

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 857/89
XXXXXX

198

DATE OF DECISION 19.12.1989.

National Railway Mazdoor Union Petitioner

Mr. G. S. Walia

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. S. C. Dhawan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. B. MUJUMDAR, MEMBER (J).

The Hon'ble Mr. M. Y. PRIOLKAR, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.857/89.

National Railway Mazdoor Union
Central Railway, Matunga Workshop,
through Mr. S. S. Pradhan, Assistant
Secretary, having his office at
12 Baldota House, L.N. Lane,
Matunga (East),
BOMBAY - 400 019.

Ahmed Azizuddin,
6, Agarwal Wadi,
Behind Municipal School,
S.M. Road, Antop Hill,
Wadala,
BOMBAY - 400 037.

.. Applicants.

V/s.

1. Union of India, through
General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Chief Workshop Manager,
Matunga Workshop,
Central Railway, Matunga,
BOMBAY - 400 019.

.. Respondents.

Coram : Hon'ble Member (J) Shri M.B. Mujumdar.
Hon'ble Member (A) Shri M.Y. Priolkár.

Appearances:

Mr. G. S. Walia, Advocate
for the applicant.

Mr. S. C. Dhawan, Advocate
for the Respondents.

ORAL JUDGMENT

Dated: 19.12.1989.

X (Per: Hon'ble Shri M.B. Mujumdar, Member (J) X.

By Employment Notice dated 1.11.1988 applications
were invited from eligible candidates for the post of Trade
Apprentices in the Designated Trades available in the
Electrical Department of the Carriage and Wagon Workshop of the
Central Railway at Matunga under the provision of Apprentices
Act, 1961. In this Notice for the trade of Wireman minimum
qualification essential was passed the Matriculation
examination/its equivalent or passed Xth class under 10+2 system

However, the desirable qualification was mentioned as passed Matriculation examination/equivalent with science subject or 10th class passed under 10+2 system with science subject.

2. It is the grievance of the applicant that minimum qualification mentioned for the trade of wireman in the schedule to the Apprentices Act, 1961 is "passed the 8th class or its equivalent". Qualification desirable for the trade of wireman given in the schedule is the same as given in the Notice dated 1.11.1988. It is the case of the applicant that by mentioning minimum essential qualification for the trade of wireman in the Notice "passed the Matriculation examination or its equivalent", many candidates who have passed 8th std. examination but had not passed matriculation or its equivalent examination did not apply. Applicant No.2 was one of them. Applicant No.1 is the National Railway Mazdoor Union of the Central Railway, Bombay and it has filed this application as a number of persons were aggrieved as they could not submit applications in pursuance of the Notice dated 1.11.1988 though they were holding minimum qualification of 8th std. examination as per the Act, though they had not passed matriculation or its equivalent examination as mentioned in the Notice.

3. By order dated 13.10.1989 we had issued notices to the respondents regarding admission and interim relief returnable on 20.10.1989. But we had directed the respondents not to fill up 10 posts of wireman detailed in the Notification dated 1.11.1988. The said interim order was continued from time to time and it is in force till today.

4. The main question that we are required to decide by this order is whether this Tribunal will have jurisdiction to entertain and decide this application.

5. After hearing Mr.G.S.Walia, learned advocate for the applicant and Mr.S.C.Dhawan, learned advocate for the respondents, we find that this Tribunal will have no jurisdiction to entertain and decide this application as the impugned Notice dated 1.11.1988 was regarding Apprentices under the Apprentices Act, 1961.

6. Admittedly the applications were called for by the Notice dated 1.11.1988 under the provisions of Apprentices Act, 1961. In this case we are not concerned with other trades but we are concerned with the trade of wireman. One of the general conditions given in the Notice was that no guarantee or promise of employment on completion of apprenticeship was given or implied. This is consistent with para 22 with Section 22 para (i) of the Apprentices Act, 1961. It 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, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. It is obvious from the scheme of the Act that the apprentices get some stipend during the period of apprenticeship as well as the necessary training and experience.

7. In E.S.I.Corporation v. Tata Engg. & Co. AIR 1976 SC 66 (para 6) the Supreme Court has held as under :-

*Employer and to accept on the part of the
" The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remain a learner and is not an employee".

The above case was relating to apprentices under the Apprentices Act 1961.

8. In view of this position, we are of the view that the apprentices under the Apprentices Act, 1961 do not become employees of the employer like the Railways in this case nor inviting applications for trade apprentices would be for the purpose of recruitment of employees.

9. To appreciate the effect of the above judgment we shall have to refer to some relevant provisions of Administrative Tribunals Act, 1985 under which this Tribunal is established. Section 14 of the Act is regarding jurisdiction, powers and authority of the Central Administrative Tribunal. Sub-Section (1) of that Section is relevant in this case and hence we quote it below :-

"(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All-India Service; or
 - (ii) a person (not being a member of an All-India Service or a person referred to in clause (c)) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian (not being a member of an All-India Service or a person referred to in clause(c)) appointed to any defence service or a post connected with defence;

and pertaining to the service of such member person or civilian, in connection with the affairs of the Union or of any State or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

(Explanation - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.)".

10. Again only clause (a) is relevant in this case. According to this, Tribunal will have jurisdiction if the grievance of the applicant is regarding recruitment and matters relating to recruitment to any service of the Union or a civil post under the Union. In our view calling for applications for trade apprentices under the provision of Apprentices Act, 1961 will not be a matter regarding recruitment to civil services of the Union or the civil post under the Union. Hence, in our view, we will have no jurisdiction to entertain and decide this application.

11. Then Mr. Walia referred to the definition of "Service matters" given in Section 2 (9) of the Act. Though the word recruitment is not used in that definition, as the application is not regarding any service or post as such under the Union that definition does not help the applicant. Then, Mr. Walia referred to 3 judgments of this Tribunal. These are (i) Zaffar Ullah Khan & 22 others v. Union of India & Ors., O.A. 603/89 decided on 22.9.1989, (ii) Milondas v. Posts Master General, NE Circle, (1987) 3 ATC 965, and (iii) Ramvir Singh v. General Manager, Central Railway & Anr. (1988) ATLT (CAT) 379.

12. In Zaffar Ullah Khan's case a notification dated 16.2.1989 was issued declaring that 23 applicants were suitable for Intermediate Apprentice Mechanics. Thereafter, the applicants underwent three months training in the Basic Training Centre at Matunga and they were then sent to the System Training School at Jhansi. There they underwent training

for 3 months more. The training was in all to be of two years. Subsequently, by order dated 19.8.1989 the panel of 16.2.1989 was scrapped or cancelled on account of some administrative reasons. That cancellation was challenged in the application. It may be noted that they were not apprentices under the Apprentices Act, 1961. Milon Das's case was mainly regarding the definition of "Service Matters". The applicant in that case was a Group 'D' employee of the General Post Office, Shillong. A question was regarding enhancement of rent of the quarter in his possession, its recovery from salary beyond his capacity, etc. had advised in that case and hence it was held to be a service matter. Again the question of jurisdiction as it arises in this case was not in dispute in that case. In the last case, namely, Ramvir Singh's case the applicant was appointed as Apprentice Mechanic through Railway Selection Commission. His termination of service was challenged before the Principal Bench of the Tribunal on various grounds. He had given preference for posting as Apprentice (Electrical) Chargeman in Nagpur Division but he was posted in Kurla Carshed which he challenged. According to the applicant, he was harassed and he was to go on hunger strike. Ultimately, his services were terminated by the Railways. Termination of his service was held to be punitive and hence struck down by the Tribunal. Again it may be noted that the applicant in that case was not an apprentice under the Apprentices Act, 1961 but he was appointed through Railway Selection Commission. Hence, this case will not enable us to hold that this Tribunal will have jurisdiction to decide the present case.

13. Lastly, Mr. Walia relied on provisions of Chapter 38 of the Indian Railway Establishment Manual, Second Edition. The heading of that chapter is, "The Apprentices Act 1961 And The Rules Framed Thereunder". In our view para 3822

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supports the view which we had taken. The heading of that para is "Absorption after training" and it says that "There is no commitment for absorbing any or all the apprentices trainees on successful completion of their training". This is consistent with Section 22 (2) of the Apprentices Act 1961.

14. The applicants have attached copies of some orders showing absorption of some trade apprentices recruited under the Apprentices Act, 1961 as skilled artisans against existing vacancies. One of these orders, namely, dated 21.5.1987 shows that the person who was appointed by that order, namely, Ramesh V. Otavkar had not only successfully passed the India Trade Test held by National Council for Training in Vocational Trades but he had also subsequently passed the departmental Trade Test for the post of Diesel Fitter.

15. To sum up, by the impugned Notice dated 1.11.1988 applications were called for engagement of Apprentices under the Apprentices Act, 1961. The selected applicants were to get some training and stipend. They were not employees of the railways or any other department of Government. No guarantee or promise of employment on completion of apprenticeship was given or implied. In view of Section 14 of the Administrative Tribunals Act this Tribunal will have no jurisdiction to entertain and decide this application. Hence, the application is rejected for want of jurisdiction.

16. At this stage, Mr. Walia requested for continuing the interim order for 7 days. The request is rejected.

(M.Y. PRIOLKAR)
MEMBER(A).

(M.B. MUJUMDAR)
MEMBER(J).