

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD.**

Dated: This the 12<sup>th</sup> day of Dec, 2005.

Original Application No. 1310 of 2003.

**HON'BLE MR. D.R. TIWARI, Member (A)**

**HON'BLE MR. K.B.S. RAJAN, MEMBER (J)**

1. Anoop Kumar Srivastava, S/o Sri Ram Bihari Srivastava, R/o PHC Saurik, District Kannauj.
2. Rajesh Kumar Srivastava, S/o Satish Kumar Srivastava, R/o 117/113-D 'M' Block Ram Lala Raod, Kadadeo, Kanpur Nagar.
3. Shasanta Kumar Das, S/o Sri Sada Nand Das, R/o 117/113-D, 'M' Block, Block Ram Lala Raod, Kadadeo, Kanpur Nagar.

.....Applicants

By Adv: Sri. O.P. Singh.

**V E R S U S**

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Rail Manager, North Central Railway, Allahabad.
3. Senior Divisional Electrical Engineer (Rolling Stock), Electric Loco Shed, North Central Railway, Fazalganj, Kanpur.

..... Respondents

By Adv: Sri A. Tripathi.

**O R D E R**

**BY K.B.S. RAJAN, MEMBER-J**

The applicant has through this OA claimed the following relief:-

(i)

Direction commanding the respondents to give preference and provide the job to the applicants on the basis of Advertisement No. 1 of 2001 for the

recruitment of the Junior Engineer  
Gr. III Electrical

- (ii) Issue a direction in the nature of commanding the respondents to appoint the applicants on their respective post in the light of the judgment and order dated 27.6.1994 passed by the Hon'ble Tribunal in O.A. no. 1677 of 1992."

2. Before going into the facts of the case, what has been directed in order dated 27-06-1994 in OA 1677 of 1992 referred to above may be stated at this juncture. The said OA was filed by one S.K. Dubey and others and vide para 4.16 of the OA the order passed therein is as under:-

"In the facts and circumstances of the case discussed above, we deem it fit and proper to dispose of this Application with a direction to the respondents to take appropriate decision on the recommendation of respondent no.2 to appoint the applicants as Substitute Khalasi and to take steps for filling up 25% of the vacancies by direct recruitment at the earliest."

3. In view of the fact that in the above order, there is a specific mention, "In the facts and circumstances of the case discussed above", and the facts and circumstances have not been mentioned, though it has been averred, "Under similar facts and circumstances of the case in OA No. 1677 of 1992 S.K. Dubey and others Vs. Union of India and others", prayer contained in 8(2) of the OA has to be summarily rejected. In fact according to the respondents, the case of S.K. Dubey is not identical to that of the applicants inasmuch as in the other case, the individuals were appointed as the

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selection board had found them suitable for the post of Sub Khalasis, Group D (para 23 of the CA).

4. Now as to the facts of the case as narrated in the OA:

- (a) The applicants were selected for apprenticeship training for the post of Electrician by the respondent and they have completed their apprenticeship training at Electric Loco Shed, Northern Railway, Kanpur for the period of one ~~year~~<sup>year</sup> year as Diploma Holder Apprentice under Apprenticeship Act 1961 in Electric Loco Maintenance.
- (b) The law has been well settled by the series of the decision of the Hon'ble Supreme Court that once apprenticeship training ~~has~~<sup>has</sup> been completed by the apprentices, then the respondents will have to provide the job in their department, but the respondents arbitrarily<sup>or</sup> not providing any job to the applicants which is completely violative of Article 14 and 16 of the Constitution of India.
- (c) The applicants have preferred O.A. no. 1440 of 2000 before this Tribunal. The Tribunal was pleased to dispose of the Original Application with the observation that if the respondents initiated any steps for recruitment of Junior Engineer, the applicants may also apply and they shall be considered in accordance with law in the light of the judgment of the Hon'ble Supreme Court and the High Court's decision in the case of Mohd. Shamim Khan

Vs. Deputy General Manager and in the case of Jai Nath Singh Vs. UPSRTC, Varanasi.

- (d) A fresh advertisement has been issued by the Railway Recruitment Board, Allahabad with employment notice No. 1 of 2001. The applicants have submitted their applications in the said selection process. Despite the specific directions given by this Court, the respondents are not ready to give any preferential benefit, nor ~~they~~<sup>they</sup> are ready to provide the job to the applicants.

5. The respondents have contested the OA and their version is as under:

- (a) The applicants have been engaged for one year training under Apprentice Act, 1961 on stipend basis vide letter dated 7.2.1998 and letter dated 7.6.1999. In these letters, it has clearly been mentioned that there is no guarantee for Railway Service and during the Training period, the stipend will be paid as per extant rules.
- (b) It is also stated that the apprentices under the Act trained in Railway Workshop without committing<sup>ing</sup> for absorption are not automatically entitled to absorption in Railway.
- (c) The Railway Board has issued instructions to all the Railways for recruitment of Course completed Act Apprentices on the Railway vide their letter dated 26.8.1996, which reads as under:-
- Bh*



"Please find herewith a copy of DGET, Ministry of Labour letter dated 26.2.1996 pursuant to the Hon'ble Supreme Court judgment dated 12.1.1995 in the case of U.P. State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishukh Berozgar Sang & Others inter alia directing that other thing being equal a trained apprentices should be given preference over direct recruits.

The matter has been carefully considered by the Board and it has been decided that for the recruitment to the post of Artisans in Group 'C' in the Railways, other things being equal a candidate who is course completed Act Apprentice trained in the relevant trade in the Railway establishment will ~~be~~ be given preference over a candidate who is not such an apprentice.

In other words, while there will be no change in the procedure of recruitment and the selection for recruitment will be in accordance with the merits of the eligible candidate, where other things are equal between two candidates, the candidates who is a course completed Act Apprentice trained in Railway Establishment will be given preference over the candidate who is not such an apprentice."

6. Rejoinder and supplementary Counter affidavit have also been exchanged.

7. Arguments were heard and the pleadings perused. We have given our anxious consideration also. The contention of the applicant's counsel is that despite the law on the subject that the applicants who are apprentice trained individuals have not been given appointment and every time after they get the admission card, no offer of appointment is given to them. The applicant's counsel argued that the

Railways are under obligation to appoint the applicants and he had relied upon the decision of the Apex Court in the case of *U.P. SRTC v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh*, (1995) 2 SCC 1. The Tribunal in its earlier order dated 01-12-2000 in OA 1440 of 2000 had directed the respondents to deal with the case of the applicant in accordance with the said judgment of the Apex Court. The Apex Court in that case has held as under:-

9. We have said so as reference to that circular shows that all it has done is to lay down the procedure for the selection of the apprentices, which did not require the apprentices to undergo any written examination for selection and their routing through employment exchange was done away with. Something was said about the age also. No promise of employment can be read in this circular which is of 21-12-1977. We would say the same about the memo of the Directorate of Training and Employment of the State of U.P. dated 21-9-1977 as it falls short of any promise of employment, because what it says is that full efforts should be made to provide the trainees with service. In this memo, what had been stated in para 2 of the Government of India's letter dated 31-8-1978 had been quoted in which it was mentioned that the scheme of training had been introduced to promote chances of employment of educated unemployed persons; and that if employers would not provide employment to the qualified apprentices the same would amount to destruction of developed human resources. It is because of this that the Government of India expressed the desire that "other things being equal trained apprentices should be given preference in case of employment".

8. The circular of the Railway Board, in its circular dated 26-08-1996 (as contained in para 16



of the counter) too has issued instructions to all the Railway Recruitment Boards strictly on the above lines only.

9. In a very recent case of *Chairman/Md, Mahanadi Coalfields Ltd. v. Sadashib Behera*, (2005) 2 SCC 396, the Apex Court has held as under:-

"6. There is another aspect of the matter which deserves consideration. The whole stand of the writ petitioner (Respondent 1 in this appeal) was that he had undergone apprenticeship training with Mahanadi Coalfields Ltd. and, therefore, he was entitled to be appointed on the post of welder. The Apprentices Act was enacted in the year 1961 and as the preamble shows that it is an Act to provide for the regulation and control of training of apprentices and for matters connected therewith. Section 2(aa) defines an "apprentice" and it means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 2(aaa) defines "apprenticeship training" and it means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. Section 4 provides that no person shall be engaged as an apprentice to undergo apprenticeship training unless he has entered into a contract of apprenticeship with the employer and the training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into. It further provides that every such contract shall be sent by the employer to the Apprenticeship Adviser for registration. Sections 6 and 7 lay down that the period of apprenticeship training shall be specified in the contract of apprenticeship and the same shall terminate on the expiry of the period of apprenticeship. Rule 6 of the Apprenticeship Rules, 1991 (hereinafter referred to as "the Rules") mandates that the contract shall be sent by the employer for registration within three months of date on which it was signed. Sub-rule (3) of Rule 6 provides that the obligation of



the employer and that of the trade apprentice shall be as specified in Schedule V or VI, as the case may be. Clause (10) of Schedule V which relates to the obligation of the employer reads as follows:

"(10) It shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer."


7. These provisions show that apprentice is a person who is undergoing a training in pursuance of a contract of apprenticeship duly registered with the Apprenticeship Adviser and the employer who is imparting training is under no obligation to offer any employment to such a person. The legislature has made the aforesaid position clear by making a specific provision in this regard namely Section 22 of the Act and sub-section (1) thereof lays down that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training. Sub-section (2) however provides that notwithstanding anything in sub-section (1) where there is a condition in a contract of apprenticeship that an apprentice shall, after successful completion of apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Thus the provisions of the Act and the Rules made there-under show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship Adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. It is not the case of Respondent 1 that in the contract of apprenticeship there was any condition that after completion of training he would serve the employer and in absence of such a condition, the employer namely the appellants are not

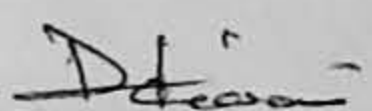


bound to offer any employment to them. In the absence of any legal right inhering in the writ petitioner (Respondent 1 herein) no writ of mandamus could be issued commanding the appellants to give an appointment to him on the post of welder."

10. In the instant case, <sup>1</sup>/<sub>2</sub> the letters under which the applicants were permitted to undergo the apprenticeship under the Apprentices Act, 1961, the Railways have clearly stated that the training imparted to the applicants is without any commitment for absorption on completion of the training.

11. In view of the above, no case has been made out by the applicants and the OA being devoid of merits, merits dismissal and it is accordingly ordered. No costs.

  
MEMBER-J

  
MEMBER-A

GIRISH/-