

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 343 of 1999

_____ day, this the 5 day of June 2007

**Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. K.S. Menon, Member (A)**

1. Mahesh Chandra Sharma, aged about 33 years, son of Shri Ram Prasad Sharma, resident of 247/12, Shastri Nagar, Kanpur.
2. Virendra Singh Pal, aged about 32 years, son of Shri Megh Singh, resident of 178/1, Shastri Nagar, Kanpur.
3. Hari Lal, aged about 38 years, son of Shri Laxman Prasad, resident of 123/159, Pratapganj, Kanpur.
4. Rajjan Lal, aged about 36 years, Son of Shri Bhagirath Ram, resident of 399/1, Faithfulganj, Kanpur.
5. Badri Prasad Nayak, aged about 37 years, son of Shri Shri Krishna, resident of 317, Loharan-ka-Bhatta, G.T. Road, Kanpur.
6. Kanhaiya Lal, aged about 38 years, son of Shri Ram Nath, resident of 132, Loharan-ka-Bhatta, G.T. Road, Kanpur.
7. Amar Nath Kumar, aged about 37 years, Son of Shri Jamuna Kumar, resident of 118/229, Kaushal-Puri, Kanpur.

Applicants

By Advocate Sri M.K. Upadhyay

Versus

1. Union of India the Secretary, Ministry of Defence, Department of Defence Production, Government of India, New Delhi.
2. Additional Director General Ordnance Factories, O.E.F. Group Head Quarters, G.T. Road, Kanpur.
3. The General Manager, Ordnance Parachute Factory, Kanpur.

Respondents

By Advocate Sri Saumitra Singh

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ORDER

By K.S. Menon, Member (A)

The present O.A. is filed by the seven applicants seeking this Tribunal to direct the respondents to appoint the applicants as Tailors in the Ordnance Parachute Factory, Kanpur, after giving age relaxation in preference to anyone else for filling up the large number of vacancies of Tailors.

2. The facts of the case to decide this O.A. are as follows: -

The applicants have experience of tailoring and were registered with the Employment Exchange. In 1985, the Ordnance Parachute Factory, Kanpur to fill up several vacancies of Tailors in the factory, requisitioned names from the Employment Exchange for Trade Test and Interview. The applicants were duly sponsored by the Employment Exchange and appeared at the Trade Test and Interview on 06.10.1985 for the post of Tailor in the grade Rs.210-290/-. They passed the trade test and cleared the interview and were informed about their selection for appointment, after which Police verification was got completed satisfactorily. Respondents, however, did not issue any appointment letter as Government had imposed a ban on recruitment. The applicants continued to approach the respondents on every occasion regarding their appointment but the respondents continued to assure them that their cases would be considered after the ban was lifted. The applicants allege that Government has issued instructions for special recruitment of persons belonging to SC & ST. Yet respondents did not consider the case of the applicants. In February/March 1999 Ordnance Parachute Factory, Kanpur received instructions for recruiting sixty tailors. Despite the applicants approaching the respondents personally no action was taken by them and the respondents are planning to recruit Tailors ignoring the cases of the applicants and hence the present O.A. is filed.


3. It appears earlier some similarly placed candidates approached this Tribunal to direct the respondents to appoint the candidates as Tailors. The Tribunal passed an order on 03.11.1992,

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directing the respondents to consider the said applicants for appointment by giving them priority over fresh candidates. The applicants contend that the Ordnance Parachute Factory is empowered to appoint them, as such they are liable to be directed by this Tribunal to give appointment to the applicant by giving them relaxation of age since it was not on account of any fault on the applicants part that appointment could not be given till now.

4. The learned counsel for the respondents confirm that the name of the applicants alongwith other names were sponsored by the Employment Exchange and that these applicants were selected on 06.10.1985 based on the Trade Test and interviews held in this connection. Police verification forms were issued to them, however, in the meantime the factory management received a letter from Ordnance Equipment Factory Board on 10.10.1985 (annexure CA-1) regarding the 'Ban on Recruitment'. Further course of action in connection with this recruitment could not be initiated and Police verification reports were not sent to the Civil Police authorities for verification. The Employment Exchange was informed by the Factory Management Board that the selection of candidates may be treated as closed vide their letter dated 24.01.1986 (annexure CA-2).

5. The respondents further contend that had the ban been lifted, the Employment Exchange would have been approached to sponsor candidates and the applicants would have been given an opportunity. Since the ban has not been lifted for a considerably long time, the applicants have not got the opportunity for which the Department cannot be held responsible as it had no control over the circumstances mentioned above. The respondents say that no recruitment of Tailors has ever been made in Ordnance Parachute Factory, Kanpur since imposition of the ban order on 10.10.1985. Respondent 3 called only Ex Trade Apprentice trained by Ordnance Parachute Factory, Kanpur who were within the prescribed age limit in pursuance of the sanction received for special recruitment of 60 tailors and no fresh person from Employment Exchange or open market has been called for interview/suitability test, hence the claim of the applicants in paragraph no. 4 (12) of the O.A. is liable to be rejected.



6. The respondents constituted a committee to look into the details of this case in compliance of orders of C.A.T. dated 03.11.1992. The Committee came to the conclusion that the applicants were over age on date and they cannot be appointed. However, based on the Addl. Standing Counsel's advice, the case was taken up with the higher authorities regarding relaxation in age in respect of the applicants vide their letter dated 07.04.1999 however Ministry of Defence turned down the proposal as communicated by Ordnance Factory Board vide their communication dated 21.04.1999. They further contend that they are bound by the guidelines spelt out by the Supreme Court of India in O.A. 4347-4354 of 1990 UPSRTC U.P. Parivahana Nigam Sishukha Berozgar Sangh and others received under Ordnance Factory Board, Calcutta letter OA 570/A/I dated 14.05.1996 (annexure CA-6). The respondents maintain that the applicants have not exhausted all departmental remedies available to them before approaching this Tribunal, besides the O.A. is very badly time barred and hence deserves to be dismissed.

7. We have heard the counsel for both parties and perused the records placed before this Court. The applicants raised a point saying that they were selected for appointment after passing the trade test and interview and police verification was complete, despite that no appointment order was issued to them.

8. From the averments of the learned counsel for the respondents, it appears that it is a fact that the applicants were selected on the basis of the trade test and interview but no Police verification was obtained as the Police verification forms were not sent for verification because the letter regarding the ban on recruitment came on 10.10.1985 i.e. 4 days after the trade test and interviews were conducted i.e. on 06.10.1985. It is also a fact that the respondents informed the Employment Exchange that the recruitment process started was being treated as closed in view of the ban order. Under these circumstances, the applicants cannot legitimately expect their cases to be alive after 14 years, after the case was closed. Applicants have also not been able to produce any documents to show that Government has lifted the ban. The



recruitment of 60 tailors done, was based on a special sanction received by Ordnance Parachute Factor, Kanpur to recruit the candidates from among the apprentices trained by the factory and who were within the age limit prescribed. Since it was a special sanction for recruitment from among a special category of persons, the applicants cannot legitimately stake a claim to be included in this recruitment process especially since they had crossed the age limit. The respondents on their part did take up the case for age relaxation in respect of the applicants evidenced by their letter dated 07.04.1999, which was turned down by the Ministry of Defence. In view of this the applicants contention that since it was no fault of their that they could not get appointment and hence age relaxation should be given, cannot be accepted. The respondents have also brought to our notice the Apex Court's guidelines on the subject in U.P.S.R.T.C. Vs. U.P. Parivahan Nigam Shishuk Berojgar Sangh and others (Civil Appeal No.4847-4854 of 1990), which reads as follows:

"In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:

- i. Other things being equal, a trained apprentice should be given preference over direct recruited
- ii. For this trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India Vs. Hargopal AIR 1987 SC 1227 would permit this.
- 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 concerned service rules. If the service rules being silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

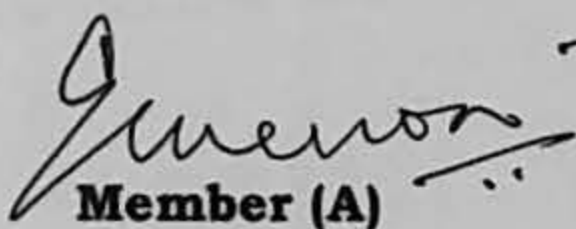
The Jodhpur Bench of Central Administrative Tribunal in O.A. No. 429 and 430 of 1994 on 24.05.1995 held as follows: -

"We find that the applicants have no claim on the posts of Diesel Assistants when no such posts are available for giving them appointments. They are surplus to the requirements of the Bikaner Division and hence have no right to claim appointment. The

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position is sustained under the Hon'ble Supreme Court judgment in the case of Shankarsan Das v. Union of India [1991 SCC (L&S) 800] delivered on 30-4-1991, in which it was held that even if a number of vacancies are notified for appointment and an adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to appointment even if a vacancy exists. This very judgment has been confirmed by another judgment of the Hon'ble Supreme Court in the case of Jai Singh Dalal and others v. State of Haryana and another [1993 (1) SLR 422]. In this case also it was held that the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort in fresh selection and appointment on revised criteria. Viewed in this context, it is not possible for us to grant any relief to the applicants for appointment as Diesel Assistants in the Bikaner Division."

9. In view of the above, we firmly believe that although the applicants were selected for appointment, they could not be given the appointment because of Government's ban order (which is applicable to all Government servants) and the recruitment process was treated as closed by Ordnance Parachute Factory, Kanpur. They cannot not after a lapse of more than 14 years claim to be considered for appointment more so when they have in the meantime become age barred. The age relaxation proposal was also duly considered by the Ministry of Defence and rejected. The O.A. is, therefore, not maintainable and is accordingly dismissed. No order as to costs.


Member (A)


Vice Chairman

/M.M./