

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 7th DAY OF Aug 2014)

PRESENT:

**HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER - J
HON'BLE MR. U.K. BANSAL, MEMBER - A**

ORIGINAL APPLICATION NO. 1351 OF 2008
(U/s, 19 Administrative Tribunal Act.1985)

Rajesh Kumar Singh, aged about 38 years, son of Shri Sarnam Singh, Resident of Village Niwari, Post Tikra, Tehsil and District Kanpur Nagar.

.....Applicant

By Advocate: Shri M.K. Upadhyaya

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A, Shaheed Khudi Ram Bose Road, Kolkata.
3. General Manager, Field Gun Factory, Kalpi Road, Kanpur.

..... Respondents

By Advocate : Shri Anil Dwivedi

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(Reserved on 10.07.2014)

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

The petitioner Shri Rajesh Kumar Singh was selected for apprenticeship in the 29th batch in Field Gun Factory, Kanpur in the trade of 'Fitter' in 1988. He completed the three years training course and also passed the All India Trade Test (56th

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batch) of the National Council for Vocational Training conducted by the Regional Directorate of Apprenticeship Training (Northern Region), Kanpur. In this trade test, he obtained 419 out of 700 marks.

2. The applicant was asked to report to the Field Gun Factory, Kanpur on 15.03.2004 and he was informed that since considerable time has elapsed since the completion of his training, the applicant will have to undergo practical training of one week duration, in his field of work, to enable him to brush-up his skills. On completion of this training, the applicant would be subjected to Practical Training and a Test. He was given to understand that on being successful he would be issued with an absorption/appointment letter as per seniority. However, the respondents went on to select individuals of junior batches for appointment, in violation of their own Rules thereby depriving the applicant of his rightful appointment.

3. The applicant filed O.A. No. 344 of 2006 seeking redressal of his grievances, which was disposed of by an order dated 14.8.2008 with directions that the Competent Authority should pass a reasoned/speaking order on the representations made by the applicant. Consequently, the impugned order dated 6.10.2008 has been passed on behalf of respondent No. 3, rejecting the claim of the applicant.



4. In this context the applicant seeks the following relief(s):-

"To quash the order dated 6.10.2008 (Ann. A-1) passed by the respondent NO. 3 and the respondents be directed to give appointment to the applicant in the Trade Fitter in the Field Gun Factory, Kanpur, or any other Factory of Kanpur under the Ordnance Factory Board by way of absorption on the same very date when junior persons given appointment in the Trade of Fitter, who has undergone Apprenticeship Training successfully for three years in the Field Gun Factory, Kanpur and passed NCTVT Test and is eligible for appointment"

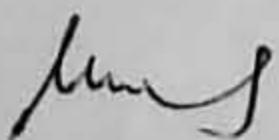
5. The learned counsel for the applicant has stated in his pleadings that the applicant belongs to the reserved OBC category. Most of the successful candidates of 29 batch of Apprentices of the Field Gun Factory have been absorbed earlier, from time to time, against vacancies except the petitioner and one other candidate.

6. Our attention was also drawn by the counsel for the petitioner to letter dated 26.02.2004 (issued by the respondents) by which he was informed that his candidature for recruitment as 'Fitter' was being considered for provisional recruitment. This letter states "**on completion of practical training, you will be subjected to practical test.....**". This letter further go on to state that "**please note that candidates are being called one and half time the number of vacancies as per OFB brief and those selected in the practical test will be appointed as per**



their seniority in the N.C.V.T. to the extent of the number of vacancies in respective trade".

7. It has been stated in the O.A. that some candidates of 30th and 32nd batches were issued appointment letters while the applicant belonging to the 29th batch was illegally and wrongfully left out. The counsel has also referred to the Ordnance Factory Board letter dated 15/20.10.1999 addressed to all General Managers on the subject of recruitment of ex-trade apprentices in Ordnance Factories. This letter stipulates that the factories shall maintain a seniority list of ex-trade apprentices of their own factory and apprentices trained in an earlier batch will be en-bloc senior to those of subsequent batches. This letter further stipulates that the selection process will be based on fitness-cum-seniority and only a **Trade test** will be conducted to ascertain whether the ex-trade apprentice is fit for the job or not. If the candidate is unfit i.e. he fails in the trade test, he is to be excluded from the list of those who pass the trade test and are found fit and thereafter, selection will be done from the pass-list strictly on seniority. This letter also states that factories should **normally** call one and half times the number of trade apprentices for the test as there are number of vacancies. The applicant has learnt through an R.T.I. query that for the selection of 22.3.2004, there was one vacancy for the O.B.C. category for the job of fitter general. According to the reply dated 25.2.2008, given to the



R.T.I. query, the respondents' department has stated that 3 OBC candidates were called for this post reserved for OBC category and that the Selection Board had adopted the procedure of practical test/interview for the recruitment. It is, therefore, argued by the applicant's counsel that this recruitment procedure was illegal and against the directives of the Ordnance Factory Board both in terms of number of candidates being called for the test and also by holding a practical test with interview while only a practical test has been mandated. It is alleged that this was done by the respondents to adopt a "pick and choose" policy.

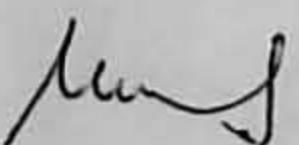
8. It has been further averred by the learned counsel for the applicant that in reality the respondents called six OBC candidates and did not take any test but completed the recruitment only on the basis of an interview.

9. In order to emphasise the fact that in subsequent recruitments also the respondents' department has called only that many ex-trade apprentices as there are vacancies, the applicant has annexed a reply given by the respondents' department dated 26.08.2008 to an R.T.I query, which clearly states that on 10.03.2008, 40 ex-trade apprentices were called against 40 vacancies.

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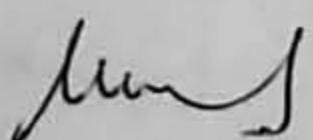
10. Lastly it has been pointed out that for the applicant's category, the upper age limit for recruitment is 38 years. According to the reply dated 25.08.2008 under R.T.I, the 38 years upper age limit is to be reckoned on 31.12.2007. The date of birth of the applicant is 1.1.1970 but he has not been called for the recruitment to the 5 posts, which became vacant in 2008 on the ground that there was only one post in the OBC category and it was reserved for physically handicapped candidates and both the eligible physically handicapped candidates were of the OBC category. It is the claim of the applicant that he should have been called for the vacancy of 'Fitter' as he was not over-age and that he has been staking his claim for appointment since 1992. Thus, the applicant has been systematically and wrongfully deprived of the opportunity of recruitment by the respondents.

11. The learned counsel for the respondents has filed a detailed counter affidavit and has drawn our attention to the impugned letter dated 06.10.2008 where respondent No. 3 has clarified (para 6) that only three candidates were called from the OBC category. As far as the general category vacancies are concerned, the three senior most applicants were of the OBC category. Hence they were called for consideration for general vacancies, as per rules, since they had all the qualifications for consideration for general category posts. It has also been stated that the applicant was also called for the test on 22.03.2004 but since he

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could not pass the test, he was not selected. As regards the five vacancies of fitter general arising in 2008, only one vacancy was in the OBC category. Out of five vacancies, one was also reserved for physically handicapped candidate and since both the available physically handicapped candidates were of the OBC category, the applicant could not be called. Lastly, it has been stated in the impugned letter that now since the applicant has crossed the age of 38 years, he is no longer eligible for recruitment through this process.

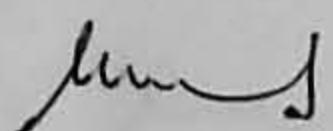
12. The learned counsel for the respondents has further stated in his pleadings that according to the Section 22 of the Apprenticeship Act, 1961, "it is not obligatory for the employer to offer any employment to any apprentice, who has completed the period of his apprenticeship training in his establishment". It is emphasized that in the Trade test of 'Fitter' General held on 22.03.2004, the applicant was not found fit for appointment and he was informed so verbally. It is, therefore, wrong to say that he was ignored by the Selection Board. As regards the number of candidates being called for selection test, the respondents' counsel stated (para 22 of C.A.) that the applicant and two other OBC candidates of the 29th batch were called for selection against 2 unreserved posts as they fulfilled all the criteria for recruitment against the general vacancies. During the selection process, none



of the three candidates of the 29th batch including the applicant could pass the Trade Test.

13. It is, however, admitted by the respondents (para 26 of the counter affidavit) that three OBC candidates were called for filling one post for OBC. It has further been argued that the Selection Board applied the same norms of selection for all the candidates and that the applicant was not treated differently. As regards the recruitment to vacancies of 'Fitters' in 2008, the learned counsel for the respondents reiterated the arguments mentioned in the pleadings by stating that since the vacancy was reserved for physically handicapped category and the available physically handicapped candidates happened to be of the OBC category, the respondents were constrained not to call the applicant for selection.

14. A rejoinder affidavit has been filed by the applicant followed by supplementary counter affidavit on the behalf of the respondents where the earlier contentions have been forcefully reiterated. It has also been argued by the applicant that OBC candidates junior to the applicant could have been called for the test/recruitment only after the applicant had been declared unsuccessful. Six candidates of the OBC category were called for one post of OBC and even if the contention of the respondents that three of the OBC candidates namely the applicant, A.K.

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Swarnkar and Nand Kumar Gupta were called for general vacancies is accepted, even then calling of three other OBC candidates for the reserved OBC vacancy is not justifiable according to the internal guidelines of the respondents' department.

15. Heard the arguments on both sides which were largely on the lines of the pleadings.

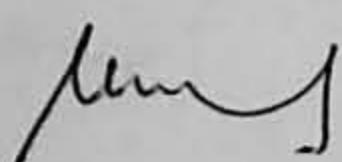
16. From an examination of the pleadings and arguments put forth on both sides, it can be concluded that in the selection held on 22.03.2004 for filling four vacancies of 'Fitters' general, there were two vacancies in the unreserved category and one each for Scheduled Caste and OBC category. The applicant is from the OBC reserved category but he was called for selection against the two general category posts along with two other candidates also of OBC namely A.K. Swarnkar and Nand Kumar Gupta. All these belong to the 29th batch of trainees. Notably all these OBC candidates failed in the trade test.

17. It is also clear from the pleadings and documents on record that the respondents had also called two Scheduled Caste candidates for one Scheduled Caste vacancy and three OBC candidates for one OBC vacancy. The directions of the Ordnance Factory Board of 1999 clearly mention that NORMALLY the

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candidates should be called one and half times the number of vacancies. Strictly speaking this number should have been two but this technicality cannot be held as important enough to vitiate the validity of the selection process. Hence, we do not find any debilitating lapse on behalf of the respondents on the point of number of candidates called for the selection in each category. It can also be noted from the list of candidates provided by the applicant at Annexure A-9 that no general category candidates have been called even when they were two general category vacancies, which further substantiates the contention of the respondents that they had called three senior most OBC candidates for general category selection as per Rules, which included the applicant.

18. As regards the selection process, the guidelines contained in the letter of the Ordnance Factory Board dated 15/20.10.1999 prescribes the holding of **Trade test**. The trade test itself has not been defined in detail. The call letter issued to the applicant dated 26.02.2004 mentions the word "**Practical Test**". The applicant has based his argument on the grounds that the Selection Board took three types of examinations namely practical test, workshop calculation and interview (para 16 of the O.A.). However, in the absence of a strict and water tight definition of the **Trade test**, it is reasonable to presume that the trade test was intended to check the capabilities of the apprentice



candidates for the job of 'Fitter', in this case and hence even if we were to presume that the Selection Board took three types of examinations as mentioned above, they can well be construed as being part of the trade test as mandated in the guidelines of the Ordnance Factory Board. Further all candidates were subjected to the same kind of test and the applicant was not discriminated in any way.

19. It is clear from the pleadings that the applicant failed in the trade test. It is not the case of the applicant that he was either discriminated or that he actually passed the trade test but was declared as failed. Having failed the trade test, he became ineligible for appointment irrespective of how many other candidates were called for the test and therefore his situation would not have changed even if he was to be considered only for the OBC category of vacancies or even if only two other candidates of the OBC category would have been called for the selection instead of three.

20. At this stage, the examination of the relief sought by the applicant becomes important.

"(i) to quash the impugned order dated 06.10.2008 passed by respondent No. 3.....".

Based on the above discussion, we find no infirmity in the impugned order, which is based on



facts and hence this relief cannot be granted to the applicant.

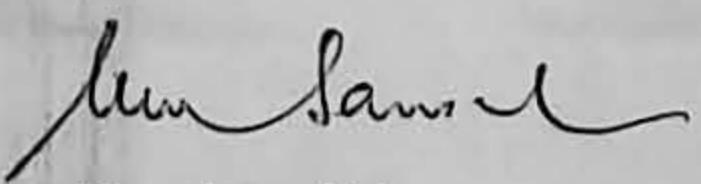
"(ii) The respondents be directed to give appointment to the applicant in the trade 'Fitter' in the Field Gun Factory, Kanpur or any other Factory of Kanpur under the Ordnance Factory Board by way of absorption on the same very date when junior persons given appointment in the Trade of Fitter....."

Since the applicant failed in the trade test held on 22.03.2004 and in the light of the discussion above, the applicant cannot lay any claim for appointment arising out of that test.

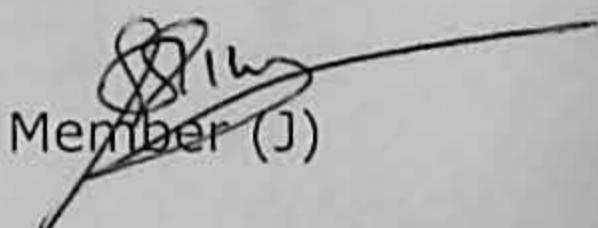
21. We, therefore, find that the Trade Test was held, in keeping with the spirit of the guidelines on the subject.

22. It is further relevant to note that any interference at this stage with the validity of the selection made in 2004 is likely to impact the interests of those candidates, who were selected in that selection process and that they have not been made an opposite party in this O.A.

23. In the aforementioned circumstances, the O.A fails and is accordingly dismissed with no orders on costs.



Member (A)



Member (J)

Manish/-