

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

Original Application No. 563 of 1999

this the 24th day of November 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)
HON'BLE MRS. ROLI SRIVASTAVA, MEMBER(A)

1. prem Singh, S/o Sri Kishan Bahadur, R/o 570 'A'
S Block, Yasoda Nagar, Kanpur.
2. Mahesh Kumar Bajpai, S/o Sri Sada Shiv Bajpai
R/o 56/3 Site No. L. Colony, Kidwai Nagar,
Kanpur.

Applicants.

By Advocate ; Sri S. Chatterjee.

Versus.

1. Union of India through its Secretary, Government
of India, Ministry of Defence, New Delhi.
2. Director General, Ordnance Factories Board 6,
Esplanada East Calcutta.
3. Upper Mahanideshak Aaydh Nirmariya Aayudh Upskar
Nirmari Samooth Mukhyalaya Ashik Bhawan, G.T.
Road, Kanpur.
4. General Manager, Works Manager/ Administration
Ordnance Parachute Naipiyar Road, Kanpur.

Respondents.

By Advocate ; Sri A. Mohiley.

ORDER

PER MRS. MEERA CHHIBBER, MEMBER(J)

This O.A. has been filed by two applicants
namely prem Singh and Mahesh Kumar who have challenged
the advertisement dated 26.4.1999 calling fresh applicat-
ions from the candidates to the post of Tailor (Semi Skill
-ed).

They have further sought a direction to the respondents to appoint the applicants as per orders of this Tribunal dated 3.11.1992 and 4.3.1993 respectively before making any fresh selection on the said post.

2. It is submitted by applicants that they were sponsored by the Employment Exchange for recruitment for the post of Tailor in semi skilled in pay scale of Rs.210-290. They were trade tested alongwith other candidates and 52 candidates were declared successful in the said trade test. Thereafter, police verification was also got done duly verified by the civil authorities and attestation form was also issued to all the candidates, out of whom 18 persons whose verification report ^{were} received, were issued appointment orders as well, but before verification and other formalities could be completed for issuance of appointment orders to applicants and other selected persons, a ban order was issued by Government of India on 10.10.1985, as a result of which appointment orders for applicants and other candidates could not be issued. They, thus, filed O.A. no. 1022/90 which was allowed on 3.11.1992 by making the following observations:

"It has been stated that the ban has now been removed and the applicants have ^{passed} the trade test and the police report is also in their favour and as such there is no reason as to why appointment order cannot be given to them and now ~~new~~ ^{was} comer or fresh candidates will be given priority over the applicants."

3. Respondents, thereafter, filed Review Application no. 166 of 1993 on the ground that the ban has not yet been lifted. The said Review Application was decided on 24.3.1993 ^{whereby} this Tribunal observed that even if ban order has not been removed, the order will come into effect whenever the ban is removed (page 26-27). It is submitted by applicants that thereafter ban ^{was} also lifted because respondents called application from the fresh candidates ignoring the claim of applicants

B

altogether. Thus, they have no other option, but to file the present O.A.

4. It would be relevant to note that this O.A. was admitted on 19.5.1999 and this Tribunal had directed the respondents not to fill-up two posts of Semi Skilled Tailor.

5. The only ground on which respondents opposed this O.A. is, that respondent no.4 considered their case after O.A. no. 1022/90 was decided on 3.11.1992, but it was dis-covered that they have become over age by 4-6 years, therefore, this matter was taken up by the Factory with the Ordnance Factory Board for giving relaxation to those five persons, who had filed O.A. no. 1022/90. The Ordnance Factory Board, Calcutta in its turn had approached the Ministry of Defence, but the Ministry of Defence had turned down the request for grant of relaxation in age as the recruitment rules do not permit. More-over, it was stated that this Tribunal had also not given any direction to appoint applicants even after they become over age. They have, thus, submitted that since applicants have become over age, O.A. may be dismissed.

6. In support of their contention, they have relied on the decision given by this Tribunal in O.A. no. 849 of 1998 decided on 5.2.1999, wherein ~~it was held~~ the claim of Apprentices was turned-down by the Ministry and they have also approached this Tribunal and this Tribunal had rejected O.A. (Annexure CA-8).

7. We have heard both the counsel and perused the pleadings as well.

8. It is relevant to see that when these applicants had approached this Tribunal by filing first O.A., this Tribunal had observed that since ban has been

8


removed, applicants had passed trade test, police verification has also been done in their favour, there is no reason why appointment order could not be given to them and no new comer or fresh candidates would be given priority over the applicants.

9. When the respondents pointed-out that ban has not yet been removed/lifted, this Tribunal had further observed that whenever ban is lifted, the order shall be given effect to. The said direction in-directly would mean that what ever situation ^{be it} since these persons were already selected and their police verification was also got done and they could not be given appointment letters only because of ban order, therefore, when-ever ban order is lifted, they should be given appointment. This was a positive direction given to the respondents, as such it did not leave any scope for respondents to interpret it in a different way ^{then} ~~and~~ what was intended, especially because these orders were never challenged by respondents, simply because applicants became over age due to the ban order imposed by respondents, they cannot be made to suffer for it. It is not the case of respondents that applicants were over age on the date of their selection. If only the ban order ~~order~~ had not been imposed, applicants would have got appointment orders as their police verification report was also in their favour. In these circumstances, naturally, respondents could not have advertised the posts calling fresh applications when the Tribunal had categorically stated that no new comer or fresh candidates will be given priority over the applicants. Therefore, the stand taken by respondents that applicants cannot be given appointment because they have become over age, has to be rejected. This Tribunal has already directed the respondents to keep two posts vacant, therefore, we now direct the respondents to issue appointment

B

orders in favour of both the applicants subject to ^{their} ~~declare~~ being medically fit. As far as judgment which has been relied-upon by respondents' counsel, ^{it} would have no application in the present set of facts, firstly became applicants therein were ~~was~~ Apprentice Trainee and the Tribunal was of the view that ^{these} applicants were not given ^{any} ~~any~~ guarantee for ~~the~~ employment at the time when they were sent for training. Therefore, they have no feasible right to seek appointment as a matter of right. More-over, applicants therein did not have the judgment in their favour as in the case of applicants, herein,, therefore, the judgment relied-upon is not applicable in the present set of facts.

10. In view of the above discussion, this O.A. is allowed by directing respondents to grant relaxation in age to the applicants and to give them appointment order within a period of four weeks from the date of communication of this order subject to their being medically fit. It is, however, made clear that applicants would not be entitled for any back wages. No costs.


MEMBER (A)


MEMBER (J)

GIRISH/-