

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 38/2007

This, the 3rd day of June, 2008.

Hon'ble Shri Shankar Parsed, Member (A)
Hon'ble Shri M. Kanthaiah, Member (J)

Trilok Kumar Arora son of Sri H.R. Arora, resident of 554 Ka/144, Arjun Nagar, Alambagh, Lucknow.

Applicant.

By Advocate: Shri A.K.Srivastava

Versus

1. Union of India, through its Secretary, Ministry of Railway, Civil Secretariat, New Delhi.
2. The Chairman, Railway Board, New Delhi.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. The Divisional Railway Manager, Northern Railway, New Delhi.
5. The Chief Workshop Manager (CWM), Charbagh, Lucknow.

Respondents.

By Advocate: Shri S. Verma

ORDER

By Hon'ble Shri Shankar Parsed, Member (A)

By this O.A., the applicant seeks the following reliefs:-

- i) That an order, direction or relief may kindly be issued thereby directing the opposite parties to select his appointment Group 'D' apprentice being senior person.
- ii) That an order, direction or relief may kindly be issued thereby quashing the order contained in Annexure No.1 to this Original Application
- iii) That an order, direction or relief may kindly be issued decide the letter immediately, which is still pending before the opposite party No.2, given by the opposite party No.3 on dated 3.1.2006 contained as Annexure No.4.
- iv) That an order, direction or relief may kindly be issued ITI two years period count in his age relaxation.
- v) That issue such other order or direction, which this Hon'ble Tribunal deems just and proper in the circumstances of the case.
- vi) That cost of the original application may be allowed in favour of the applicant.

2. The facts lie in a narrow campus.

a) The G.M. Northern Railway issued a notification dated 24.12.1997 regarding filling up of Group 'D' vacancies in Mechanical Workshop. Relevant part of the policy reads as under:-

"In order to ensure that a uniform and correct practice be followed, the concerned units are advised:-

- i) to invite applications from all the Act Apprentice trained by the Railway and who are willing to take up employment on Northern Railway.
- ii) to ensure that only these applicants who are duly qualified under the Act i.e. who passes certificate from National Vocational Center in support of their having qualified as a Trade Apprentice.
- iii) to ensure that age of the applicants is in conformity with the recruitment Rules, uniform cut off date as 31.10.1997 will be reckoned for the purpose
- iv) to ensure that the successful candidate will have to pass the requisite medical test before they are offered appointment letter as substitute.
- v) to ensure implementation of Hon'ble Supreme court direction in case of U.P. State Road Transport Corporation Vs. U.P. Paribahan Nigam, Shishikshu Berojgar Sangh... as directed by CAT, ALD. In CCP No. ... of 1996 -O.A.No. of 1993 Santosh Kumar and others Vs. Shri L.N.Railway and others, that the persons trained earlier should be treated as senior to the persons trained later."

The Act apprentice will be engaged as substitutes as per medical clarification and age limit etc. required for their engagement in the workshops."

b) It appears that the applicant submitted an application received on 31.3.98 pursuant to notification issued by Charbagh, Lucknow enclosed along with application the certificate of having passed the High School, Certificate of ITI, Aliganj and certificate regarding Trade Apprenticeship (Annexure 10 A). He had been called for viva voce vide letter dated 17.6.98 (Annexure 11). It

appears that the question of relaxation of upper age limit for the period spent in ITI training had been referred by the Chief Works Manager to GM(P) vide his letter dated 21.7.98. He was informed by letter dated 18.8.98 of GM(P) that such relaxation cannot be granted.

c) It appears that the applicant has applied on some more occasions. One such occasion is in 2004 (Annexure 14). There is a letter of Union in 2005 and finally the GMs letter of 3.1.2006 which is impugned in the order. The relevant part of the letter is referred to para 3(c) below. We have on record an order dated 11.6.98 selecting appointing 23 persons as substitute pursuant to panel declared on 20.5.98 (Annexure 13).

3.(a) The case of the applicant in brief is that he had been selected for the training as an Apprentice under the respondents for undergoing technical training in the Fitter Grade. The period of training is 3 years. As he was an ITI trained person, the actual training was restricted to one year, as is the Railway Board policy. In support of this contention, a subsequent notification dated 22.2.2005, having the following foot note "such of the applicant who has passed the ITI will have 2 years relaxation in training" has been annexed. He has completed his training from ITI from August 1983 to July 1985 (Annexure 4) and on completion of one year training in the electrical workshop, Northern Railway Charbagh, was also granted a National Apprenticeship Certificate (Annexure 5).

(b) There was no recruitment from trained apprentices for a very long time and when the applications were finally invited in 1998, he applied for the selection as a substitute but he was not selected as he was found overage. He had not been given the benefit of 2 year relaxation.

(c) The applicant applied on subsequent occasions also but the non-grant of benefit of two years training stood in his way. The matter is pursued from time to time by the Union also. It is stated in the Union's letter of 19.10.2005 addressed to CPO , Northern Railway that the issue has been raised from time to time at various level even at the G.M.'s PNM level but

the same has not been resolved. It is also stated that even a reference was made by the G.M., no instructions have been received from the Board. The relevant part of the GM's letter dated 3.1.2006 to Railway Board reads as under:-

"Shri Trilok Kumar Arora completed his Act Apprenticeship as a Fitter from 28.2.1986 to 27.2.1987 from CB-LKO; CWM CB-LKO had called for applications to the post of substitute Khalasi from the eligible Act Apprentices. Sri Arora also applied for the post of substitute Khalasi along with others but his application was rejected on the grounds that he was over age. As on 31.12.97, even after giving him concession of one year, i.e. for the period for which he trained as an Act Apprentice, he was over age by one year 3 months and 17 days. His DOB is 14.9.62, as such Sh.Arora was not considered. Shri Trilok Kumar Arora is more than 43 years of age and the maximum age limit prescribed for absorption of general candidates who were born on leave CL register is 40 years as per Railway Board's No. E (NG) II-99CL/19 dated 28.2.2001.

In view of the position explained above the matter is referred to Railway Board for clarification regarding relaxation in upper age to the extant of period specified for training i.e. 3 years uniformly for ITI and non ITI Apprentice and if Railway Board agrees with above version than the approval for upper age relaxation of Trilok Kumar Arora Act Apprentice to be engaged as substitute in Group 'D' post of Khalasi may be communicated to this Railway."

Rejoinder Affidavit is filed.

4. The respondents in their reply, have stated that the scheme for recruitment of apprentices under the Apprenticeship Act has been restricted to Mechanical workshop, of the Railway Production units, Diesel and Electrical Locoshop, Carriage and Wagon Depots, Railway Electrification and Engineering and Signal workshop. The obligation is only to provide training and there is no guarantee to absorb the trained apprentices. A person who successfully completes the training and has passed the test conducted by the National Council for Vocational Training is granted a certificate of proficiency by the NCVT. On completion of such training, the course completed apprentices are eligible for being considered for employment in Artisan Group 'C' posts.

As open market recruitment for Group 'D' vacancies in the mechanical workshop was taking undue long time, the G.M. Northern Railway decided to fill up such vacancies from amongst course completed Act Apprentices by recruiting them as substitute. It was subject to the condition that the maximum age of 33 years after giving them age relaxation

to the extent of apprenticeship training. As he was trained for one year only, he could not be granted three year's relaxation in upper age. The applicant's claim seeking age relaxation of 3 years is contrary to the judgment of Apex Court in U.P. Road Transport Corporation and another Vs. U.P. Paribahan Nigam (Supra).

5. We have heard the learned counsels. The legal question that arises is as to whether the applicants is entitled to count the two years spent in ITI for relaxation of age and if so with what consequence.

6. Para 115 (vi) of the IREM reads as under:-

"115. Relaxation of the age limit- The following relaxation of age are permissible:-

(vi) Existing age concessions allowed by specific instructions of the Railway Board for specified category/ categories of posts will continue to apply."

7. The Railway Board have issued instructions dated 26.8.96 regarding recruitment of course completed apprentices. They have enclosed D.G. Employment and Training letter dated 26.2.96 along with this letter.. The relevant part of this letter reads as under:-

"The Hon'ble Supreme Court whiel deciding the Civil Appeal inter-alia directed as under:-

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.

- i) Other things being equal a trained apprentice should be given preference over direct recruits.
- ii) For this trainee would not be required to get his name sponsored by any employment exchange . The decision of this court in Union of India Vs. Hargopal AIR 1987 SC 1227 would permit this.
- iii) If age bar would come in the way of the trainee, the same would be relaxed in accordance with that is stated in this regard, if any in the concerned service rules. If the service rules being silent on this aspect

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relaxation to the extent of the period for which the apprentice had undergone training would be given.

iv) The concerned training institute would maintain a list of person trained year wise. The person trained earlier would be treated as senior to the persons trained later. In between the trained apprentice , preference shall be given to those who are senior ."

8. The Apprentice Act as ~~relevant~~ in the AIR Manual 5h Edition, 1989 also contains provisions relating to statements of Objects and Reasons of the Apprentices Act as well as subsequent amendment Act. 27 of 1993 and Act 41 of 1986. The relevant part of statements of objects and reasons of Act 27 of 1973 are as under:-

"1. The question of undertaking legislation for the training of graduate engineers and diploma holders with a view to giving them practical training under factory conditions thereby improving their employment potential and solving the immediate unemployment problem has been under the consideration of the Government for some time past. At present a voluntary scheme of training in industry for such personnel is being administered by the Central Government.

4. The bill is intended to achieve the above objectives- Gaz. Of Ind. 21-11-1972 Pt. II, S.2 , Ext. P. 1123."

The relevant part of objects and reasons of the Act 41 of 1986 are as under:-

"2. The vocationalisation of higher secondary education has been attempted in this country as part of the efforts to provide meaningful education leading to suitable employment opportunities at the appropriate levels. It is also hoped that this would relieve the pressure on our higher education system. Vocationalisation implies education through work experience and hence adequate facilities are to be provided for the vocational steam to learn the practical aspects of the subject through field studies and to supplement the institutional learned. Providing apprenticeship facilities to the products of vocational stream assures relevance in this context.

5. The object, thereof , is to provide "on the job training " to the products of the vocational stream so that adequate competence and skill required for various occupations are acquired which would lead to suitable employment or self employment opportunity in organized industries, agriculture and other service sectors of economic activity including agro and rural based industries."

9. We find that Section 2(aaa), 2(pp) and 2q Of the Apprentice Act are as under:-

"2(aaa) " apprenticeship training' means the Central Apprenticeship Adviser appointed under sub section (1) of Section 26 or the State

Apprenticeship Adviser appointed under sub section (2) of that Section;

"2(pp) "Technician (vocational) apprentice" means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognized by the All India Council and undergoes apprenticeship training in any such subject filed in any vocational course as may be prescribed."

"2 (q) "trade apprentice" means an apprentice who undergoes apprenticeship training in any such trade or occupation as may be prescribed.]

10. Section 6 of the Act is as under:-

"6. Period of apprenticeship training:- The period of apprenticeship training which shall be specified in the contract of apprenticeship , shall be as follows:-

(a) in the case of (trade apprentice) who , having undergone institutional training in a school or other institution recognized by the National Council, have passed the trade tests (or examinations) conducted by that council, the period of apprenticeship training shall be such as may be determined by (that council or by an institution recognized by that council)

(aa) In the case of trade apprentices, who having undergone institutional training in a school or other institution affiliated to or recognized by a Board or State Council of Technical Education or any other authority which the Central Government may , by notification in the Official Gazette specify in this behalf have passed the trade tests (or examinations) conducted by that Board or State Council or authority, the period of apprenticeship training shall be such as may be prescribed.)

(c) In the case of other (trade apprentices), the period of apprenticeship training shall be such as may be prescribed.

(a) Substituted for the words "apprentices" and 'that council' by the Apprentices (Amendment) Act, (27 of 1973) s.8 (1.12.1974)

(b) Clauses (aa) and (c) inserted , ibid

(c) Inserted by the Apprentices (Amendment) Act (41 of 1986) S.3 (16.12.1987)

(d) Inserted ibid S.5 (16.12.1987)"

11.(a) The applicant has brought on record extracts from the Apprenticeship rules famed under the Act. Rule 7(1) and (7(4)(a) are as under:-

(1) The period of apprenticeship training in the case of trade apprentices referred to clause (b) of Section 6 of the Act shall be as specified in Schedule I.

(4)(a) The period of apprenticeship training in the case of Engineering Graduates, Diploma holders and vocational certificate holders shall be one year.

(b) Relevant entries of Schedule I appended to these rules are as under:-

S.No	Designated Trade	NCO Code No.	Ratio of apprentices to workers other than unskilled workers	Period of Trg.	Relevant ITI trade	Rebate allowed in apprenticeship training	Essential/desirable educational qualification
1	2	3	4	5	6	7	8
1	Fitter	842-10	1:7	3 years	1. Fitter (+shipwright steel)	2 years	Passed 10 th class examination under 10 +2 system of education or its equivalent

12. In the AIR manual, 5th Edition, 1989, the following comments has recorded at S.No. 1 under section 6.

"While the period of apprenticeship training for trainer was prescribed as three years, the said period has got to be reduced by the period of institutional training undergone by the candidate in the trade concerned therefore, the candidate who had undergone institutional training for two years was eligible for appearing for trade test after undergoing apprenticeship for period of one year." (1989) 1 Kant LJ 89 (91,92)

13. The learned counsel for the respondents has contended that the applicant's claim is contrary to the decision of Apex Court. The directions of Apex Court have been circulated in the DG (E&T) letter referred to in para 7 above. It refers to period prescribed in service rules and in absence, the period for which training has been undergone. We find from para 3 of the judgement that the Apex Court has taken note of 1973 amendment for training of graduate engineers and diploma holders and the 1986 amendment for the on the job training.

14. The scheme of the Act and the rules framed there under shows that one is being allowed rebate in the period of apprenticeship training.

because one is a Diploma holder. The period spent in obtaining diploma is thus being counted for the period of training under the Apprenticeship Act. The decision of Hon'ble Karnataka High Court as cited in AI R Manual and quoted in para 12 above refers.

15. It is true that a reference is made to the Railway Board and they are yet to clarify the same. The Apprenticeship Act is administered by Director General ,Employment and Training under the Ministry of Labour. The Railway Board could have easily consulted them and taken a decision even during the pendency of the O.A. This they have not done.

16. In view of the foregoing discussions, we are of the view that the applicant was entitled to claim age relaxation for the entire period of three years as against one year allowed by the respondents. The decision of GM(P) communicated vide letter dated 18.8.98 is quashed and set aside.

17. The applicant has approached this Tribunal after a long lapse of time. The respondents are directed to consider the case of applicant for appointment *in respect to* as substitute ~~W.L.~~, the selection in respect of which the reference was made in the light of law as explained above. This exercise be completed within 3 months no costs.

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(M. KANTHAIAH)
MEMBER (J) 30.06.08

Shankar Parasad
(SHANKAR PARSED)
MEMBER (A)

HLS/-