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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 16 OF 1995.

Cuttack this the 4th day of May, 1998.

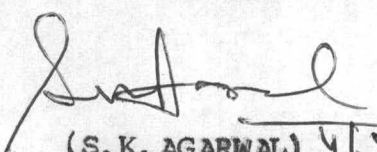
BIJAY KUMAR MOHANTA & OTHERS. APPLICANTS.


- Versus -

UNION OF INDIA AND OTHERS. RESPONDENTS.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K. AGARWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

10

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 16 OF 1995.

Cuttack this the 4th day of May, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

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IN THE MATTER OF:-

1. Bijay Kumar Mohanta,
Son of Berenchinarayan Mohanty,
At-Godipokirisahi, Old Town,
Plot -1202, Bhubaneswar,
Khurda-754002, (Welder).
2. Jaya Krushna Das,
Son of Nayan Ballav Das,
At-Barabatia,
Po-Baghilababanpur,
Via. Chandol,
Dist. Kendrapara,
(Fitter).
3. Lokanath Swain,
Son of Jaganath Swain,
At. Sanbaday Nagar,
Qr.No.131/C,
New Railway Colony,
Puri-752002,
(Welder).
4. P. Trinath Panda,
Son of P. Chitti Panda,
At. Rly Qr.No.E/IB(I),
Rly, School Side,
College Square (PO),
Cuttack-753003,
Machinist.
5. Bikram Ku. Behera,
Son of Mochiram Behera,
At-Damodanpur,
Po/Dist. Ganjam-761026,
(Fitter).

J Som
4.5.98

6. P. Sanyasi Rao,
Son of P. Bodeshu,
C/o. P. Adhinarayan,
Retd. Driver,
At-Babichock Street,
Po. Jatni,
Dist. Khurda (Welder).
7. Somanath Panda,
S/o. Suratha Panda,
C/o. Banamali Panda,
Khakimatha Nuva Sari,
Near Hotel Indrapuri,
Puri (Orissa),
(Welder)
8. S. V. B. V. H. Ravi Prasad Rao,
S/o. S. Suryanarayan,
At-Rly Qtr. No. 237/C,
Retanga Colony, Jatni,
Khurda, (Welder).
9. M. V. Giri,
S/o. M. Venkata Rao,
At-Mandasa Road,
Haripuram,
Po. Srikakulam, Dist. A.P.
(Fitter).
10. Prasanta Ku. Moharana,
S/o. Harihar Moharana,
At-Nehru Nagar-7,
Gosaninuvaghan,
Berhampur-760 003,
Dist. Ganjam (Painter).
11. Bibekananda Mishra,
S/o. Golak Ch. Mishra,
At-Bainchura,
Dist. Cuttack-22 (Welder).
12. Khirod Kumar Patnaik,
S/o. Gobind Ch. Pattnaik,
At-Traffic Colony,
Or-No. D-25/B, Jatni,
Dist. Khurda-752050,
Machinist.

J. J. M.
4.5.98

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14

-3-

13. Prakash Ku. Parida,
S/o. Baidhar Parida,
At-Haripur,
Po. Godiput Matiapada,
Jatni, Dist. Puri-50,
(Fitter).
14. Fakir Charan Mallick,
S/o. Maheswar Mallick,
At-Biswanathpur,
Tyenda Kura,
Cuttack-34,
(Machinist).
15. Vasudev Teddy,
S/o. Adhinarayan,
At-Reddy Street,
Po. Kotabommali,
Dist. Srikakulam-95,
(Fitter).
16. Sanathan Sethi,
S/o. Biswanath Sethi,
At-Lalitagiri,
Cuttack-38
(Blacksmith).
17. Pabitra Mohan Adhikari,
S/o. Madhusudan Adhikari,
At/Po. Urali,
Via-Gopalpur,
Dist. Cuttack-11,
(Welder).
18. Saroj Kumar Mohanty,
S/o. S. Mohanty,
At/Po. Peddadimili,
Via. Kotturu,
Dist. Srikakulam,
532455(A.P.),
Fitter.
19. Suryanarayan Panigrahi,
S/o. Rama Ch. Panigrahi,
At-Somayavalasa,
Po. Tekkali,
Dist. Srikakulam-532202
(Fitter).

J. J. M.
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13

VS

-4-

20. Debaraj Nahak,
S/o. Gundhicha Nahak,
At. Navli,
Po. Bonabulapalli,
Via. Chatrapur,
Ganjam-761020,
(Fitter).
21. Ramesh Behera,
S/o. Trinath Behera,
At/po. Daspur,
Via-Berhampur-3,
Ganjam-760 003,
(Welder).
22. Karanachari Majhi,
Son of Badal Majhi,
At/po. Bokharidiha,
Via. Joka,
Dist. Mayurbhanj-7570193,
(Carpenter).
23. Guruprasad Jena,
S/o. Dinabandhu Jena,
At-Pamasara,
Po. Kairi. Via-Pipili,
Dist. Puri-752104,
(Machinist).
24. Rabindra Ku. Behera,
S/o. Bhaskar Behera,
At-Chatrapur,
Old Police Line,
Qr. No. E-B
(Machinist).
25. D. G. Naveen Kumar
Son of Appa Rao,
At-Batohayyapeta,
Qr. No. 3-11-22,
Srikakulam(Fitter).
26. Silla Venugopal,
S/o. S.S. Sastry,
C/o.P. Narayana Rao-I,
Driver-A,
Hat Bazar Jatni,
Khurda Road-752050,
(Welder).
27. Bipin Bihari Patalasingh,
S/o. Dusasana Patalasingh,

J. Sum
H-5-98

At/Po. Kankia,
Dist. Khurda-752020,
Machinist.

28. Ramesh Murmu,
S/o. Surendra Murmu,
At. Thokarapal,
Khuntepal-PO,
Dist. Mayurbhanj,
Carpenter.
29. S. V. S. V. Prasad,
Son of S. Jagga Rao,
House No. 6.1.31,
Khurda,
Palakonda Road,
Shikakulam,
30. Sahadev Singh,
S/o. Makar Ch. Singh,
At-Thakurapal,
Po. Khuntapal,
Dist. Mayurbhanj,
Carpenter.

... .. APPLICANTS.

31.
BY LEGAL PRACTITIONER :- M/S. G. A. R. DORA, V. NARSINGH, ADVOCATES.

-VERSUS-

1. Union of India through the
General Manager, S.E. Railway,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager,
S.E. Railway Khurda Road,
PO: Jatni, Dist. Khurda.
3. The Regional Director,
Apprenticeship Training,
and Regional Central Apprentice
Adviser (Eastern Region),
Nizam Palace, 2nd floor, 234/4
Acharya Jagadish Chandra Bose Road,
Calcutta-20.
- Sum.
4.5.98

4. The Director of Technical Education & Training Orissa, Killa Maidan, At/Po./Dist. Cuttack. RESPONDENTS.

BY LEGAL PRACTITIONER : Mr. Ramesh Chandra Rath, Additional Standing Counsel (Railways)

&

Mr. K.C. Mohanty, Government Advocate appearing for Respondent No. 4.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN :-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, 30(thirty) applicants, who have been permitted to pursue this Original Application jointly, had prayed for set aside their order of discharge/termination as void, being violative of Section 25-F of the Industrial Dispute Act. At the time of hearing, it was submitted by the learned counsel for the applicants that he does not press this prayer because the Tribunal has no jurisdiction to adjudicate a matter which comes under the Industrial Dispute Act, and for which separate courts are there.

Sd/-
H.5.98

2. The other prayers made by the applicants are for a direction to the Respondents 1 and 2 to confer temporary status on the applicants after 120 days from the date of their joining under the Respondents, alongwith all benefits and privileges of temporary Railway Servants. There is also a prayer to issue any other appropriate relief or reliefs, in favour of the applicants, justified under the circumstances.

3. The facts of this case, according to the applicants, are that they are all Diploma Holders from I.T.I. in different trades namely Welder, Fitter, Machinist, painter, Blacksmith and Carpenter. Respondents 1 and 2 requested the Employment Exchange to sponsor the names of suitable qualified and eligible candidates for recruitment as Act Apprentice under Apprentices Act, 1961. Employment Exchange Authorities asked the applicants to come with all certificates including employment Identity Card etc. A copy of such a notice, issued to one of the applicants by the Junior Employment Exchange Officer, Kendrapara is at Annexure-A/1. The applicants, on their name being sponsored by the Employment Exchange, appeared at a written test and interview and were selected as Act Apprentice subject to medical fitness. They were all declared medically fit and they joined as Act Apprentice in June, July and August, 1992. Copy of one such order, engaging the applicants as Act Apprentice is at Annexure-A/2.

J. Sum.
H-5.98

17

19

-3-

It is submitted by the learned counsel for the applicants that under the Appt. Act, the employer is under obligation to provide training in the trades in accordance with the provisions of this Act and Rules. Further it is submitted that the employer is also under obligation to ensure that a person possessing the prescribed qualification is placed in charge of the training, and at the end of one year practical and basic training, an Apprentice is required to appear in All India Trade Test conducted by the National Council for Vocational Training (for short N.C.V.T.). On passing the said test, a certificate is awarded by the N.C.V.T., which is recognised for the purpose of employment under the Government. Under Section-9 of the Act, Employers are required to make suitable arrangement in his workshop for imparting a course of practical training to every apprentice engaged by him in accordance with the programme approved by the Apprenticeship Adviser. There are also detailed provisions in the act itself about giving of basic training. It has also been provided under Rule-9 of the Act, that the Employer is required to submit report to the Regional Director of Appt. Training, in prescribed form and at the end of every half year, a report in Form App-1, is also required to be sent to the Director along with details of training, subjects, marks etc. Applicants' state that the Training is for one year of

J. Jom
H. 5. 98

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-2-

which ten months is for practical training and two months is for basic training. Applicants' case is that instead of imparting training, applicants were posted in different carriage sheds and utilised in Group D service for maintenance duties for one full year and were paid a stipend of Rs. 380/- per month instead of regular Group - D scale of pay. After one year, applicants have been discharged, as they have not been given any training nor their training reports etc. have been sent to the Regional Director, they are unable to appear at the All India Trade Test and can not, therefore, pass and get the certificate from the N.C.V.T. Petitioners filed representation before the Director of Technical Education and Training, Government of Orissa, indicating that no training was provided to them and necessary documentation work was also not done by the respondents in respect of these applicants. In the enclosure to this representation, at Annexure-A/7, Petitioners, had given details of statutory requirements of training and the lapses of the Respondents with regard to this. Petitioners also filed a representation before the General Manager, South Eastern Railway, at Annexure-8 and prayed for absorption in any Gr. C or D posts and also arrange for issue of Certificates of Apprenticeship as per Rules but no action was taken on the said representation. Applicants' further state that in similar

J. Sum.
H-5-98

circumstances, the course completed Act Apprentices in Waltair Division have been granted temporary status and have been allowed all privileges that was admissible to the temporary Railway Servants from the date of granting temporary status (Annexure- A/9.). Applicants case is that as they were engaged in Gr. D work and actually, no training, whatsoever, were given to them, they must be treated as Gr. D employees and on completion of 120 days, conferred with temporary status. As already noted, they have also prayed for any other relief or reliefs justified in the circumstances of the case.

4. Union of India represented through General Manager, South Eastern Railway and Divisional Railway Manager, Respondents 1 and 2 in their counter, had taken the stand that Apprentices are given training in terms of the contract as per Section 2(aa) of the Apprentice Act, 1961. On completion of their training, they are ^{not} to be absorbed and the employer under whom, they had received the training is under no obligation under the Act to provide them with any employment. Respondents have stated that applications were invited from the open market for recruitment of Act Apprentices vide notice/circular dated 14.8.1991 (Annexure-R/1) and in the said circular, it was mentioned that on completion of the prescribed training, the trainees shall be discharged and the Railway Administration is under no obligation to provide them opportunity for employment, under the Act.

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A panel of Seventy three candidates was drawn up and in the first phase, fifty candidates were offered training and out of which, forty eight persons, had undergone such training in different carriage sheds of Khurda Road Division for a period of one year, and after completion of such training, they were discharged. Respondents' case is that appropriate training was given to the applicants in different carriage sheds of Khurda Road Division for a period of one year and two months theoretical training was given at Basic training centre Manchewar. Respondents have enclosed an order at Annexure R/2 in which 29 such Apprentices were posted under different places for training. Agreement was also executed with them. Respondents have denied that these applicants were engaged as Gr. D employees and utilised in maintenance duties. Respondents further state that during theoretical training, the Admn. was advised by Respondent No.3 to obtain signatures of the Apprentices in the new contract form and accordingly, the administration has requested the said trainees to sign in the new format but they flatly refused to sign the format and thereafter, the administration has approached the respondent no.3 with old contract forms signed by the trainees for registration of their names. But this contract forms were returned by Respondent No.3 without registration. Because of this the names of the applicants could not be registered with Respondent No.3 and therefore, they could not appear in the N.C.V.T. It is further stated by the

Sd/-
H.5.98

Respondents that for non-eligibility of the applicants for appearing in the All India Trade Test, Respondents 2 and 3 are not responsible. It is further stated that the applicants were trainees and not workers and therefore, there is no question of conferring temporary status on them.

5. Respondent No.3, is the Regional Director, Apprenticeship Training and Regional Central Apprentice Adviser (Eastern Region), Calcutta. He has not filed counter but a letter dated 10.2.1995 sent by him to the Tribunal, which is on record and Respondent No.4, the Director of Technical Education and Training, Orissa has filed counter in which he has extracted the relevant portion of the letter of the Regional Director, Respondent No.3. Regional Director, in his letter, has pointed out that this is a matter between employer and employees as stated in the petition contesting for regular employment, ⁱⁿ the said concern and petitioners are never covered under the App. Act, 1961 as apprentices. Reasons for this is that the employer has not entered into the contract of Apprenticeship and sent the contracts of the apprentices for registration with the Central Apprenticeship Adviser under section-4 of the App. Act, 1961 within the permissible time. Hence those candidates who are stated to be Appt. are not apprentices under the Act, 1961. The responsibility of engaging the candidates for training or whatsoever as daily wages worker as stated by the applicants,

J. Som.
7/15/98

solely rest with the employer and the Regional Central Apprenticeship Adviser (E.R.), who has been made a party to the case in question, does not come into the picture at all. Respondent No. 4, in his counter has merely quoted the above letter of the Respondent No. 3 and has taken the stand that he has no connection with this dispute and has no comments to offer.

6. We have heard Shri G. A. R. Dora learned counsel for the Applicants, Shri R. C. Rath, learned Additional Standing Counsel appearing on behalf of Respondents 1 and 2 and Shri K. C. Mohanty, learned Government Advocate appearing on behalf of Respondent No. 4 and have perused the records.

7. The whole controversy, in this case boils down to the point ; whether regular training as required under the Act, 1961 was imparted to these applicants and whether proper documents were made on the basis of which the applicants would have been treated as Act Appts. and/or whether they are entitled to appear in the All India Trade Test. During the hearing of this original application, we had directed the learned Additional Standing Counsel to produce relevant documents indicating that proper training was given to these applicants. In response, three documents had been produced before us and we have noted this in our order dated 13-12-1997. These three documents, however, do not throw any light on the question whether actually training were given to them as required under

Sum.
H. S. 18

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-14-

the Act; the first document is Attendance Register for certain periods. It is not in dispute that the applicants attended different offices under the Respondents. Their case is that they were engaged as Gr.D employees and utilised for maintenance work instead of giving them training. Attendance register do not throw any light on this aspect. The second set of document is payment of stipend. It is admitted by both sides that the applicants got stipend of Rs. 380/- per month. These documents, is therefore, of less relevance to the points at issue. The third document is a letter dated 17.2.1995 in which sitting arrangements have been made from 19.12.1994 to 18.2.1995 to the candidates for providing theoretical training at the Basic Training Centre, Mancheswar, Bhubaneswar. Respondents have further stated in their counter that theoretical training mentioned as basic training in the Act, was given to these applicants in the basic training Centre, Mancheswar, Bhubaneswar but from this documents it appears that such training if at all was provided from 19.12.94 to 18.2.1995 but the applicants joined the Appt. training in June, July & August 1992. This training is for one year. From these documents it is clear that during the period of one year training, no basic training was provided to these applicants and if the Respondents are to be believed, that basic training was provided only between December, 1994 to February, 1995. Applicants have also enclosed various documents alleging that statutory requirements for giving training were not complied with. Different forms required

J. Jm.
4.5.98

to be sent alongwith statutory reports etc. were not submitted to the Regional Director, Respondent No.3. Half yearly training programme was also not given and because of this, the Appt. Adviser in his letter dated 10.2.1995 has clearly mentioned that these persons are not Act. Appts. under the Act and therefore, they could not have appeared in the All India Trade Test, organised by the N.C.V.T. In the face of this letter of Regional Director, Respondent No.3, which has also been extracted in the counter of Respondent No.4 it is clear that Appt. training as required under the Act, was not given to the petitioners and necessary statutory documentations were also not made.

8. The next question which arises for consideration that in such case what relief could be given to the petitioners. Admittedly, petitioners have lost one valuable year and have been debarred from appearing in All India Trade Test. Therefore, the first prayer is for conferring on them temporary status. In support of their contention, petitioners have relied on the order dated 16.3.1993 (Annexure-A/9) in which in Waltair Division, different persons who have been described as course completed Act. Appts., who are working as substitute in Gr. C category of various Departments were granted temporary status with effect from 24.2.1993. This order is at Annexure-A/9. From this order, it appears that in Waltair Division, Similarly placed persons were treated as substitute in Gr.D category in

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various department and on their completion of requisite periods they were conferred temporary status. As in the present case, petitioners ~~were~~ not engaged as Gr.D employees, they can not be taken as Railway servants from the date when they joined as Appt. in June, July and August, 1992. Therefore, temporary status, can not be conferred on them, straightway. This prayer is held to be without any merit and is rejected.

9. Learned counsel for the applicants Mr. Dora, has very strongly submitted that inequitous situation of the present applicants. In response to a notice of the Respondents 1 and 2, they applied and they were selected through a written and viva-voce and medical examination, ^{were} Respondents ~~/~~ statutorily obliged to give them training as per the Act and Rules and to keep on reporting about the training to the Regional Director, Apprenticeship Training and Regional Central Apprentice Adviser, Respondent No. 3 but none of this was done and at the end of one year, they were simply retrenched. It has been submitted by the learned counsel for the applicants and this is also borne out by Annexures-A/5 and A/6 in which the Divisional Railway Manager has sent the proposal to absorb these persons as substitute. The letter Annexure-A/5, is dated 7.6.1993 and is a proposal from Divisional Railway

J.J.M.
4-5-98

Manager (P), Khurda Road to Chief Personnel Officer, South Eastern Railway, Garden Reach. In this letter, it has been stated that 48 Act Apprentices, are undergoing Statutory Training under Apprenticeship Act, 1961 in different C&W Sheds of Machinical Departmental in Khurda Division and the Railway Administration is not under any obligation to absorb them after training but there is a demand from the organised labour for the engagement of the trained Act Apprentices as substitutes against Group D requirements and later as Group C apprentices in Direct Recruitment quota as has been done in adjacent division i.e. Waltair. It is also stated that there is shortfall of reserved community candidates in Group C skilled artisan category which can also be met from the I.T.I. passed SC/ST Act Apprentices. Further it is stated that there is requirement of substitutes in Electrical Department against newly proposed A.C. Coach maintenance works. It is noted that these 48 trainees are passed I.T.I. candidates with high percentage of marks and substantial number of them are wards/relatives of Railway employees. In view of this, the D.R.M. has proposed, in this letter to absorb these I.T.I. passed Act apprentices as substitutes in Group D Posts after the screening and then regularise them in Gr. D Posts meant for direct Recruitment quota. Approval of the above proposal was sought for in this letter.

J. V. M.
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Second letter, dated 09-10-1993 at Annexure-A/6 is addressed to the Chief Personnel Officer, S.E. Railway, Khurda Road where it is mentioned that the Act Apprentices have been absorbed against substitutes Group D requirements in Waltair Division, with the post facto approval of General Manager. In Khurda Division, there is a requirement of additional substitutes in Electric Department against newly proposed and A.C. Coaches, maintenance work/D.H.E./KUR on the issue and placed an indent of 70 number of substitutes for manning of day-to-day work in Electrical Department. Moreover for imparting training to these I.T.I. passed candidates as Act Apprentices, the Railway Administration has incurred financial expenses and therefore, in this letter, it was proposed to absorb these I.T.I. passed Act apprentices as substitutes in Group D posts, after the screening. On these two proposals, apparently, no orders of competent authority were received. The Respondents, in their counter, have not referred to these two letters even though the same has been enclosed to the O.A.

10. Honourable Supreme Court in the case of U.P. STATE ROAD TRANSPORT CORPORATION AND ANOTHER VRS. U.P. PARIVAHAN NIGAM SHISHUKHS BEEROZGAR SANGH AND OTHERS reported in AIR 1995 SC 1115 have pointed out that what is indeed required is to see that the nation gets the benefit of time, money and energy spent on the trainees, which would be so, when

they are employed in preference to non-trained direct recruits, and therefore, in para-12 of the judgment, their Lordships of the Hon'ble Supreme Court have laid down ^{are} ~~about~~ how the trained Apprentices / to be absorbed. In para-13 of the judgment, Hon'ble Supreme Court have ordered that pending consideration of the engagement of Act apprentices against the post in the trade in which, they are qualified, they could, even, be considered for the post of Conductors and clerks in the U.P. Road transport Corporation.

11. In the instant case, we find that the Divisional Railway Manager, had sent proposal for absorption of these Act. Apprentices as substitute against Group D Posts and there is requirement of such substitute as it appears from Annexure-A/6. In similar circumstances, such Act Apprentices have been absorbed as substitute in other Division i.e. Waltair. In consideration of the above, we direct that Respondent No.1, should pass appropriate orders on these two proposals at Annexures-A/5 & A/6 dated 7.6.93 and 9.10.1993, within a period of three months and communicate the order/decision to the applicants. The applicants would be free to approach the Tribunal, in case they are dis-satisfied with the final order to be passed on these two letters/proposals, referred to above.


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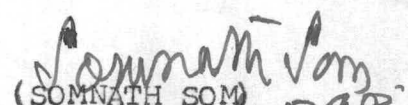
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-20-

12. With the above directions, the Original Application is disposed of. There would be no orders as to costs.


(S.K. AGARWAL) 4/5/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 4-5-98

KNM/CM.