

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Allahabad, this the 20th day of April, 2010

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.1373 of 2006
(U/s 19 of Administrative Tribunal Act, 1985)

1. Gopal Anand S/o Sri Saroj Anand R/o 9th Line Birpur Estate, Dehradun Cantt. Uttaranchal.
2. Vikram Verma, S/o Sri Nathu Lal Verma, R/o 50 Krishna Nagar, Dehradun Uttaranchal.
3. Satish Chandra Mangain, S/o Sri Hari Nand Mangain, R/o Village Niyanwala, P.O. Harrawala District Dehradun Uttaranchal.
4. Vijay Kumar S/o Late Banwari Lal, R/o 244 Chuukhuwala Dehradun Uttaranchal.
5. Bahadur Singh Negi S/o Sri Kushal Pal Singh Negi, R/o Nai Basti, Melaram Colony, Sohmdhowe Road, Dehradun Uttaranchal.

..... **Applicants.**

By Advocate : Shri A.S. Vats

V E R S U S

1. Union of India through its Secretary, Department of Science and Technology Mehrauli Road , New Delhi.
2. Surveyor General of India, Hathibarkala, Dehradun, Uttaranchal.
3. Director Map Publication, Hathibarkala, Dehradun, Uttaranchal.

..... **Respondents**

By Advocate : Shri R. D. Tiwari



ORDER

Delivered by Hon'ble Mr. D.C. Lakha, Member-A :

This OA has been preferred for the following relief :

"(A) To issue necessary order or direction quashing the impugned order dated 17.6.2003 passed by respondent No.2 contained as Annexure-1 to the Compilation No.1.

(B) To issue necessary order or direction, directing the respondents to call the applicants for the post of Motor Driver-Cum-Mechanic.

(C) To issue necessary order or direction, directing the respondents to absorb the applicants on the post of Motor Driver-Cum-Mechanic.

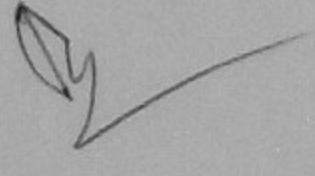
(D) To issue any other further order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. The facts of the case as narrated in the OA are as under :-


The applicants had filed an earlier OA No.1198/88 seeking absorption on the suitable post in view of the terms and condition of the contract of Apprenticeship Training Act 1961 as the applicants had undergone the requisite training. As per the direction of the C.A.T. in this OA vide their order dated 17.4.2001 (Annexure-A-2 to the Compilation No.2) the applicants were supposed to be called for the post of Motor Driver-cum-Mechanic. In view of the fact that the earlier three posts namely Motor-Driver-cum-Mechanic, Motor Driver Heavy Vehicles and Motor Driver were merged into the Single Driver Motor-cum-Mechanic. The applicants submitted representations dated 24.5.2001, 29.8.2001 and 11.3.2002 for the implementation of the order of C.A.T. However, the applicants were called for a test/interview vide call letter dated 20.5.2002 for the post of Motor Driver ignoring the directions issued by the Tribunal vide its order dated 17.4.2001. The copy of the



Call letter dated 20.5.2002 is marked as Annexure-A-3 to the Compilation No.II. The applicants possess the certificate of Apprenticeship in the trade of Mechanic (M.V.) awarded to them by Government of India, Ministry of Labour. The Apprenticeship training was conducted in the respondents' establishment i.e. Survey of India Dehradun (N.C.) w.e.f. 18.6.1982 to 17.6.1985. The applicants also possess valid driving license of heavy vehicles issued by Regional Transport Officer. The certificate of Apprenticeship training and Driving License are marked as Annexure A-4 and A-5 respectively and the true copy of the experience certificate may be seen as Annexure-A-6 to the Compilation No.II. The post of Motor-Driver-cum-Mechanic exists in the Survey of India and there is no post of Driver for which the applicants were called for the test/interview. When no action was taken on the representations of the applicants they gave a notice dated 27.5.2002 (Annexure-7 to the Compilation No.II) through their counsel for the compliance and necessary action in terms of order dated 17.4.2001 passed by the Tribunal. The said notice was not replied nor any opportunity was given to the applicants to present their case. Later on the advocate of the applicant was given a reply vide respondents' letter dated 17.6.2003 (Annexure-A-1) in which it is stated that the applicants were called for the test and interview on 6.6.2002 through letter dated 25.5.2002 but none of the applicants presented for the test. The photocopy of notice for the test/interview dated 11.6.2002 is marked as Annexure-10 to the Compilation No.II. It is stated in the OA that there was no need of written test and interview for appointment of the trained apprentices as the applicants had been trained by the respondents' department. They were supposed to be recruited directly as and when the vacancy was available. To this effect the letter dated 5.8.1982 of Government of India is annexed as Annexure-8 to the




Compilation No.II. When the order dated 17.4.2001 passed by the Tribunal was not implemented the applicants had to file the contempt petition but the same was dismissed on 25.11.2003.

3. The applicants are aggrieved by the impugned order dated 17.6.2003 because the applicants were not given the opportunity of hearing and they were not called for interview as per their qualification and post. The Director Geodetic and Research Branch, Dehradun was prejudiced and biased for the reasons best known to him as apparent from his letter dated 11.6.2002, notice for interview/test dated 20.5.2002 and impugned order dated 17.6.2003. The post available in the department is i.e. Motor-Driver-cum-Mechanic and not of Driver for which the applicants were called for the test/interview. The impugned order dated 17.6.2003 is illegal and arbitrary.
 4. The OA has not been filed within the time for which the delay condonation application No.4281/06 has been submitted on behalf of the applicants. Stating the reasons for delay it is submitted on behalf of the applicants that after the judgment of C.A.T. dated 17.4.2001 in OA No.1198/88 they had to wait for the implementation. They had to submit several representations for the implementation of the directions of the Hon'ble Tribunal dated 17.4.2001 but no action was taken by the respondents when they had to serve a legal notice upon the respondents through their counsel on 27.5.2002. The applicants had inculcated a bonafide belief that their rightful claim has been accepted and they will be accordingly absorbed on the post for which they are entitled. But when they came to know through the impugned order dated 17.6.2003 they felt that there was a deliberate attempt to commit contempt of the order dated 17.4.2001 of the Tribunal. So they had to file the contempt
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petition No.222/03 but unluckily the same was dismissed by the Tribunal on 25.11.2005 (Annexure No.1). The applicants have meagre means so they could not come to the Tribunal after the matter was heard and reserved for orders in the contempt petition and their pairokar remained under bonafide belief that needful information about the result of the contempt petition shall be given to the applicants by their counsel. The applicants could learn about the order dated 25.11.2005 for the first time in the month of March 2006 only when their pairokar met the counsel. They were told that the counsel sent the letter in January 2006. Then the same was informed to the other applicants No.1,3,4 and 5. The applicants sought advice from one or two lawyers of Hon'ble High Court. They had to drop the suggestion as they were not able to collect requisite funds. This took about 7 to 8 months. The applicants were, however, advised by another counsel practicing exclusively before this Tribunal in the month of November that there is no need to file a Writ Petition against the order dated 25.11.2005. As per legal advise, the impugned order dated 17.6.2003 passed by respondent No.2 was taken as the order to be challenged by a fresh OA. Stating these circumstances, the applicant's counsel has put up the delay condonation application, which may be accepted and delay is requested to be condoned.

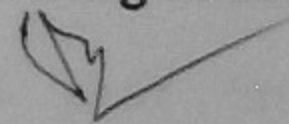
5. On notice the respondents have filed the counter reply in which the fact of the applicants having been trained by the Department from 16.8.1982 to 17.6.1985 has been admitted. It is stated in the counter reply that the applicants submitted representation dated 16.5.1988 requesting for appointment as Motor Mechanic-cum-Driver under the 50% quota available for the trained apprentices. The names of these apprentices were not forwarded by the employment exchange as such their candidature could not be considered for appointment for the said



post. As per provision contained in Section 22(2) of the Apprentices Act 1961, the employer is not bound to employ the trained apprentices. Subsequently the applicants filed OA before the Tribunal which was disposed of against the applicants vide its judgment dated 2.6.1995. Thereafter the applicants filed a Special Leave Petition in the year 1996 before the Hon'ble Supreme Court in which the matter was remanded again to CAT, Allahabad Bench vide judgment dated 14.8.1997. Photocopies of the representation dated 16.5.1988, OA No.1198/88 and SLP moved before the Hon'ble Supreme Court are annexed as CA-I, CA-II and CA-III respectively. The Tribunal has pronounced the judgment on 17.4.2001 in which the following direction was given :-

"The applicants be considered for appointment to the post in respondents establishment in accordance with their qualifications and experience as apprentices under Apprenticeship Act 1961, notwithstanding that their candidatures has not been sponsored by the Employment Exchange and also the relaxation in age be allowed to extent of the period or which they have undergone apprenticeship training and the matter retained subjudice. The OA is decided accordingly."

6. The applicants were asked to attend the test and interview on 6.6.2002 for the post of M.T. Driver-cum-Mechanic. But they did not attend the test and interview and sent a legal notice demanding to give them appointment without any test and interview. Thus the applicants were given the opportunity in compliance of the order of the Tribunal dated 17.4.2001 but they did not avail the same. Hence the reply to the notice was given by the respondents' letter dated 17.6.2003 (Annexure-1 to the OA). It is also stated in the counter reply that the applicants had filed a contempt petition No.222/03 in OA No.1198/88 which was dismissed on 25.11.2005 with the following observation :-




"The above orders of the Apex Court would show that in so far as the apprentices under the Apprenticeship Act 1961 are concerned, except exemption of being sponsored through employment exchange and except certain age relaxation no other concessions has been given. At best other things being equal preference can be given to such apprentices. Nothing less, nothing else, whereas according to the applicant the Supreme Court judgment relied upon by them give full fledged exemption from appearing for interview etc. This is an incorrect proposition. As such the respondents are right in not giving the appointment orders to the applicants as they lack in qualification etc.

In view of the above we hold that no non compliance of the order of this Tribunal dated 17.4.2001 has been made by the respondents and the applicants have thoroughly failed to make out a case for contempt. Hence the CCA is dismissed and the notices discharged."

A photocopy of the judgment dated 25.11.2005 is also annexed as Annexure-CA-5 to the Counter Affidavit.


7. Now after a lapse of about four years of call letter dated 20.5.2002 asking them to appear in the exam/interview and one year from the order dated 25.11.2005 passed in Contempt Petition No.222 of 2003 in OA No.1198/88 the applicants have filed the present OA challenging the order dated 17.6.2003 (which is only a communication). This OA is thus highly time barred. The Hon'ble Apex Court laid down in the case of **Mohd Khalil Vs. UOI (1997) 3 SLJ (CAT) 54** the "No application shall be admitted by the Tribunal unless it is made within a year from the date on which the final order had been given." The applicants have failed to make out any cogent or compelling ground for condoning the delay as per provisions of Section 21(3) of Tribunal Act. The Hon'ble Apex Court in another case of **Bhagmal Vs. UOI (1997) 2 SLJ (CAT) 543** held that "delay cannot be condoned unless sufficient grounds are shown". Further, the Hon'ble Apex Court laid down in the case of **Mohd Khalil Vs. UOI (1997) 3 SLJ (CAT) 54** that "subsequent moving of



representation will definitely not extend the period of limitation. This decision has been further upheld by the Hon'ble Apex Court in the case of **Sri Niwas Pathak Vs. UOI (1997) 2 SLJ (CAT) 520**. In view of the aforesaid provision and law laid down by Hon'ble Supreme Court, the present OA is barred by limitation and liable to be dismissed. Repetitive emphasis has been laid on the point of delay and the same having not been explained satisfactorily.

8. Replying on the other facts of the OA it is stated in the counter reply that there were three designations prior to 1981 namely Driver Heavy Vehicles, Motor-Driver-cum-Mechanic and M.T. Driver, in the trade of Mechanic (Motor Vehicle) they were merged into one designation i.e. Motor-Driver-cum-Mechanic. A photocopy of the letter dated 27.3.1981 is annexed as Annexure-CA-6 to the counter affidavit. In pursuance of the Tribunal's order dated 17.4.2001, the Director, Geodetic issued a letter dated 20.5.2002 to the applicants to appear for the examination and interview for the post of Motor Driver on 6.6.2002, but the applicants did not appear in the examination. About the merger of three different posts into one the applicants were already in the knowledge. Hence they had already requested to respondent No.2 vide their letter dated 18.11.1987 (Annexure-CA-7) that the appointment may be given in any post according their qualifications.

9. It is evident, that the applicants had filed a Civil Misc. Application No.4987 of 1997 in original Application No.1198 of 1988 and in the said Misc. Application on page 5 paragraphs 8, 10,11,12,13 and 14 (Annexure-CA-4 to the counter affidavit) and in Special Leave Petition on page No.45 (Annexure-CA-3 to the counter affidavit), in prayer, the applicants themselves accepted therein that they will be absorbed on the




post of Motor Driver whenever there will be a vacancy in the department. It clearly indicates that the applicants themselves asked for appointment on the post of Driver.

10. It is also submitted that it is absolutely wrong to allege that there is no need of test or interview for the post of Motor-Driver-cum-Mechanic. About 17 years ago the applicants were given training hence it is very essential for employer to test the efficiency of the applicants for the post they are demanding.


11. It is also contended in the counter affidavit that the matter was adjudicated in the OA No.1198/88 decided on 17.4.2001 and the directions given by the Tribunal have already been complied with. The present OA is barred by the principle of resjudicata and deserves to be dismissed.

12. Supplementary counter reply, rejoinder affidavit, supplementary rejoinder affidavit and written submissions (by the applicant's counsel) have also been filed by the respective parties to the OA.

13. We have gone through the pleadings of the parties and have given our thoughtful consideration to their averments in the OA, delay condonation application, counter reply, supplementary counter affidavit, rejoinder affidavit and supplementary rejoinder affidavit supported by different annexures. We deem it proper to take up the matter of delay at the outset. Taking in view the averments made on behalf of the applicants, it is clear that the matter was first adjudicated upon by the Tribunal vide order dated 17.4.2001 in OA No.1198/88. The respondents authorities had issued call letter to the applicants dated 20.5.2002 to appear for the test and interview on 6.6.2002. None of the




applicants appeared for the test and interview nor any objection was lodged before the respondents. Instead of the applicants took up the matter through the contempt petition to the Tribunal which was dismissed vide order dated 25.11.2005. The order dated 17.6.2003 has been challenged. Actually this is not an order, this is only a communication or reply to Shri Amrit Verma Advocate of the applicants who did not turn up for written test and interview on 6.6.2002 in reply to the call letter dated 25.5.2002. In real terms the fault of there on the part of the applicants, neither turned up for interview nor lodged any objection or protest. The applicants are really aggrieved by the notice dated 25.2.2002 calling them for test/interview. This was the cause of action for the applicants which must have been challenged in time. The letter dated 17.6.2003 (impugned order) was actually communicative in nature and not an order as such. Learned counsel for the applicant has also submitted written argument. The delay condonation application has been submitted to explain the delay in filing the OA. Learned counsel for the applicant has submitted that the delay has occurred in seeking the advice of the one or two lawyers of Hon'ble High Court. The applicants could not arrange funds for quite some time to pursue the matter in the Tribunal or any other court of law. There was also delay in seeking and getting copy of the order in contempt petition No.222/03. On merits the learned counsel for the applicant, in support of the OA, has contended that the applicants were not supposed to appear in any interview or test after the merger of three posts into one that of Motor Driver-Cum-Mechanic because rules of recruitment were not. But the applicants were called for the post of Motor Driver which at all does not exist in the department as stated in the OA (Annexure-3). The post of Motor Driver-Cum-Mechanic is altogether different from the post of Motor Driver. The



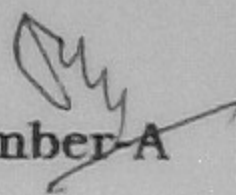
impugned order discloses that the applicants were required to appear for written test followed by interview which was illegal because the Survey of India itself have given training of apprenticeship to the applicants and had issued certificate. There was no reason for calling for fresh test and interview. It was obligatory upon the employers to have acted on the principle of a welfare state by absorbing the candidates and comply with the order of Hon'ble Court. In the counter reply, greater emphasis is laid on the preliminary objection of delay in filing the OA. Although the learned counsel for the respondents has not submitted any written arguments yet he has put up his objection on the point of delay in a very cogent and lucid manner in the counter reply itself. On the point of merit also it is submitted in the counter reply that for the post of Motor Driver-Cum-Mechanic (after merger) the test and interview were necessary for two reasons. One, it was not exonerated in the order dated 17.4.2001 of Tribunal in OA No.1198/88 and second the applicant's knowledge and skill was necessary to be tested because about 17 years had lapsed since there training. They could not have been appointed merely on the basis of certificate because of the requirement of the job.

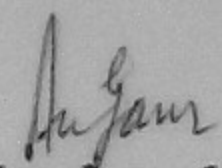
14. In view of the above facts and arguments of both the parties, we strongly feel that the delay in filing this OA has not been properly and sufficiently explained. The delay has not been explained since 2002 when the applicants were called for test/interview by which they were really aggrieved. In view of law laid down by the Hon'ble Supreme Court in the case of **R.C. Sharma Vs. Udham Singh Kamal reported in 2000 SCC (L&S) 53**, the OA is highly time barred and suffers from delay and laches. Even on the point of merit calling the applicants for written test and interview was never objected too and no protest was lodged with the concerned authorities so the applicants are, when they put up the



objection only in the OA, are barred by principle of estoppel and acquiescence. The respondents in calling the applicants for written test and interview for the post of Motor Driver-Cum-Mechanic have not violated any rule or law laid down for the recruitment.

15. In view of the above, we find that the OA is not legally maintainable and is liable to be dismissed. Accordingly the OA is dismissed. No order as to costs.


Member-A


Member-J

RKM/