

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 874 of 1999.

Dated this Friday, the 2nd day of February, 2001.

Sanjay Baburao Sant, Applicant.

Shri V. N. Tayade, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? X
- (iii) Library. X


(B. N. BAHADUR).
MEMBER (A)

OS*

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Hon'ble Shri S. L. Jain, Member (J).

Sanjay Baburao Sant,
R/o. Khatri Galli,
Dharangaon, Tal. Erandel,
Dist. Jalgaon.

... Applicant.

(By Advocate Shri V.N. Tayade).

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi.

2. The General Manager,
Ordinance Factory, Varangaon,
Tal. Bhusawal,
Dist. Jalgaon,
Pin Code - 425 308.

3. The Works Manager/LB,
Ordinance Factory, Varangaon,
Tal. Bhusawal, Dist. Jalgaon,
Pin - 425 308.

... Respondents.

(By Advocate Shri R. K. Shetty)

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri Sanjay Baburao Sant,
seeking the relief from this Tribunal as follows :

"(A) To direct the Respondents to consider the candidature of the Applicant and consequently appoint him on the post of "Ty. Machinst Semi Skilled" as he is eligible to be appointed on the post.

(B) To grant interim injunction restraining the respondents, their agents, sub-ordinates and servants from appointing the other candidate than the Applicant as Ty. Machinist Semi-Skilled at Varangaon Ordinance Factory, pending the hearing and final disposal of this Application."

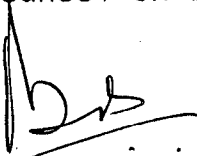
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2. The facts of the case, as brought forth by the Applicant are that he has teaching experience for N.C.T.V.T. student being a diploma holder in I.T.I. and C.T.I. He was a candidate in the selection for the post of Trainee Machinist (Semi-Skilled) in Respondents' organisation and had been asked to submit the N.C.T.V.T. certificate, whereupon certificates of I.T.I. and C.T.I. have been submitted. He was subject to oral test and was successful. However, he was informed by letter dated 06.01.1999 to submit the N.C.T.V.T. certificate. Now, the short point is, that the Applicant is held to be not qualified, as he is not possessing the N.C.T.V.T. Certificate. The main issue before us is, whether the Applicant is qualified as per the Recruitment Rules, as he contends he is, or does not meet the qualifications, as is argued by the Respondents.

3. The stand taken by the Respondents in the Written Statement and the subsequent affidavit dated 08.01.2001 (page 58 of the Paper Book) is that the Applicant is not qualified. In fact, there was some doubt in view of the nomenclature of the certificates and others, which has been clarified through the second affidavit filed by Respondents.

4. We have heard the Learned Counsel, Shri V. N. Tayade for the Applicant, and Shri R. K. Shetty for the Respondents. In fact, over more than one sitting. Time was provided giving them an opportunity to file papers and clarifications that had become necessary during the course of the hearing and the perusal of the record. We have considered all these papers, including the rejoinder filed etc. and the arguments made by the Learned Counsel on both sides.



5. The stand of the applicant is that the Recruitment Rules, as available at page 32, prescribed the qualification as "National Council of Trades for Vocational Training Certificate failing which by I.T.I. or equivalent Diploma/Certificate holder." Now really it is the interpretation of this which has fallen upon us to decide in view of the arguments made on both sides. The mere reading of the entry does not clarify the matter one way or other and hence it has become necessary for us to go into the depth of the matter. The position has really come to be explained in the affidavit of 08.01.2001. We are reproducing para 4 of the affidavit, as it is essential to clarify the background of the certificates.

"4. I say that National Council for Vocational Training (NCVT) previously known as National Council of Trades for Vocational Training (NCTVT) runs two type of Training Scheme (CTS) and Apprenticeship Training Scheme (ATS). Students after passing class Tenth can join any of the Two Training Scheme. Under Craftsman Scheme which is of two years duration, students are awarded National Trade Certificates (NTC). This Training Course is conducted by the various Industrial Training Institutes on behalf of NCVT and after successful completion of Training, Certificate is awarded by Secretary NCVT. This Certificate NTC is also popularly known as ITI Certificate. I say that under Apprenticeship Training Scheme students are awarded National Apprenticeship Certificates (N.A.C). This training is conducted by various factories but again certificate is awarded by NCVT. In this scheme students can join either getting NTC or directly after Class XII. In the first case, duration of course ie one year while in second case it is three years. For three years course, syllabus for first two years is same as of NTC. The Third year course consists of Industrial Experience i.e. Workshop Training in Industrial Environment. Thus, students undergoing training acquire Industrial Skill. In common parlance this is also known as NCTVT Certificate."

Now the important point that is made is with reference to the above statement that what is required under the rules is that the

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aspirants to this post of Machinist should have passed the three years course and anyone who has not passed the three years course is not acceptable as having the requisite qualification.

6. The Learned Counsel for the Applicant stated that the Recruitment Rules, as stipulated, should be read as they are and since this qualification is not mentioned in the rules, the requirement as being stated, would amount to an extension of the requirement that is actually stipulated in the Recruitment Rules. What is required to be followed, he argued, was the Recruitment Rules entry, as it stood.

7. Another argument made by the Learned Counsel for the Applicant was that, in fact, he has higher qualifications and is training the students who themselves go in for the aforesaid three years course.

8. The Learned Counsel for the Respondents had stated that the requirements of the job are not one of teaching, and well as the Applicant may be fit to teach in a Training Institute, what the Organisation required was practical workshop experience of one year. Without this, the Machinist would not be of any use and in fact, it is only because of this that they are taking persons who have undergone three years course only, since this course has, in it, an inbuilt one year practical workshop experience as an essential ingredient.

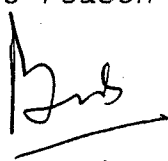
9. Now it is not possible to take a clinical view to the effect that any NCTVT Certificate is enough, because we note that the term 'N.C.T.V.T. Certificate' is a general term. Clarification was essential and has become possible only from the

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above quoted paragraph. Well and truly, the Recruitment Rules could have made things more clear obviating the doubtful situation obtaining. In the absence of that, we were of the view during arguments that the actual practice being followed should be brought out. Time was therefore afforded to the Respondents to file an affidavit, which he has now done. Copy of this affidavit has been made available to the other side. This affidavit dated 22.01.2001 (page 83 of the Paper Book) states that the O.F.V. has not appointed any Craft Instructor Certificate holder as Semi-Skilled (Machinist) in the Ordnance Factory. The affidavit reads as under :

"I have already filed an Affidavit in C.A.T. Mumbai on 8-1-2001. In addition to it, I say that OFV has not appointed any Craft Instructor Certificate Holder as Semi Skilled (Machinist) worker in Ordnance Factory, Varangaon. Pursuant to sanctions accorded by the Ordnance Factory Board, Calcutta during 1995 and afterwards for direct recruitment to the post of Semi Skilled in the Industrial Establishment till now 104 incumbents have been appointed as Semi Skilled (Machinist) by way of direct recruitment. I also enclose the list of these 104 employees alongwith their technical qualification who were recruited as Semi Skilled (Machinist) since 1995 in the Trade of Machinist, at Ordnance Factory, Varangaon as Exhibit R-5."

Now this affidavit shows the System/requirement that has been followed. It shows us as to how exactly the Organisation has been interpreting the Recruitment Rules, and following it. If indeed they had taken persons with other qualifications like those of the Applicant at any stage, then the Applicant clearly had a case. The Learned Counsel for the Applicant does point out that the affidavit speaks only of the position as from 1995 onwards. However, no proof of the practice followed otherwise, is made by either side. Now once the Organisation is following a certain set method which requires a three years course, there is no reason why an exception should be made in favour of the



Applicant. We also note that the reason afforded for this requirement of three years course is very plausible and justified, in that the expectation is of practical workshop experience, which is available only through the said course. (The position in fact, is very lucidly explained in Exhibit R-2 at page 66 and, therefore, not being repeated herein.)

10. Holding the Applicant eligible merely because of the wordings in the entry in the Recruitment Rules, would be taking advantage of a hypertechnical reason and would be unfair. On the other hand, no prejudice is caused to the Applicant since he cannot be singled out. Perhaps, the entry in the Recruitment Rules should have been more specific but the Recruitment Rules, as they are generally framed, do not contain elaborations, and we do not find any malafide intention. In this connection, we must also note that the said Recruitment Rules are notified on 01.11.1994, and hence the earlier period is not relevant.

11. Another point made by the Learned Counsel for the Applicant related to the argument that a perusal of the mark-sheet of the Applicant showed that the same subject are cleared by him, which are required in the 3 year course referred to by the Respondents. Now this argument involves assessment of the merits of the course content, etc. and their equivalence. This is not a matter which is for Courts and Tribunals to go into. The Organisation which has the expertise knows its need, and when once they have come to identify certain requirements and incorporate them in the Rules, it is not for this Tribunal to interpret whether these are correct per se or not. In this

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connection, we also note the opinion of the Advanced Training Institute of the Ministry of Labour, Government of India, which was sought by the Respondents and are available at exhibit R-1. It is clear from the perusal of this letter that the Respondents' arguments are well taken.

12. In view of the above discussions, we are not convinced that the Applicant has made out a case for our interference. This O.A. is therefore dismissed. There will be no order as to costs.

S.L. Jain

(S.L. JAIN)
MEMBER (J).

B.N. Bahadur

(B.N. BAHADUR)
MEMBER (A).

OS*