

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

O.A.NO. 333/89 19 (L)

T.A.NO. Cw 19 (T)

336/89

DATE OF DECISION 4.10.1990

S. Swami Kisan Singh & others PETITIONER

S. Pawan Kisan & others

S. M. P. Sharma

Advocate for the
Petitioner (S)

VERSUS

Rly. Board & others RESPONDENT

S. Anil Srivastava Adv.

S. L. P. Shukla Adv.

Advocate for the
Respondent (S)

CORAM :

The Hon'ble Mr. Honbl. Mr. P. Srikanth Vasam A.M.

The Hon'ble Mr. Honbl. Mr. J. P. Sharma J.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ? y
2. To be referred to the Reporters or not ? y
3. Whether their Lordship wish to see the fair copy of the Judgement ? n
4. Whether to be circulated to other Benches ? no

JUDL. MEMBER. Sharma

ADM. MEMBER.

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CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

REGISTRATION (O.A.) NOS. 333 AND 336 OF 1989.

Date of Decision 4.10.90.

Sunil Kumar Singh and others.	.. Applicants in O.A.No.333/89.
Pawan Kumar and others.	.. Applicants in O.A.No.336/89.

/Versus/

Railway Board and others.	.. Respondents.
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Hon'ble Mr.P.Srinivasan, A.M.

Hon'ble Mr.J.P.Sharma, J.M.

(Delivered by Hon'ble Mr.P.Srinivasan)

Both these applications raise common issues. They were, therefore, heard together and are being disposed of by this common order.

2. The issue for determination in these applications is whether apprentices who undergo training in different trades in a Railway Workshop under the Apprentices Act, 1961 ('Act' for short) have a right to appointment in posts falling under those trades in the Railways as a matter of course and whether the Railways can advertise and select persons under their own employment notices for such posts even though apprentices under the Act are at that time undergoing training in a Railway Workshop?

3. The applicants in both these applications - there are 13 of them - were engaged as apprentices/under the Act in the Railway Workshops under the control of the Deputy Chief Electrical Engineer (Workshop) Northern Railway, Charbagh, Lucknow. Applications for such engagement as apprentices were invited by a notice dated 28-4-1982 modified by another notice dated 25-5-1982. The trades in which the said apprentices were to be trained were those of Fitter, Turner, Electrician, Wiremen, Carpenter, Refrigeration and Air Conditioning Mechanic, Boiler Attendant, Winder, Electrical Rotating Machinery/Armature and one more trade which is not clearly legible from

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the copy of the ^{notice} ~~notification~~ attached to the reply of the respondents. The applicants and others applied for such training and were duly selected. Persons so selected were sent for training in the Loco Shop at Charbagh and underwent ~~some~~ training from 28-2-1986 to 27-2-1989. They had to take an All India Trade test under the Act at Lucknow from 21-4-1989 to 28-4-1989. As a result of the training and the test, 15 persons including the 13 applicants herein were declared to have successfully completed the training by an order dated 19-10-1989 issued by the Deputy Chief Electrical Engineer (W) Northern Railway, Charbagh, Lucknow. Meanwhile on 28-9-1988 the said Deputy Chief Electrical Engineer (W), Northern Railway, Charbagh issued an employment notice calling for applications from the sons and near relatives of the employees of the Loco Workshops at Charbagh and Alambagh for appointment after training to 15 posts of skilled workmen Grade-III. The 15 posts were in the following trades:

	Posts
1) Crane Driver.	1
2) T.L.Fitter.	4
3) AC/Fitter/Elec.Fitter	4
4) Armature Winder/Power Winder.	3
5) Wireman (TL)	2
6) Electronic Mechanic	1

Total.	15

In due course, applications were received in response to this employment notice. We are told that six out of the fifteen persons declared as successful in the training under the Act by the order dated 19-10-1989 also applied in response to this employment notice. All the candidates who applied had to take a written examination on 27-11-1988 and on oral examination on 14-3-1989 at the end of which 13 persons were declared successful by a notification dated 26-10-1989 issued by the office of the aforesaid Deputy Chief Electrical Engineer. The applicants challenge the employment notice dated 28-9-1988 and the notification dated 26-10-1989 announcing the names

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of 13 successful candidates for appointment after training in different trades in the Northern Railway at Charbagh and Alambagh Workshops.

4. During the pendency of these applications, 7 persons who were declared successful by the notification dated 26-10-1989 were impleaded as respondents 3 to 10 in addition to two respondents, namely, the Railway Board and the Deputy Chief Electrical Engineer (Workshop) Northern Railway, Lucknow who had already been impleaded in the applications. The 7 additional respondents are among the 13 declared successful in the notification dated 26-10-1989.

5. Sri M.P.Sharma, learned counsel appeared for the applicants. Sri Anil Srivastava, learned counsel appeared for respondents 1 and 2 and Sri Shukla, learned counsel for respondents 3 to 10. They were heard at great length on 16-8-1990. The contention of the applicants is that they were selected for training under the Act against 15 posts in the Workshops at Charbagh and Alambagh and were given training in different trades for eventual appointment. They were all close relatives of Railway Employees. Under the relevant Recruitment Rules, 25 per cent of posts of Skilled Workmen Grade-III were required to be filled in by direct recruitment of persons who had completed training under the Act or who had successfully completed a course in I.T.I. or who were matriculates. The sons and close relatives of Railway Employees were ^{to be} given preference in the matter of appointment. When the applicants were taken for training under the Act there was an understanding that they would be absorbed against 15 posts in different trades which were vacant. There was thus an implied promise on the part of the Railway administration that after successful completion of training under the Act, the applicants would be absorbed in the said 15 posts. However, in breach of the said promise, the respondent/Railway had notified the same 15 posts and had called for applications thereto by their notification dated

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28-9-1988 and after holding written and oral tests had selected 13 persons for appointment excluding the applicants therefrom. The applicants having been sent for training from 28-2-1986 and having undergone more than 2 years of training when the employment notice was issued had a prior claim over persons who were selected in pursuance of the said employment notice dated 28-9-1988 who, unlike the applicants had not had any training by then. The 13 persons so selected were also sons and close relatives of the Railway officials, but the applicants having been selected for training earlier, should have been offered appointment in preference to those 13 persons. By ignoring the applicants for such appointment, the respondent/Railway had violated Articles 14 and 16 of the Constitution and had practised hostile discrimination against the applicants. It was also alleged on behalf of the applicants that the employment notice dated 28.9.1988 and the consequent selection of 13 persons were made to favour some Railway officials whose children the said 13 persons were.

6. On the other hand, learned counsel for the respondent/Railway as well as the 7 private respondents urged that the applications were devoid of merit. Apprentices engaged for training under the Act were not automatically entitled to absorption in the Railway. They categorically denied that when the applicants and others were selected for training under the Act they were so selected against specific vacancies existing at that time in the Northern Railway. On the other hand, like many other industrial establishments, the Railway Workshops had to train a certain number persons in different trades under the Act with no obligation to absorb the trainees. At the same time, the Railways selected persons from time to time to undergo training for appointment in existing posts of skilled workers. The Railways were entitled to call for applications for appointment of specified posts after training and to select persons as apprentices/trainees for the posts

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to which they would be eventually appointed. For employment as Skilled Workmen Grade III, persons who had completed training under the Act were also eligible to apply in addition to I.T.I qualified persons and matriculates. If persons who had successfully completed the training under the Act were selected in response to such employment notices after ~~upassing~~ passing the required written and oral tests, they would be straightway appointed to posts of Skilled Workmen Grade-III. I.T.I qualified persons selected in response to such employment notices were required to undergo 6 months training before they were appointed as Skilled Workmen Grade-III and matriculates had to undergo three years training. Thus, persons who successfully completed the training under the Act constitute one source of recruitment but it was not as if they alone should be considered for employment and that on completion of ^{such} training they should necessarily be absorbed in the Railways. When the impugned employment notice was issued on 28-9-1988, the applicants had not completed training as apprentices under the Act. But, if they were I.T.I. qualified persons or had passed matriculation, they could also have applied in response to the employment notice. In fact 6 persons who were undergoing apprentice training under the Act at the time did apply in response to the aforesaid employment notice because they had the alternative qualification of having passed matriculation. Out of the said 6 persons 2 were also selected and their names figure in the list of 13 successful candidates announced on 26-10-1989. The applicants had no prior right for appointment to the 15 posts notified in the employment notice dated 28-9-1988. They had either to compete with others if they had ^{the} requisite qualification at the time of recruitment or wait for the next recruitment after they had acquired the necessary qualification. Under the Act, an employer engaging an apprentice is not obliged to absorb him in his service. This was also made clear in the contract of Apprenticeship entered into by the applicants

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with the Railways when they were sent for apprentices training. Thus, there was no promise implied or otherwise to which the respondent/Railways can be held.

7. We have considered the matter very carefully. The Act was enacted "to provide for the regulation and control of training of apprentices and for matters connected therewith". The object of the Act was to give training to as many young men and women as possible in the country in different technical trades so that they could obtain employment in those trades in the different industrial establishments of the country or could set up factories of their own and make a living as self-employed persons. With a view to achieve this purpose, the Act casts an obligation on industrial establishments in the country to give training to a certain number of persons in designated trades and to pay them a stipend during the period of training. The number of persons to be trained in each trade was fixed as a ratio of the number of skilled workers employed in that trade by the establishment. The apprentice or his guardian if he was a minor had to enter into a contract with the industrial establishment described as the employer. The period of training, content of training and other matters were laid down in the Act or were to be prescribed by the authorities under the Act. The minimum qualification, age and other requirements for being selected as an apprentice are also regulated under the Act. Section 22 of the Act reads as follows:-

22. Offer and acceptance of employment. - (1) 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, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice

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shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable and the period of remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer."

When we turn to the present case, as already stated, the Northern Railway invited applications for apprentices to be selected for training under the Act by a Notification dated 28-4-1982. We do not see anything in the said notice to say that apprentices to be selected for training thereunder were against specified posts in the Northern Railway. In fact, as we have already mentioned, an industrial establishment is required to train a certain number of persons and this number has no relation to vacancies in the establishment at the time. The number to be trained was fixed in terms of a ratio of 1:7 so far as the Railway Workshops ^{which were} concerned. The respondents have furnished a copy of the contract which the trainees under the Act including the applicants had to sign. Paragraph 5 of the said contract reads: "It shall not be obligatory on the part of the Employer to offer any employment to the apprentice on completion of the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part the apprentice to accept an employment". Thus, neither the notice calling for applications for engagement of apprentices under the Act to which the applicants responded nor the contract of apprenticeship entered into by the applicants with the Northern Railway contains any commitment on the part of the Northern Railway to absorb the applicants after completion of their training in specific posts in the workshops at Charbagh or Alambagh. In the very nature of things, the Act being a legislation for creating a pool of trained persons in different trades in the country as a whole, the training establishment cannot also undertake to absorb

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all persons which it trains under the said Act, nor can it be prevented from making recruitment to skilled jobs in its workshops according to its own requirements and subject to tests which it considers suitable for the purpose. Since the training given under the Act is in accordance with the directions of the authorities mentioned in the Act, it cannot be assumed that the content of training would automatically fit out the apprentices so trained for specific jobs in the training establishments, in this case the Northern Railway. We are, therefore, satisfied that no automatic right for employment in the Northern Railway accrued to the applicants merely because they were selected for training under the Act and successfully completed such training in the Railway Workshop.

8. It is also clear from what we have stated above, that there was at no time any promise implied or otherwise by the respondent-/Railways that they would absorb the applicants and other trainees under the Act in their employment in specified jobs. To repeat what we have said earlier, there was no mention of any posts in the original notice calling for applications against which the persons selected as apprentices would be trained and the contract of apprenticeship clearly repeats the provision in the Act that the employer was under no obligation to provide the apprentices employment in his establishment. The judgment of the Supreme Court in SURYA NARAIN YADAV AND OTHERS v. BIHAR STATE ELECTRICITY BOARD AND OTHERS [1985(2) SLJ 315] relied on behalf of the applicants has no bearing on the facts of the present cases. In Surya Narain Yadav's case there were clear promises repeated in different forms to the petitioners that they would be given regular employment. There was no such promise in this case.

9. Let us now turn to the Rules of the Railway itself regarding the apprentices trained under the Act. ^('Act apprentices', for short) The Rules provide that such

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apprentices would be engaged in Railway workshops other than running sheds, the trainee or his guardian if he is a minor would enter into a contract of apprenticeship with the Railway, the period of training would normally be 3 years and stipend would be paid at the rates prescribed under the Act. "There was no commitment for absorbing any or all the apprentice trainees on successful completion of their training. The extant Rules for the absorption of directly recruited Trade Apprentices will apply on the basis of requirements/vacancies available in the trades". From this it is clear that apart from the Apprentices under the Act the Railways could directly recruit "trade apprentices" for specific posts in its Workshops. Separate Rules are provided in respect of trade apprentices engaged by the Railways as distinguished from Act apprentices. In this context, an apprentice, i.e., a trade apprentice is defined to mean "a person deputed for training in a trade or business with a view to employment in Government service, who draws a stipend at monthly rate from Government during such training but is not employed in or against a substantive vacancy in the cadre of a department". Straightway one notices a distinction between Act apprentices and trade apprentices. Trade apprentices directly recruited by the Railways undergo training for specific posts with a view to employment in the Railways, though in their cases also, "no guarantee or promise of employment can be given to an apprentice. But, on the satisfactory completion of their training the apprentices will be considered for appointment to the post for which they are apprentices subject to the existence of vacancies. They will however, be taken on probation for a period to be specified in each case". Thus, trade apprentices are apprentices for ⁹⁷ particular posts unlike the apprentices under the Act. However, as stated above, the extant rules for the absorption of directly recruited Trade apprentices were also to ⁹⁷ apply to Act

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apprentices on the basis of requirements/vacancies available in the trades. One infers ^{that if} a sufficient number of Trade apprentices directly recruited by the Railways against specific posts do not qualify for appointment in any trade, Act apprentices would be eligible for appointment if they pass the requisite trade test. Turning to the impugned employment notice dated 28-9-1988 it calls for applications for appointment after training for 15 posts of skilled workmen Grade -III in different trades. Unlike the earlier notice calling for applications for apprentice training under the Act to which the applicants responded, this employment notice specifies the posts for which applications are invited. The notice further states that persons who have completed training under the Act or are I.T.I qualified or matriculates could apply and the period of training would be nil for the first category, 6 months for the second and 3 years for third category. It is clear from this that recruitment for specific posts was being made and Act apprentices were also eligible for appointment. As stated earlier, Act apprentices then undergoing training did indeed apply because even though they had not completed the training under the ^M Act to become eligible when the employment notice was issued, they had an alternative qualification. Thus, apprentices who had completed training under the Act were also eligible to apply in response to the employment notice and if they had not completed such training by the time, they could still apply if they had one of the other alternative qualifications. Obviously, except 6 persons who were undergoing apprentice training under the Act at the time none of the others including the 13 applicants before us responded to the employment notice dated 28-9-1988 because they did not at that time possess the necessary eligibility qualification. That being so, they cannot complain against the selections made in pursuance of the said employment notice. There is no discrimination under Articles 14 and 16 of the Constitution involved here. The

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notice dated 28-9-1988 was issued by the Railways for recruitment of persons to specific posts in its Workshop. Act apprentices still under training at the time were not eligible for appointment merely because they were under training unless they possessed any of the alternative qualifications. Even such Act apprentices who completed training had to apply along with others and pass the qualifying test prescribed by the Railway. A person undergoing training under the Act is similar to a person who undergoes an engineering course and acquires a degree at the end, the only difference being that the training under the Act is given in different industrial establishments which have jobs while engineering courses are conducted by colleges where there are no opportunities for employing working engineers. A person who undergoes training under the Act merely acquires a qualification at the end of the training on the basis of which he may apply for a job either in the establishment in which he obtains the training or elsewhere. If he applies for a post in the establishment in which he completed training, he may still have to undergo written and oral tests which his employer thinks fit to hold along with others and he has no pre-emptive right of appointment to any post in the establishment of the employer. Therefore, if he is not automatically selected for appointment to a post in the employer's establishment at the end of his training and even more so while still under training as in this case, there is no element of arbitrariness on the part of the employer and no discrimination involved. The Railways are also not obliged to keep posts vacant till its Act apprentices complete their training. The Railways are likely to issue employment notices for further posts of skilled workmen in future and the applicants now being fully qualified under the Act can apply for such posts and if they successfully clear the written and oral tests, they may hope to obtain employment.

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10. In view of the above, we are of the opinion, that the applications are devoid of merit. We dismiss the applications leaving the parties to bear their own costs.

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Jomacee
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H. Jomacee in open court by me.

Jomacee

6-10-90 JY