

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.443/99.

Dated: 10 Dec 99

Ashok Vijayan Nair

Applicant.

Mr. M. S. Ramamurthy

Advocate
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. R. K. Shetty

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not?
(2) Whether it needs to be circulated to
other Benches of the Tribunal?
(3) Library?

} No

R. G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 43/99.

this the 10th day of Dec 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

Ashok Vijayan Nair,
Vijay Chawl,
Kamlaakar Nagar,
Ambernath (West),
Dist. Thane,
Pin - 421 501.
(By Advocate Mr.M.S.Ramamurthy)

...Applicant.

Vs.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi - 110 001.
2. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.
3. Shri S.L.Bhate,
Prapancha Co-Op. Hsg. Society,
Tadwadi, Behind Rahul Nagar,
Ambernath (E) - 421 501.
4. Shri A.P.Shevale,
Sanjeevani - 4,
Jagrut Lane,
Vadavali Section,
Ambernath (E) - 421 501.
5. Shri Karra S.Rao,
Kanta Niwas,
H.No. 1348,
Behind Bethal Church,
Khoj Gaon, Ambernath.
6. Shri John K.Jacob,
2/9, Paris Ram Co-Op. Hsg. Society,
Govind Nagar,
Village Road,
Bhandup,
Mumbai - 400 078.
(By Advocate Mr.R.K.Shetty)

...Respondents.



: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsels appearing on both sides. Since the point involved is a short point and there is an interim order operating against the respondents, we are disposing of this OA at the admission stage itself.

2. The applicant is an Apprentice Trainee holding NCTVT certificate. He has therefore, qualification and eligibility for being appointed as a semi-skilled official under the respondents. The second respondent, took steps to fill up certain posts including the post of Fitter. The applicant responded to the Notification and he was called for written test and trade test. Many candidates appeared in the test. As far as Fitter Trade is concerned 20 candidates including the applicant appeared from different batches of Apprentice Trainees and of whom four persons are selected against three vacancies. Obviously, the fourth person will be in the waiting list. The applicant's grievance is that the respondents should not have held any written or trade test for appointment of apprentices in view of the law laid down by the Supreme Court in U.P.Parivahan Nigam's case (JT 1995 (2) SC 26). Further, the respondents have not taken into consideration that the applicant is entitled to preference being a trainee of an earlier batch than the selected persons. It is therefore, alleged that the selection process initiated and conducted by the second respondent is illegal and contrary to law and liable to be set aside. It is alleged that as per the seniority of the applicant being a trainee from earlier batch he

is entitled to preference and entitled to be appointed as a Fitter. Necessary directions are sought for by the applicant.

3. The respondents stand is that they have a right to hold a written test and trade test for selecting suitable candidates. It is alleged that applicant participated in selection process and he appeared in the written test and trade test and he has failed in the selection. The committee has found that applicant is not suitable for the post, hence no direction can be given to the respondents to appoint the applicant as a Fitter. It is also alleged that the batch seniority of the applicant is not at all relevant.

4. In the light of the arguments addressed at the bar and the pleadings, the first question to be decided is whether the selection process which included written test and trade test is valid or not.

The respondents have not produced any recruitment rules to show that the Competent Authority can prescribe written test and trade test. On the other hand, the recruitment rules are given in SRO 185 dt. 1.11.1994. It is a rule made by the President of India under Article 309 of the Constitution of India. This Recruitment Rules which is placed before us by the learned counsel for the respondents does not provide for any test for the post of Fitter which comes under semi-skilled grade. The Recruitment Rules viz. SRO 185 provides trade test for certain categories. For example, for the post of HSG - I and II trade test is prescribed. The trade test is also prescribed for skilled workman. We are concerned with semi-skilled grade which is at Sl.No.5 in SRO 185. It does not provide any trade test at all. But, the learned counsel for the respondents says that

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written test and trade test is now prescribed by administrative instructions and reliance is placed on letter dt. 1.11.1995 of the Director General, Ordnance Factories which is at page 45 of the paper book. This circular refers to direct recruitment of five Industrial employees in the semi-skilled grade. It also says that selection process should be completed by 31.3.1996. Therefore, this instruction is with reference to filling up of five posts in 1995. But, we are concerned with the present selection of 1999 for which no such administrative instructions are produced before us. Even otherwise, for a Trade Apprentice like the applicant the department cannot prescribe written test as held by the Supreme Court in U.P.Parivahan Nigam's case (JT 1995 (2) SC 26). In that case, the Supreme Court was concerned with the question as to how appointments should be made from trained apprentices like the applicant. Though the High Court had issued a Writ of Mandamus to make appointments from apprentice trainees, the Supreme Court reversed that order and laid down broad guidelines for making appointments from trained apprentices. The Supreme Court has clearly ruled that for such trained apprentices no written examination can be held.

At one stage Mr.R.K.Shetty, the learned counsel for the respondents contended that the decision of the Supreme Court applies only for U.P.Transport Corporation and not to Government of India or other departments of Government of India. On the face of it, the argument has no merit. The law laid down by the Supreme Court is binding on everybody and it is the law of the land under Article - 141 of the Constitution of India. The Supreme Court was concerned with the object and scope of the provisions of the Apprentices Act, 1961. The Supreme Court has

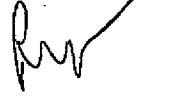
pointed out that the public amount spent for training apprentices should not be wasted. The services of trained apprentices should be utilised by giving them appointment. It is in that context the Supreme Court observed that when a person has already undergone training by a regular Institute or a Factory he cannot be further subjected to a written examination before appointment. Further, we find that the Ordnance Factory Board has accepted this position and therefore it is too late in the day to contend that the decision of the Supreme Court applies only to U.P.Parivahan Nigam's case and not to other departments of Government of India. The respondents themselves have annexed to their written statement a Judgment of a Division Bench of this Tribunal dt. 20.1.1998 in OA 776/97 to which one of us was a party (R.G.Vaidyanatha, Vice-Chairman). This Judgment is referred to in the written statement of the respondents. Both the counsels are relying on this Judgment. In order to appreciate the rival contentions we have secured the file of OA 776/97 and perused the same. In that file, the respondents themselves have produced Circular No.DGET 50(2)/95-AP dt. 15.3.1996, this is addressed to all the Ministries, by enclosing a copy of Government Circular dt. 26.2.1996. In this copy of the circular dt. 26.2.1996 it is stated that in the U.P.Parivahan Nigam's case, the Supreme Court has given directions as to how apprentices should be appointed, then all the conditions prescribed by the Supreme Court are reiterated in the circular. Then, in para 4 it is mentioned as follows :

"You are therefore requested to ensure that while considering the cases of apprentices for the purpose of absorption/employment in different establishments, the directions of the Hon'ble Supreme Court as reproduced in the above paragraphs, are fully complied with."

Therefore, the Central Government as a policy has adopted the guidelines given by the Supreme Court about appointment of apprentices and all the guidelines prescribed by the Supreme Court are reproduced in the circular dt. 26.2.1996 and it is not open to the respondents to say that they are not bound by the guidelines given by the Supreme Court in the said case.

4. When the Supreme Court has clearly said that no written examination can be held for apprentices at the time of their appointment, the respondents cannot say that they can still hold written test to find out the suitability of a person. In view of the law declared by the Supreme Court and adopted by the Central Government in the above circular, it is not open to the respondents to hold a written examination for a trained apprentice. Therefore, we hold that the procedure adopted by the respondents in prescribing written examination for selection or appointment of trained apprentice is wrong and cannot be sustained.

6. In the present case, the department has held both written examination and trade test. Now, we have held that written examination is impermissible for the reasons mentioned above. As far as trade test is concerned it cannot be said that even trade test cannot be held. The Supreme Court itself has observed in para 13 of the reported Judgment that the selection process as prescribed in the Service Regulation may be followed except that the candidate should not be subjected to written examination. If there are other conditions in the Service Rules, then there is no legal impediment to follow the same. Though, in the Recruitment Rules no test is prescribed, by issuing administrative directions, the Competent Authority has prescribed both written



test and trade test. But, the direction regarding written test cannot be sustained for the reasons mentioned above. There is no bar for holding a trade test just to find out whether the trained apprentice is still in the ~~group~~ or not. A person might have obtained training about few years back and might be working as an Agriculturist or as a Labourer and may not be in the technical ~~group~~. For instance, in the present case, the applicant obtained the apprentice training in 1988, but selection is being held in 1999 i.e. 11 years after the training. To find out whether the applicant can still be appointed to a technical job, there is nothing wrong to hold an interview or a trade test. In the previous OA 776/97, a Division Bench of this Tribunal has held that though written test is not permissible, there is no bar to hold an interview to select a person. Similarly, in the present case, there cannot be any objection for trade test particularly when selection is being made few years after the training. Therefore, in the circumstances of the case, we hold that there is no illegality in respondents conducting the trade test in this particular case.

7. The learned counsel for the respondents has placed before us the results of the written test and trade test held in this case. As far as trade test is concerned applicant has obtained 20 marks out of 50 marks, for 100 marks it will come to 40%. The three selected persons and one person selected for waiting list viz. S.L.Bhate, A.P.Shevale, Karra S.Rao and John Jacob are concerned, they have secured 33 marks, 35 marks, 30 marks and 32 marks respectively. Then written test marks are added and on that basis the three persons are selected in the main list and one person in the waiting list. If we apply the rule of



per centage, then applicant has secured 40%, the others have secured 66, 70, 60 and 64 marks respectively.

The learned counsel for the respondents contended that even if we take the result of trade test of the four persons selected, they have secured more marks than the applicant and therefore, their selection is perfectly valid and cannot be challenged at the instance of the applicant. The argument is no doubt attractive, but on deeper scrutiny we find that it cannot be accepted.

8. The Supreme Court has laid down one more guideline in the said Judgment which is Guideline No.4 in para 12 of the reported Judgment, which reads as follows:

"(4) The concerned training institute would maintain a list of persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the apprentices, preference should be given to those who are senior" (underlining is ours).

According to Supreme Court, no written examination should be held and candidates should be preferred having regard to their seniority. Now, in this case, the administration has held a trade test for which there is no provision in the Recruitment Rules and still we may uphold it since it may be necessary to find out whether particular person still remembers his training after a lapse of few years. But, when once the candidate passes in the test, then he should be selected as per his seniority. The question of selection of more meritorious is not called for in such a case. For this, there is some intrinsic material in the rules itself. Though under the old rule all these appointments were shown by selection method, SRO 185 has made the appointment by selection method only for Master Craftsman and



for others including semi-skilled trade with which we are now concerned ^{it} which is by non-selection method.

In a selection method, the rule is best among the candidates should be selected. But, in a non-selection method, the rule is seniority subject to fitness. That means, if the candidate passes in an examination or he is found suitable, then he should be selected irrespective of the marks obtained by him provided he has seniority. The Supreme Court has clearly ruled that seniority should be given preference.

Since the applicant has secured 40% marks which is above the passing marks of 35%, he has passed in the examination. Once he has passed in the examination, by virtue of his seniority he must be selected. Among the 20 candidates, for Fitters' trade test, the result of which is at page 15 of the paper book, the applicant is seniormost being from Batch No.26. Among the four selected persons in the Fitter grade, the first two Mr.S.L.Bhate, Mr.A.P.Shevale are from Batch No.27, Mr.K.S.Rao is from Batch No.32 and Mr.John K.Jacob is again from Batch No.27, whereas, the applicant is from Batch No.26. If it is a case of non-selection method, that means seniority-cum-fitness, the applicant being the seniormost from Batch No.26 should have been selected since he has passed in the examination.

Though it was argued that no passing marks are prescribed in this examination, we may point that in the earlier case, against the Judgment of the Division Bench, the applicant in that case filed a Writ Petition in the High Court viz. W.P. No.488/98. The respondents themselves are relying on the copy of the order in the writ petition which is annexed to the written statement

and which is at page 41 of the paper book. There, the Division Bench of the High Court dismissed the writ petition and in the order dt. 16.2.1998 it is mentioned that since the applicants in that case had not secured 35% marks, they have failed in the examination and therefore, they cannot question the selection. Hence, we may presume that usual percentage marks is 35%.

Since the applicant has secured 40% marks, by taking only trade test into consideration and ignoring the performance in the written test, the applicant should have been selected since he is from earlier batch and since is seniormost candidate among the Fitter grade.

9. In view of the above discussion, we hold that non-selection of the applicant is illegal and contrary to Rules. Since applicant has secured 40% and since he belongs to the earlier batch, he must be selected on the basis of his seniority as observed by the Supreme Court which we have referred to above. If there are four posts, then applicant can be accommodated in the existing panel of three persons. But, if there are only three posts, then applicant should be accommodated in the panel by deleting the name of the last person in the panel. We are taking that the panel consists of three persons for the Fitter Trade with one more person in the waiting list. The applicant's name should come in the select panel of three persons.

10. In the result, the application is allowed as follows:

- (1) While not interfering with the entire selection process of different trades as mentioned in Ex. 'D' (page 15 of the paper book), we direct that the applicant's name should be included in the select panel of three persons in the Fitters Trade by deleting the last name. However, if there are four vacancies, then applicant's name should be added to those three persons and selected. We make it clear that our order pertains to only about interfering with the panel of Fitters grade and not other panels in respect of other trades.
- (2) The interim order dt. 18.5.1999 and extended from time to time is hereby vacated.
- (3) In the circumstances of the case, there will be no order as to costs.

B.N.Bahadur
(B.N.BAHADUR)

MEMBER(A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
10/2/99

VICE-CHAIRMAN

B.