that the applicant has been participating in the cricket tournaments including inter-railway. The respondents have explained that Act Apprentices have been permitted to participate in the extra-curricular activities including sports. The applicant was accordingly allowed to play in the various tournaments. The respondents have also stated that the applicant was allowed to play in the tournaments during the training period treating the absence as a part of training and no special casual leave was sanctioned. Once it is

admitted that the applicant was only an Act Apprentice in D.I.W. during the period under reference, the plea of the applicant that he has been considered as a regular employee on various surmises and conjunctures is not sustainable. Even if the applicant had been allowed to play in the inter-railway cricket tournaments for which the regular employees are eligible, this irregularity may call for disqualifying of the team or of the player ~~at~~ but does not give any right to the applicant that he becomes a regular employee of the organisation. The applicant has brought out that in the letter dated 11.2.93 at A-3, he has been shown as a Machinist while ^{we find} in the other documents brought by the applicant himself on record, he has been shown as an Apprentice Fitter. Keeping these aspects in view, we are unable to find any merit in the contention of the applicant that he was deemed to a regular employee as a Machinist and has been denied the appointment.

7. The respondents have brought out that the recruitment of the Sportsmen against the sports quota is to be made as per the instructions of the Railway Board in the letter dated 25.5.90 at ann.R-2 to the counter-affidavit. The applicant has not brought out that he was subjected to the selection process for sports quota. In the absence of any selection, the applicant cannot claim for being appointed against the sports quota.

8. The applicant has pleaded that appointment to 3 sports persons has been given in the year 1995 and the applicant has not been called for appointment,

even though he has been playing for D.L.W. for more than 3 years. The respondents have contended that the applicant was advised of the proposed selection trial and the letter was also sent on 16.6.95 for which necessary documentary evidence by way of certificate of posting, has been brought on record. The applicant has denied of having received any intimation in the rejoinder-affidavit. The applicant has, however, not brought on record any material to support his contention. From the facts brought out by the respondents, 29 persons participated in the selection trial which indicates that the date of this trial was widely circulated. We are not able to understand if there was any malafide intention of the respondents in not calling the applicant for selection as the applicant has not alleged any malafide for not being called in the selection. Keeping this in view, we have no reason to disbelieve the submission of the respondents that the applicant was advised the date of selection trial. Even otherwise the applicant has not brought on record ^{to show} that it was mandatory to call the applicant individually for the proposed trial. From the annexure-5 to the counter-affidavit, it is noted that the Regional Sports Officer, Varanasi had been advised to recommend the names of the outstanding and talented cricket players for the proposed trial, which shows that wide publicity had been done and no individual intimation was required to be sent. In spite of this, the respondents have specifically sent intimation to the applicant. Therefore, the plea of the applicant that he was not called for trial, is not sustainable.

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9. Keeping in view the above deliberations,
we are unable to find any merit in the O.A. and the
same is dismissed accordingly. No order as to costs.

P. G. J.
Member (J)

A. H. J.
Member (A)

/M.M./