

In The Central Administrative Tribunal
Calcutta Bench

OA No.271 of 1997

Present : Hon'ble Mr. D. Furkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Sri Lakshmi Kanta Maiti, working for gain at
Advanced Training Institute, Calcutta, Dasnagar,
Howra as Vocational Instructor (Fitter General),
residing at the Campus of Advanced Training
Institute (Quarter No.3/16).

.... Applicant

- Versus -

- 1) Union of India, service through the Secretary,
Ministry of Labour, Shram Shakti Bhawan, N.Delhi.
- 2) Director General/Joint Secretary to the Govt. of
India, M/o Labour, New Delhi.
- 3) Director, Advanced Training Institute, Calcutta,
Dasnagar, Howrah.
- 4) Grievance Officer, Advanced Training Institute,
Calcutta, Dasnagar, Howrah.
- 5) Assistant Director, National Commission for SC/ST,
Mayukh Bhavan, Salt Lake City, Calcutta.
- 6) Shri Anand Prakash Mishra, Vocational Instructor
(Fitter), Advanced Training Institute, Dasnagar,
Howrah.

.... Respondents

For the Applicant : Mr. B. Dhara, Advocate

For the Respondents: Mr. M.S. Banerjee, Advocate
(Official)

(Private) : Mr. B.K. Chatterjee, Advocate

Heard on : 12-6-2000

Date of Order : 27.6.2000

ORDER

G.S. MAINGI, AM

This application has been filed against Office Memorandum
No.Est/Cal/5(550)/LKM/VOL-I dated 21-2-1997, issued by the Director,
Advanced Training Institute, Calcutta, Dasnagar, Howrah to the
applicant. The facts of the case are that the applicant had joined
As Vocational Instructor (Fitter) in the Establishment of Model
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Industrial Training Institute, Choudwar, Cuttack, Orissa under Director General & Training, Ministry of Labour, New Delhi after being selected and offered appointment vide letter dated 21-9-1983. This letter is placed at Annexure-A to the application and that as per selection made by the Selection Committee for Calcutta Unit of Director General of Employment & Training Organisation, he was offered appointment of Vocational Instructor(Fitter) to the temporary post on ad-hoc basis in the Office of Model Industrial Training Institute, Choudwar, Cuttack in the scale of pay of Rs.440-20-500-EB-25-700-25-750/-. It is worth noting that the applicant was selected by a Selection Committee for the post of Vocational Instructor(Fitter) on ad-hoc basis. But this letter does not say as to whether the selection was made as per relevant Recruitment Rules. Another Office Order No.869 dated 24-4-89 (Annexure-B to the O.A.) was issued by the Model Industrial Training Institute, Choudwar, Cuttack through which the applicant was appointed in the substantive capacity as V.I.(Fitter), Choudwar, Cuttack i.e. the selection made in 1983 was confirmed in April, 1989. Before his transfer he worked there as V.I.(Fitter) from 16-12-83 to 31st March, 1992 i.e. for a period of 8 years 4 months approximately. He was transferred to Calcutta vide order dated 27-3-92 and was released on 31.3.92 to join the post of V.I.Machinist General. Subsequently, he was adjusted as V.I.(Fitter General) vide Office Order dated 8-5-1996 (Annexure-D to the C.A.) in place of one Shri R.R. Jati, V.I.(Fitter) though there is no vacancy of V.I. (Fitter) in the Institute. He made representation on 20-9-96 to the respondents requesting them to post him permanently in the Fitter Trade against the vacancy of V.I.(Fitter). The copy of the representation is placed at Annexure-E to the O.A. The Director of the Advanced Training Institute, Dasnagar, Calcutta replied to the representation dated 20.9.96 that since action has already been taken to fill up the post of Vocational Instructor (Fitter Trade), therefore, it is not possible to transfer him at this stage and his case will be considered at later stage. The applicant made another representation on 14.12.96 to which Shri Mitra, Director of the Advanced Training

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Institute replied that he had accepted his transfer from M.I.T.I., Choudwar as V.I.(Fitter General) on his own request and he did not object at that time. So his case would be considered as soon as the next vacancy occurs in the trade of V.I.(Fitter). This clearly demonstrates the arbitrariness of the Director. The applicant again made another representation on 8-1-1997 to the Grievance Officer, A.T.I., Dasnagar and a letter was also addressed to the Director, A.T.I., Dasnagar by the Advocate of the applicant. Shri A.K. Mitra, Director issued another memorandum dated 21-2-1997 (Annexure-M to the C.A.) highlighting some points which are as under : (i) That the recruitment rules stipulate that for transfer to the post of V.I.(Fitter), the qualification cannot be relaxed. (ii) That at the time of your transfer from M.I.T.I., Choudwar to A.T.I., Calcutta, the original order of transfer was in the trade of Machinist (Genl.) issued by the then Principal, M.I.T.I., Choudwar. Since the post was occupied by other officer and there was no vacancy, your case was sympathetically considered and posted as V.I.(Fitter General) as per your qualification. (iii) That your qualification does not conform with the recruitment rules of V.I.(Fitter), you will not be posted as V.I. (Fitter) and this memorandum supersedes the earlier memorandum issued on 12.10.96 and 4.2.1997.

2. Respondent No.3, namely, Shri A.K. Mitra, Director, A.T.I., Calcutta has filed reply and it is indicated on the cover of the reply that the reply has been filed on behalf of the respondent Nos.3,4 & 5. He has made no mention about the respondent Nos.1 i.e. the Union of India through Secretary, Ministry of Labour, New Delhi and Director General/Joint Secretary to the Govt. of India, Ministry of Labour, New Delhi. He has stated in the verification of the reply that he is authorised to sign the verification on behalf of the respondents. Later it shows that the reply filed by the respondent No.3 does not have approval of the Respondent Nos. 1 & 2. The respondents in the reply have stated in paragraph 2 that application is not within the period of limitation prescribed under Section 21 of the Administrative

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Tribunals Act, 1985. The respondents have stated in paragraph 3 of the reply that the applicant was appointed as V.I.(Fitter) by the Principal of Model Industrial Training Institute on 16-12-83 and that the applicant passed NTC/NAG in the trade of Mill-Wright and Craft Instructorship in Machinist trade and not in Fitter trade, and that passing of NTC and NAG in Fitter trade is the prescribed qualification for appointment to the post of V.I.(Fitter) as per Recruitment Rules. Also qualification of the applicant does not fulfil the recruitment rules for the post of V.I.(Fitter). It is also stated by the respondents that the Recruitment Rules, 1974 was amended latest by 1983 and sometime after 1982 a copy of each of the proposal relating ~~to~~ ^{of} thereof was submitted before the Bench during the hearing on 12-6-2000. They have made the position absolutely vague in this regard. The respondents have further stated that a circular was issued on 21-8-1986 to all the sister Institutes of A.T.I., Calcutta for filling up of the post of V.I. at A.T.I., Calcutta on transfer basis against which applicant Shri Lakshmi Kanta Maiti applied for the post of Vocational Instructor, Mechanical Group. His request was considered and he was given appointment in the post of V.I.(F. General) at A.T.I., Calcutta. Vide order dated 27.2.92 of the M.I.T. I., Choudwar, Cuttack he was required to join at Calcutta as V.I. (Machinist General). It is indeed very intriguing and surprising to observe that the circular letter was issued on 21.8.86 for which the applicant had made an application on 22-9-86 alongwith his complete bio-data. But his option and posting was complied with in 1992 after a period of six years. Some order was issued vide Office Order No. 32/92 according to which the applicant was posted as SL 24 of the Order as Tool Mill-Wright. This promotion was also ad-hoc promotion as per the order. The request of the applicant has been highlighted by the respondents in paragraph 4 of the reply to the O.A. That demonstrates that the respondent No.3 all through was aware that the applicant was working as V.I.(Fitter). In paragraph four of the reply the respondents have stated that the applicant was adjusted

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against the vacant post of V.I.(Fitter General) on his own request as per his request made vide letter dated 5.2.1992. This letter has not been enclosed by the respondent No.3 with his reply to the O.A. Respondent No.3 in paragraph 5 of the reply has further stated that vide Office Order No.069/96 the applicant was directed to look after the training of MTI (Fitter) in addition to his own duties as V.I. (Fitter General) and he was advised to take over the charge of tools, equipment, furniture etc. from Shri R.R. Jati, V.I.(Fitter). It is stated that ^{on 28.03.92} his transfer from M.I.T.I., Choudwar, Cuttack, Orissa vide order No-259 dated 27.3.1992 the applicant was accommodated as Fitter General in the scale of pay of Rs.1400-2600/- and he was posted in the Mill-Wright Section as Fitter General. Although he was released from M.I.T.I., Choudwar, Orissa to join as V.I.(Machinist General), he could not be posted as V.I.(Machinist) as no vacancy was there in the said post in A.T.I., Calcutta. Therefore, he was posted as Fitter General which was accepted by him without any objection. The respondents have further stated that the applicant was duly considered and by Office Memorandum dated 12-10-1996 he was intimated that his case would be considered at the later stage and ~~it~~ ^{as} is also intimated to the applicant that action has already been taken to fill up the post of V.I.(Fitter) trade, it is not possible to transfer him at this stage to the post of V.I.(^Fitter). The respondents have stated in paragraph 9 of the reply that a reply was sent to the applicant on 4.2.1997 when he was intimated that he would be considered for the post of V.I.(Fitter) in the next vacancy. It is only that one month thereafter the applicant moved this Tribunal with the present application which is under consideration. According to the respondents, qualification etc. of the applicant does not conform with the Recruitment Rules. They also failed to submit the relevant Recruitment Rules, 1974 which was subsequently amended in 1992. The respondents were asked as to what ^{reason} purpose the applicant was recruited as V.I.(Fitter) and what was the Recruitment Rules? The reply submitted by the respondents is not only hopeless but it is also quite mis-leading. It is not understood how they came to this conclusion that the applicant's qualification was not suited to post of V.I.(Fitter). But they were

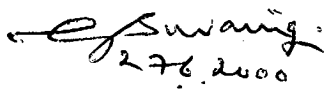
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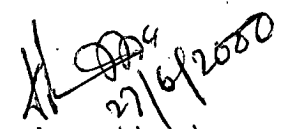
unable to explain as to how he was appointed in that capacity.

3. The hearing was granted on 19.5.2000 and on 12-6-2000 when Id. Advocate Mr. B.Dhara appeared on behalf of the applicant and Id. Advocate Mr. M.S. Banerjee appeared on behalf of the official respondents and Id. Advocate B.K.Chatterjee appeared on behalf of the private respondent. Id. Advocate Mr. Chatterjee had nothing to say on behalf of the Private Respondent Mr. A.P. Minz while Mr. Dhara and Mr. Banerjee argued their case very well.

4. It is observed that the reply to the O.A. was given by the respondent No.3 and no reply has been given on behalf of the respondent Nos. 1 & 2 and no mention in this regard has also been made. It appears that the respondent No.3 Mr. A.K. Mitra, Director, A.T.I., Calcutta has been handling this case by himself without getting any approval from his superiors. Mr. Mitra has stated in his reply that applicant was not qualified for the post of V.I.(Fitter) though he has been working as V.I.(Fitter) right from the date of appointment upto February, 1997 and that the applicant would be posted as V.I.(F) as and when vacancy will arise. It clearly shows that the respondents did not apply their mind keeping in view the Recruitment Rules and the matter had been dealt with in a short-slip manner as there was nobody to look into the matter.

5. We find that the applicant has been working as V.I.(Fitter) for a long time and no fault was found with him because none of the respondents could be able to enlighten on the Recruitment Rules. In this view of the matter we set aside the order dated 21.2.1997 (Annexure-M to the O.A.) and direct the respondent No.3, who has been handling this matter all through by himself to post the applicant as V.I. (Fitter) on regular basis without delay. Accordingly, the application is allowed by us.


27.6.2000
(G.S. Maingi)
Member (A)


27/6/2000
(D. Furkayastha)
Member (J)