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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.452 OF 1996

Cuttack, this the 25th day of January 1999


Kishore Biswal Applicant

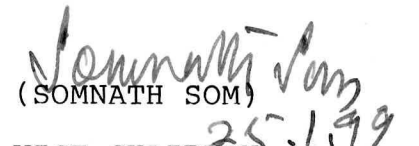
Vrs.

Manager, Postal Printing Press
and another 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.AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.1.99

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....

Kishore Biswal,
aged about 24 years,
son of Parsuram Biswal,
Qrs.No.F-37, Unit-7,
Suryanagar,
P.O-Baramunda,
Bhubaneswar-751 003,
District-Khurda

..... Applicant

By the Advocates - M/s S.S.Das
B.R.Das
S.S.Das &
B.Mohanty.

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

By the Advocate - Mr.Ashok Mohanty,
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed that he should be absorbed in the post of Machine Assistant (Offset) or his case should be considered in the line of the judgment of the Apex Court in the case of U.P.State Road Transport Corporation and another

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v.U.P.Parivahan Nigam Shishukhs Berozgar Sangh and others, AIR 1995 SC 1115, before the vacant post is filled up. There is also a prayer that the post advertised be declared as unreserved.

2. The facts of this case, according to the applicant, are that Postal Printing Press issued an advertisement (Annexure-1) for apprenticeship training for Litho Offset Machine Minder. It was indicated that there were four seats. In the advertisement it was also mentioned that the candidates would be selected on the percentage of marks secured in the H.S.C.Examination or equivalent examination and after such provisional selection, candidates would be called for aptitude test and for verification of original documents as also for checking physical fitness. The petitioner applied for apprenticeship training for Litho Offset Machine Minder and was issued with a call letter dated 29.9.1992 (Annexure-2) requiring him to appear at an interview (aptitude test). The applicant further states that he and three others were selected out of 3000 applicants for the purpose of undertaking a course of full term apprenticeship training in Government of India Postal Printing Press. He was informed of his selection in letter dated 22.10.1992 (Annexure-3). Thereafter the applicant underwent apprenticeship training for three years during which he got stipend initially at the rate of Rs.290/- which was increased to Rs.530/- in the second year and was further increased in the third year. On 3.3.1994, the Manager, Postal Printing Press, issued an office order, copy of which was sent to the trainee apprentices, in which officers/supervisors were directed

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to ensure that the apprentices are engaged on production work as soon as they can be switched over to such jobs. It was indicated that thereby the trainees would attain the confidence and necessary skills in their trade and the press would be benefitted by the fruits of their labour. This office order is at Annexure-4. The applicant states that from Annexure-4 it is clear that during the period of training he was engaged in production work. The applicant successfully completed the apprenticeship training of three years and appeared in the final test. According to him, out of four apprenticeship trainees who were selected, only two, i.e., himself and another person continued till the last and the applicant was the only one who appeared at the final test in which he came out successful. After successful completion of training, the applicant came to know that a single post of Machine Assistant (Offset) which was lying vacant since 1986 was going to be filled up. Accordingly, he represented on 9.1.1996 for taking him in that post. In reply, he was informed by Assistant Manager of the Postal Printing Press in his letter dated 27.2.1996 (Annexure-5) that he may apply for the post when the same is advertised. The applicant further states that three years earlier an advertisement was made for filling up of the same post, but the same was not filled up. The applicant has stated that he is the first batch of apprenticeship trainees and he is the only one who has completed training for three years. After him, now four others are taking training. According to the applicant, similar apprenticeship training is being imparted in Orissa Government Text Book Press, Bhubaneswar and Orissa Government Press at Cuttack. Apprenticeship training was introduced in the Postal Printing Press only in 1992. In Orissa Government

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Press, Cuttack, trainees are being absorbed against vacancies arising in those presses and no advertisement is made to fill up the vacancies from outside source. The respondents issued an advertisement on 8.5.1996 in SAMAJ inviting applications for filling up of different posts including one post of Machine Assistant (Offset). This single post was kept reserved for Scheduled Tribe even though earlier assurance was given to the applicant that his case would be considered if he applies after the post is advertised. The applicant has stated that going by the law laid down by the Apex Court in **U.P.State Road Transport Corporation's case (supra)**, his case should be considered for appointment against the post and as it is a single post, the same should not have been kept reserved for S.T. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that according to Section 18 of Apprentices Act, 1961, the apprentices are to be treated as trainees and not workers. The trainees were engaged in the production unit for the purpose of acquiring experience and practical knowledge. It has been further stated that there were two vacant posts of Machine Assistant (Offset) out of which one is to be filled up by promotion and the other by direct appointment. According to the roster point, the direct recruitment post is reserved for Scheduled Tribe community, and the applicant being of general category cannot be considered for the post advertised. It is further submitted that according to a contract entered into between the applicant and the Press, no apprentice is bound to serve the establishment and correspondingly, the Press is also not bound to give

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employment to the trainee apprentice after completion of the training. There is also no rule to appoint the applicant directly to the post. He is to be considered along with other applicants who have applied in response to the advertisement and that is how he was advised to apply for the post when the same is advertised. Accordingly, the petitioner applied for the post though the post is reserved for Scheduled Tribe category. The respondents have further stated that the persons who have acquired training from other establishment cannot be prevented from competing with apprenticeship trainees of the Postal Printing Press. Therefore, the contention of the petitioner that selection should be confined to the trainees is not correct. The respondents have also stated that according to the judgment of the Apex Court in **U.P.State Road Transport Corporation's case (supra)** only preference has to be given to the apprenticeship trainees of the establishment, but they cannot be straightaway absorbed against the vacant posts. In the instant case, as the post is reserved for S.T. candidate, the applicant's candidature for the post cannot be considered. On the above grounds, the respondents have opposed the prayers of the applicant.

4. We have heard Shri S.S.Das, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. At the time of hearing, the learned counsel for the petitioner has produced a gradation list of Machine Assistants in the Postal Printing Press which shows that there are three vacancies instead of two. This document has been kept on record and has been taken note of. The

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applicant has also filed an affidavit in which he has indicated that one Prafulla Kumar Nayak is going to be appointed against the post for which an interim order has been passed by the Tribunal. He has been working as a Machine Assistant in the Text Book Press, Bhubaneswar and he had a training from that Press. It has also been stated that there are three unreserved posts against the total number of eight posts. This affidavit has also been taken note of.

5. It has been submitted by the learned counsel for the petitioner that the applicant was the first batch of apprenticeship trainees in Postal Printing Press. Four persons including the applicant were selected out of 3000 applicants. The applicant was thus selected on the basis of merit. The training given to him was also production-oriented. In view of this, his appointment in the Press should be considered in the light of the decision of the Hon'ble Supreme Court in **U.P.State Road Transport Corporation's case (supra)** . It has also been submitted by the learned counsel for the petitioner that number of vacancies of Machine Assistant is three and not two, as mentioned by the respondents in their counter. In support of this, he has produced the gradation list of Machine Assistants which shows total eight posts out of which five have been filled up and three are lying vacant. It has been further submitted that even granting for argument's sake the contention of the respondents that there are only two vacant posts and according to Recruitment Rules 50% are to be filled up by promotion and 50% by direct recruitment, the single post to be filled up by direct recruitment should not be reserved as that would amount to 100% reservation. It has been argued by the learned Senior Standing Counsel that according to the provisions of Apprentices Act, 1961 the Press is not bound to offer employment to the apprenticeship

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trainees. The contract entered into between the apprenticeship trainee, i.e., the applicant and the Press also specifically provides for this. In view of this, the applicant cannot claim that he had any legitimate expectation of getting absorbed in the Press. As the post of Machine Assistant (Offset) advertised is reserved for S.T. candidate, the case of the applicant cannot be considered. The above contentions of the learned counsel of both sides are considered below.

6. Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation and another v. U.P.Parivahan Nigam Shishukhs Berozgar Sangh and others, AIR 1995 SC 1115, have considered the whole scheme of the Apprentices Act, 1961 and other relevant factors and have laid down the manner in which claim of trainees to get employment after successful completion of the training is to be considered. In this connection, it will be worthwhile to extract paragraph 12 of the judgment of the Apex Court in the above case:

"12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:-

(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.

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(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."

From the above, it is clear that a trained apprentice should be given preference over direct recruits and he would not be required to get his name sponsored by the Employment Exchange. He should be given age relaxation in accordance with the provisions of the concerned service rule. If the service rule is silent, then the age relaxation to the extent of the period for which the apprentice has undergone training would be given. It has also been laid down that the concerned training institute would maintain a list of persons trained year wise and the persons trained earlier would be treated as senior to the persons trained later and in between the trained apprentices, preference shall be given to those who are senior. The respondents have correctly pointed out that the Apex Court has mentioned about giving preference. There is no direction in the judgment of the Apex Court to give employment to the trained apprentices straightaway. They have to apply. Their candidature has to be considered. Age relaxation, if necessary, has to be given in accordance with the service rule or for the period of training undergone by them. Thus, the prayer of the applicant that he should be given appointment straightaway is held to be without any merit. All that he is entitled to is that his case should be considered and he should be given preference over other direct recruits and also over the successful apprenticeship trainees of later years from the same establishment. In view of the above, it is clear that the applicant's case should

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have been considered by the respondents and he should have been given preference, he being the first successful apprenticeship trainee in the trade from the Postal Printing Press. But the problem in this case is that the post has been reserved for S.T. candidate. This has been questioned by the learned counsel for the petitioner and this is the second point which falls for consideration.

7. The respondents have mentioned in paragraphs 7 and 13 of their counter that according to the Recruitment Rules 50% of the posts are to be filled up by promotion and other 50% by direct recruitment. There are two vacancies of which one is to be filled up by promotion and the other by direct recruitment. The respondents have further stated that according to the roster point, the direct recruitment post is to be filled up by an S.T. candidate. In course of hearing, the learned counsel for the petitioner has produced the gradation list of the Postal Printing Press which shows names of incumbents against particular post and also the vacancies. The gradation list apparently shows the position as on 1.1.1996. From the gradation list it is seen that five posts of Machine Assistant were filled up by Karunakar Mahalik, Bibhuti Bhusan Mishra, Asish Kumar Roy, Pitabas Das and Debaprasad Tripathy. It is mentioned in the gradation list that three posts are lying vacant. At the time of hearing, the learned Senior Standing Counsel had indicated that he would obtain instructions on the precise number of vacancies in the rank of Machine Assistant and would let us know. But no such memo has been filed. It is also not clear from the gradation list if the five posts of Machine Assistant which have been filled up, have been filled up strictly according to the Recruitment Rules, i.e., 50% by promotion and 50% by direct recruitment. In view of this, the respondents are directed to

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check up if there are three vacancies in the post of Machine Assistant or only two. Secondly, of the posts of Machine Assistant, which have been filled up, whether 50% have been filled up by promotion and 50% by direct recruitment. In case, the promotion quota has been overutilised, then future vacancies in the rank of Machine Assistant will have to be filled up by direct recruitment till the balance of 50% by direct recruitment and 50% by promotion is achieved. If there are three vacancies, then depending upon the utilisation of the promotion and direct recruitment quota in respect of posts which have already been filled up, promotion and direct recruitment quota in the three vacancies will have to be worked out. In other words, if out of the five posts already filled up, four belong to promotion quota, then the existing vacancies are to be filled up by direct recruits. If the promotion quota has been overutilised, then the future vacancies must be filled up by direct recruits till the balance, as mentioned in the Recruitment Rules, is achieved and while filling up such direct recruitment posts, the applicant should be given preference.

8. The next point is regarding the reservation of the single advertised post for S.T.category. It has been submitted by the learned counsel for the petitioner that as it is a single post, it cannot be reserved because that will amount to 100% reservation and would be against the law as laid down by the Hon'ble Supreme Court in the case of Dr.Chakradhar Paswan v. State of Bihar and others, AIR 1988 SC 959. The respondents in paragraph 7 of their counter have indicated that according to the roster point, this direct recruitment post falls in the category of S.T. and that is how it has been reserved for S.T. candidate. While filling up of the direct recruitment post, the respondents are

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required to follow the reservation roster and as according to the reservation roster the post falls in the category of S.T., the reservation of the post for S.T. has been correctly done. The contention of the petitioner that the post should be declared unreserved is held to be without any merit because the respondents are required to follow the roster and according to the reservation roster, this vacancy falls in the S.T. quota. This contention of the learned counsel for the petitioner is accordingly rejected.

9. Learned counsel for the petitioner has also submitted that the case of the petitioner should be considered for other posts available in Postal Printing Press in accordance with the decision of the Hon'ble Supreme Court in **U.P.State Road Transport Corporation's case (supra)**. In that case, the Corporation had filed an affidavit giving the position of vacancies in the posts of Conductor and Clerk. The Hon'ble Supreme Court issued certain directions with regard to the claim of the trained apprentices with regard to such posts. The observation of the Hon'ble Supreme Court in paragraph 13 of their judgment is quoted below:

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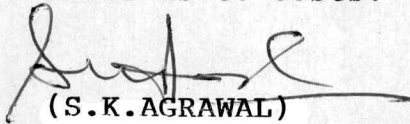
".....If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age requirement is concerned, the same shall be relaxed as indicated above."

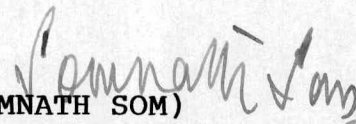
It has been submitted by the learned Senior Standing Counsel that the law as laid down in paragraph 12 of this decision is to be followed in respect of apprenticeship trainees in other establishments. So far as direction in paragraph 13 of the judgment is concerned, it is submitted by the learned Senior Standing Counsel that this direction applies only to the facts of that case and would not be applicable to the case of the petitioner. We are unable to accept this contention because the Hon'ble Supreme Court have mentioned in their judgment regarding use of public funds in training the apprentices and the need for proper utilisation of the resources spent in training the apprentices, and in the context of that their Lordships have issued direction in paragraph 13 of their judgment for considering the claim of the trained apprentices for other posts in the same establishment. The same logic^{JJM} applies to the facts of this case. In view of this, it is ordered that in case the petitioner applies for some other posts in the same establishment of Postal Printing Press, then his case should be considered for giving him employment in suitable post following the Service Regulations and the applicant will not be required to appear at any written examination and the requirement of name being sponsored by the employment exchange would not be insisted upon. Age relaxation would be given in accordance with the direction of the Hon'ble Supreme Court in paragraph 12 of the judgment which has already been extracted earlier. In view of the above, the respondents are directed to check up within a period of 60 (sixty) days as to the number of posts of Machine Assistant which have been filled up and to what extent the 50% promotion quota and 50% direct recruitment quota have been filled. Basing on that, present and future vacancies should fall in direct recruitment or promotion quota depending upon the short-fall from 50% in either case. While filling up of

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the direct recruitment quota, reservation roster should be followed. For any general category post, the applicant should be given preference in accordance with the law as laid down in paragraph 12 of the judgment of the Apex Court quoted by us above. In case the petitioner applies for any other post, then his case should be considered in accordance with the law as laid down by the Hon'ble Supreme Court in paragraph 13 of their judgment extracted above.

10. With the above observation and direction, the Original Application is disposed of. There shall be no order as to costs.


(S.K. AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 25.1.99