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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
C U T T A C K.

ORIGINAL APPLICATION NO.359 OF 1996.

Cuttack this the 9th day of December, 1996.

Ajit Kumar Das and two others Applicants.

Versus.

Manager, Postal Printing Press,
Mancheswar Industrial Estate,
Bhubaneswar and another. Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ? *Ys.*
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? *NG.*

N. SAHU
(N. SAHU) 9/12/96
MEMBER (ADMINISTRATIVE).

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ORIGINAL APPLICATION NO.359 OF 1996.

Cuttack this the 9th day of December, 1996.

C O R A M :

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE).

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1. Ajit Kumar Das, aged about 23 years,
Son of Pramod Chandra Das,
At- Kalarapal, Plot No.662(P),
Rasulgarh, Bhubaneswar-10
having permanent address
at Sarangapur, District-Jajpur.
2. Hemanta Kumar Behera, aged about 23 years,
Son of Gangadhar Behera, At/P.O.Kakhadi,
District-Cuttack.
3. Pramod Kumar Behera, aged about 25 years,
Son of Kanhu Charan Behera,
At Balipatna, P.O.Marichpur,
District-Jagatsinghpur.

..... Applicants.

Versus.

1. Manager, Postal Printing Press,
Mancheswar Industrial Estate,
P.O.Rasulgarh, Bhubaneswar-10,
District-Khurda.
2. Department of Post, Government of India,
represented by the Chief Post Master General,
Bhubaneswar, District-Khurda.

..... Respondents.

Advocates for Applicants : M/s.S.S.Das,
B.R.Das,
S.S.Das, and
B. Mohanty.

Advocate for Respondents : Shri Ashok Mohanty,
Senior Standing Counsel.

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O R D E R.

N. SAHU, MEMBER (ADMINISTRATIVE): In this Original Application the relief prayed for is for a direction to the respondents to absorb the three applicants who have jointly pursued this application in the post of Bindery Assistants advertised for recruitment by the Manager, Postal Printing Press, Bhubaneswar-10 in Samaja dated 8.5.96 which is Annexure-7 to this petition. Nine different categories of posts were advertised. We are concerned with item No.6, Bindery Assistants, for vacancies of S.T-1, S.C.-1 and 2 UR = total-4. Against Bindery Assistants, para-6 states that the qualification would be Matriculate or equivalent Trade Certificate of successful completion in the trade under the Apprentice's Act, 1961. The mode of selection states that -

" The eligible candidates shall be called to appear before a selection board by intimating the date, time and place of interview."

With regard to experience, it is only the experience in any firm or organisation that would count. These three applicants claim in this petition that they have completed successfully the Course of Full Term Apprenticeship Training with respondent No.1, but they were equated with the general run of Matriculates without giving any importance to their training.

2. It is necessary to narrate at length the terms and conditions of selection for apprenticeship training. There was an advertisement by the Manager, Postal Printing

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Press for six seats of Book Binder. The training was scheduled around June-July, 1992. The minimum qualification was HSC or any equivalent examination. Rigorous standards of physical health were prescribed. The duration was two years. There was a stipend of Rs.290/- for the first year and Rs.330/- for the second year. The selected candidates were to enter into a 'Contract of Apprenticeship' with the Postal Printing Press. It is stipulated that the Manager, Postal Printing Press is under no obligation to provide employment to the candidates on completion of ~~the~~ training. The candidates for training would be selected on the basis of percentage of marks secured in the H.S.C. Examination. Thereafter, the candidates would be called for an aptitude test. After that there would be verification of the physical fitness and it is only thereafter that they are admitted for training.

3. 5000 applicants appeared for the selection. Out of these 5000, six were selected for apprenticeship training. These six persons had undergone training for a period of $2\frac{1}{2}$ years. During this period they were paid stipend as stipulated in the advertisement. Two months after their joining their stipend got increased from Rs.290/- to Rs.460/- in the first year and from Rs.300/- to Rs.530/- in the second year. By order dated 3.3.94 they were directed to undergo practical training in addition to the training imparted to them. This practical training was to ensure that the applicants were engaged on production work as soon as they could be switched over

to such jobs. This was the order to ensure that the trainees would attain confidence and necessary skills in their trade. It is specifically mentioned therein that with such rounding up of training, the Postal Printing Press "would be benefited by the fruits of their labour." It is thus ordered that "the apprentices will attend the Press in General shift for attending R.I. Classes for which monthly programmes will follow regularly."

4. The applicants successfully completed the training and the result was declared on 23.8.95. Out of six trainees only three applicants in this application were declared to have passed. After this completion of training, the applicants came to know that four posts of Bindery Assistants were lying vacant. They represented to respondents 1 and 2 on 9.10.95, 6.2.96 and 4.3.96 (Annexure-5). The representations were disposed of by saying that they could apply for the post of Book Binder in case of advertisement for the post. In their representations, the applicants had drawn the attention of the respondents to the decision of the apex Court. Of the three applicants, one of the applicants belongs to Scheduled Caste category and the other two belong to the General category. It is also to be noted that the applicants are the first batch apprentices who have completed the successful training from the Postal Printing Press. After them, the second batch consisting of 6 persons are still undergoing training, as submitted by Shri S.S.Das, during course of hearing. It is also stated that this kind of training was undertaken by the Orissa Government Text Book

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 Press, Bhubaneswar and Orissa Government Press at Cuttack since long and the successful trainees were absorbed against the vacancies arising in the said Presses and no advertisement was ever made for filling up such vacancies.

5. Shri S.S.Das, learned counsel for the applicants, relied on the decision of the Supreme Court in UP State Road Transport Corporation and another v. U.P.Parivahan Nigam Shishukhs Berozgar Sangh and others (1995(1) SCALE page 127). The judgment is dated January 12, 1995. As the learned counsel entirely relied on this order of the Supreme Court, I shall extract the summary head-note as under :

" A. The provisions of the Act, are sufficiently indicative of the fact that the training imparted is desired to be result-oriented; and the trainees are treated as akin to employees. Even so, Section 22 of the Act states, 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 in his establishment unless there be a condition in the contract to the contrary (Para-7).

B. The circular and the Memo of the appellant falls short of any promise of employment (Para-9).

C. Having regard to the fact that the Government of India did desire that preference should be given to the trained apprentices and it is because of this that the State Government stated in its letter No.734/38-6-16(T)-79 dt.12.11.79 that where such apprentices are available, direct recruitment should not be made, the Court issued the following directions,

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. Hargopal AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training Institute would maintain a list of the persons trained year-wise. The persons trained earlier would be treated as Senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior (Paras-11 & 12)."

The learned counsel highlighted the concern of the apex Court in this case for a need to make proper and timely utilisation of the available resources and not to fritter them away or to sideline them or waste such resources. As stated above, apprentices were trained after their rigorous selection followed by an equally rigorous training. Unfortunately this impugned advertisement just equates them with any other Matriculates. The advertisement reads in such a manner as though that a Matriculate and an apprenticeship certificate holder are equated. This is absolutely unacceptable.

6. The apex Court at the preamble to their order stated as under :

" The material resources of this country are limited. Indeed this is so for every country. The resource crunch is, however, acute for us; and so whenever and wherever public money is invested, it has to be seen that there is a proper utilisation of the same in the sense that the public ultimately gets benefit of the same.

2. This prelude is to highlight the idea which we propose to focus as we proceed to bring home the need to make the investment in apprentice trainees useful to the society, which would be so when the training received by them is put to social use."

Similarly at paras-6 and 7 the apex Court had firmly spelt out as to how important and precious are these trained apprentices. In that case they referred to a Memo of the Directorate of Training and Employment of the State of U.P. where other things remaining equal, the trained apprentices should be given preference in case of employment. Paras-6 and 7 of the judgment are quoted below :

" 6. So the legislature did desire and make adequate provisions to see that the competent persons receive due training to cater to the need of increasing demand for skilled craftsman on one hand, and to improve the employment potential of the trainees on the other. Good amount of money, which would be public money in case of public bodies like the Corporation, is also spent on training the apprentices. Further, during the period of training, the apprentices are put under a discipline akin to that of regular employee inasmuch as Section 17 states that in all matters of conduct and discipline, the apprentice shall be governed by the rules and regulations applicable to employees of the corresponding category in the establishment in which the apprentice is undergoing training. Section 16 requires payment to the apprentice in case of injury due to accident arising out of and in the course of training, in accordance with the provision of the Workmen Compensation Act, 1924, as modified by the Act. The Rules have dealt with the hours of work (Rule 12) and grant of leave (Rule 13) also.

7. The aforesaid provisions are sufficiently indicative of the fact that the training imparted is desired to be result-oriented; and the trainees are treated as akin to employees. "

Unfortunately in the impugned advertisement, there is not even an indication of giving any preference to the trained apprentices over others. The Hon'ble Supreme Court at para-10 had clearly spelt out that the Government

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of India did desire that preference should be given to the trained apprentices. At para-11 the Hon'ble Court had held that the nation should get the benefit of time, money and energy spent on the trainees.

7. In the counter affidavit, the respondents say that the Supreme Court judgment is a judgment in personna and not a judgment in rem. It is also stated that the Supreme Court directed preference to an apprentice and never directed an absorption. Learned Senior Standing Counsel who argued the case stated that although the applicants were declared selected apprentices, there might be others who had undergone similar training in other institutions either recognised, affiliated, Government aided or purely private. He also stated that there might be other candidates who have completed the apprenticeship either on scholarship or spending their own money. He submitted that to shut them out from the open interview would be a flagrant violation of Article 14 of the Constitution and not to consider them for employment along with the apprentices trained no doubt in a recognised institution, would be a violation of Article 16.

8. I have carefully considered the submissions of the rival counsel. I have no doubt in my mind that the Supreme Court directed preference to be given to the trained apprentices and although there is no promise of employment, relaxation from the need to have their names sponsored by any Employment Exchange and relaxation from age bar are expressly stated in the Supreme Court judgment.

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This decision of the Hon'ble Supreme Court is not confined to merely the trade apprentices before the U.P. State Road Transport Corporation. The apex Court had interpreted the provision of Apprenticeship Act, 1961 and interpreted the law which is binding on all employers in the country. The respondents after going through the representations should have spelt out the preference for the trained apprentices. It is for the above reasons that order dated 24.5.96 I have stayed the interview for Bindery Assistants.

9. After hearing the arguments of the learned counsel for both the sides, I have no doubt in my mind that the applicants are entitled to succeed. Since the advertisement dated 8.5.96 had already initiated the recruitment process by the time this Court considered the matter and the applications must have already been received, no useful purpose will be served by declaring the recruitment to the posts of Bindery Assistants as per se bad. One argument of the learned Senior Standing Counsel cannot be brushed aside. There may be other applicants from other institutions. As far as private institutions are concerned, the applicants shall get preference over those candidates because the standard of selection in a private institution is not usually very exacting. The concern of the Supreme Court is that the respondents having spent public money for ^{the} training the applicants cannot ignore them for appointment. It is just pointless to go in for a search again for suitable candidates. If a Matriculate was to be selected, he has to

submit himself to a similar training for 2½ years which the applicants had already undergone before they can be treated as qualified workers for these technical posts. But there may be similarly situated trainees ^{from} ~~in~~ other Government institutions where similar resources have been spent and if they apply and if they are senior to the applicants and if they are not absorbed by their sponsoring employers, there is a case for considering them, along with the applicants. Subject to this, I direct that the respondents shall scrupulously follow the directions of the Supreme Court and consider the applicants subject to their showing training certificates, as entitled to preference over other candidates. Since they are the first batch, their seniority also is not disputed. The respondents shall consider their cases and fill up the posts of Bindery Assistants as per the advertisement dated 8.5.96 within a period of six weeks from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. No costs.

Narasimha Rao
 (N. SAHU) 7/12/96
 MEMBER (ADMINISTRATIVE).

DJena./