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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 581/91 & 823/93

Transfar Application No:

DATE OF DECISION: 13/03/1993

C.P.Yadav & 47 Ors.
K.P. Choudhari & 8 Ors. Petitioners

Shri. S.H. Iyer Advocate for the Petitioners

Versus

Union of India & Ors. Respondent s


Shri. R.P. Darda Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.S.Deshpande)
Vice-chairman

J*

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

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O.A. 581/91
O.A. 823/93

O.A. 581/91

C.P. Yadav & 47 Ors.	.. Applicants
Vs.	
Union of India & Ors.	.. Respondents

O.A. 823/93

K.P.Choudhari & 8 Ors.	.. Applicants
Vs.	
Union of India & Ors.	.. Respondents

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, Vice Chairman
2. Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearances

1. Shri. S.H.Iyer, Counsel for
the applicants
2. Shri. R.P. Darda, Counsel for
the respondents

ORAL JUDGMENT

DATED : 13/03/1995

(Per Shri Justice M.S.Deshpande, Vice Chairman)

By these two applications, the applicants seek direction that they should be treated as Semi Skilled workers for all purposes from the date of their initial appointment at Ordnance Factory, Ambajhari and to grant them pay and allowances at par with Semi Skilled worker from the date of their initial appointment as Labourer 'B' (Unskilled) together with arrears of pay and allowances and other consequential benefits, as well as regularisation.

2. The applicants were appointed as Trade Apprentice at Ordnance Factory, Ambajhari and underwent training as apprentice for three years, between 5.7.1982 and 4.7.1985. They were being given Rs.230/300 as stipend. In November 1985 they also obtained certificate of N.C.T.V.T and were given casual employment from 6.12.1985 as they were sponsored by the Employment Exchange. The applicants were subsequently given regular appointment as Unskilled labourer in the scale of Rs.750-940. Despite this, they were being

assigned skilled jobs and they did skilled jobs during this period. They were however not given the pay and allowances of Skilled workers and were denied regularisation. They have, therefore approached this Tribunal by these two separate applications, for the aforesaid reliefs.

3. The respondents contended that no requisition for sponsoring of candidates for recruitment of Semi-skilled workmen was placed on Employment Exchange after 6-12-1985 and there was no obligation on the part of the General Manager to absorb the trainees under the Trade Apprenticeship Act. Since there was requirement of Casual Labourers and the applicants were employed as Casual Labourers, in order to give them employment assistance, they were continued in service. It was urged that the mode of selection under the Ordnance Factory Board letter No. U1/A/ECC dated 16.1.1985 was that the vacancies arising in future in the skilled grades should be filled in accordance with the letter dated 13.1.1984, i.e. in the Skilled Grade carrying scale of pay Rs.260-400 to the extent required by (i) promotion of unskilled workers to the semi-skilled grade of Rs.210-290 in the respective trades mentioned in Annexure-II to that letter as well as Annexure-II to OFB letter of even number dt. 13.1.1984 (ii) by direct recruitment of Ex.trade apprentices who have passed NCTVT to the Semi-skilled grade of Rs.210-290 in the respective trades. The percentage of posts to be filled by (ii) above will be based on requirement but in no case it should be less than 20% and it was open to the applicants to compete trade test etc., in accordance with rules relating to seniority, whenever the applications were invited or to appear in an interview for direct recruitment of Semi-skilled workers whenever vacancies are intimated to Employment Exchange.

4. No material has been placed before us that a notification has been issued for direct recruitment and that the applicants were to be taken in the 80% quota for direct recruits. Our Attention was drawn to the letter dated 19/12/1990 issued by the Minister of State of Ministry of Defence to a Member of Parliament in which it was stated that the individuals who were recruited on casual basis as unskilled labour have to await their turn for absorption in the semi-skilled grade. The individuals who are in possession of N.C.T.V.T certificate can be considered for recruitment against the direct recruitment quota of 80% in the semi-skilled grade

posts alongwith the candidates sponsored by the Employment Exchange since they possess the necessary qualifications for direct recruitment in this grade. However, they can be granted semi-skilled grade either from the date from which they were regularised or till they are appointed in semi-skilled grade against direct recruitment quota on availability of requisite number of posts.

5. We repeatedly asked Shri.S.H.Iyer, learned counsel for the applicants about the material allegations of facts which he should have made and pleaded to show that employment notice has been issued for direct recruitment quota. However no such material was pointed-out to us. On the other hand, Shri.R.P.Darda, learned counsel for the respondents very categorically stated that no direct recruitment has been resorted to and the applicants have been appointed only to casual post and he reiterated the respondents stand that the applicants have not been trade tested prior to their appointment and some of the applicants had appeared in the trade test which was held in the year 1995 and some of them have passed in the first ever trade test that was held. In the absence of material produced on behalf of the applicants, it is not possible for us to accept the submissions that the applicants should be regarded as direct recruits in the absence of relevant notification and relevant formalities being performed for recruitment in direct recruitment quota. The facts stated by the applicants in the petition would show that the applicants were taken as Apprentices and were given casual employment after completion of the apprenticeship period. It was not obligatory on the part of the respondents to appoint the applicants as semi-skilled or un-skilled workers in the trade in which they received training as apprentices. With regard to the statement that the applicants were doing skilled job for a long period, the learned counsel for the respondents stated that on occasions, skilled jobs were entrusted to the applicants but that would not give the applicant a right to the post in the absence of trade test as required for direct recruitment.

6. We have given anxious consideration to the relief which can be granted in the light of the facts stated above. All that we can say in view of long periods for which the applicants have been working with the Ordnance Factory, is that all those applicants who were not trade tested and who have been trade tested but failed in early 1995, should be trade tested in the respective trades in which they are working, and those who pass the trade test should be granted appointments in the semi-skilled category of

...4

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those trades on the basis of their seniority, which shall have to be reckoned from the date of their passing the trade test. Obviously, the applicants cannot seek direction that they should be paid wages of semi-skilled workers from the date of their initial appointment. They can be paid wages of semi-skilled workers only from the dates on which they are found suitable in the trade test and it would be from that date they would be entitled to the wages of Semi-skilled worker. The trade test shall be done within one year from the date of communication of this order and the benefits which we have enumerated above shall be given from the date of passing of trade test. With these directions the G.As are disposed of, with no orders as to costs.

M. R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

M. S. Deshpande
(M.S. DESHPANDE)
VICE-CHAIRMAN

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Review Petition No.78/95 in

O.A.No.581/91.

O.P.YADAO & 42 Ors.

... Applicant.

V/s.

1. Union of India, through Secretary,
Ministry of Defence, South Block,
New Delhi.
2. The Director General,
Ordnance Factories,
101-A Auckland Road,
Calcutta-1.
3. General Manager,
Ordnance Factory,
Ambazari,
Nagpur.

... Respondents.

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman.
Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION
BY CIRCULATION.

Dated : 30-8-1995

X Per Shri M.R.Kolhatkar, Member(A) X

In this Review petition, the prayer is for review of our judgement dated 13.3.1995. In that judgement, after considering the prayer of the applicants to treat them as semi-skilled workers from the date of initial appointment, we had noted that the Learned Counsel for the applicant had not been able to show that the Employment notice was issued for direct recruitment quota. We therefore rejected the application but in view of the long periods of service which the applicants had been working with the Ordnance Factory, we had directed that the applicants who were not trade tested and who have been trade tested but failed should be trade tested in the respective trades in which they were working and those who pass the trade test should be granted appointments in the semi-skilled category of those trades on the basis of their seniority, to be taken from the date of their passing the trade test.

The prayer for review is based on certain documents which were not filed earlier. At Annexure-A of the RP is the letter dated 26/4/95 addressed by one of the petitioners to the Employment Officer, Regional Employment Exchange to issue a certified true copy of the employment notification. No notification has been filed and we are asked to review our judgement interalia on the footing that the copy of the notification will be filed on record as soon as it is made available by the Employment Exchange. The second document filed is an invitation for interview for the post of machinist on 19/9/1985. This again does not help the applicant. The third document filed is regarding cash award for outstanding performance in defence production. In our view this document also does not help the petitioner. It is also stated in the RP that the respondent department did not produce log books and the production register which can show the nature of the work done by the original applicants. So far as this prayer for additional documents which may have been mentioned at the stage of OA and which may not have been produced is concerned, it also cannot help the petitioner's case. The Counsel for the applicant had chosen to proceed to argue the case even in the absence of these particular records. A grievance of their non production cannot be made at the stage of review. For the rest, the applicant has traversed the same grounds which he had urged in the OA.

Considering all facts and circumstances, we are satisfied that no grounds have been made out for review of our judgement in terms of rules under order 47 of CPC. The RP is therefore dismissed without any order as to cost. The RP is being disposed of by circulation as permissible under the rules.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)
abp.

(M.S. DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO: 02/96 ALONG WITH MP 17/96 IN

O.A.NO:581/91

(17)

1. Union of India
through
Secretary
Ministry of Defence,
South Block,
New Delhi-11.

2. Director General,
Ordnance Factories,
10-A, Auckland Road,
Calcutta -1.

3. General Manager,
Ordnance Factory,
Ambazari,
Nagpur - 21.

.. Review
Petitioners

-vs-

O.P.Yadav and 47 Ors.

.. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

Tribunal's Order on Review Petition
by circulation

Date: 18/11/96

(Per M.R.Kolhatkar, Member(A))

O.A. 581/91 was decided by Tribunal on
13-3-95 by grant of certain reliefs to the applicants.
R.P.No.78/95 filed by the original applicants was
dismissed by this Tribunal by circulation on 30-8-95
The present RP is by original respondents in which
the main contention is that the original applicants
are not within the zone of consideration in terms of

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SRO 10-E, which came into force w.e.f. 6-7-89 read with contents of the letter dt. 28-7-89-Para 2.2.1. The review petitioner has therefore sought review of our judgment dt. 13-3-95 and ^{prayed us} to hold that the original applicants are not entitled for grant of any relief.

2. MP 17/96 is for condonation of delay in filing the RP. The grounds for condonation **are that** the certified copy of the order dt. 13-3-95 was not delivered to the review petitioners. They, however, arranged to collect the uncertified copy of the order on 4-5-95 and thereafter the matter was referred to to the Ordnance Factory Board and after inter departmental correspondence and after obtaining legal advice the RP came to be filed on 15-11-1995.

3. Delay in filing the RP is condoned. ~~in~~ the facts and circumstances narrated by the Review Petitioner. ~~The~~ MP, therefore, stands disposed of.

4. Subsequent to the filing of the RP respondents have filed an "additional reply to state subsequent events", and the same has been briefly noted by us in our order dt. 17-10-96 passed at Nagpur, the gist of which is that out of 48 applicants in OA, 28 applicants have been promoted, 13 have been interviewed, 3 have been transferred, 1 applicant has resigned ^{and} 2 applicants belong to Grinder's grade **for which** there are no vacancies and one applicant belong to Tool & Diemakers grade **which** does not exist in the new SRO. The respondents therefore submit that the order passed by the Tribunal **may** be implemented in the aforesaid manner.

99

5. The counsel for the original applicants had undertaken to file a reply to additional submissions filed by the original respondents and it was decided that orders in RP would be passed only after perusal of the submissions. The same has been received at Bombay on 31-10-1996 and we have perused the same. In this reply the original applicants have opposed the RP and have also referred to the judgment of the Tribunal in O.A. 1468/95 decided on 9-1-96 in which the Tribunal followed the Supreme Court judgment in U.P.State Road Transport Corporation and Anr. vs. U.P.Parivahan Nigam Shishukhs Berozgar Sangh and Ors. (1995) 2 SCC 1. On the basic point xxxxxxx that there is no requirement of semi-skilled worker in the Grinder trade it is stated that a vacancy has been notified on 17-4-1995 and that S/Shri B.K.Shrivastava and S.K.Kathwate , employees belonging to this trade had applied for the same but their application was not considered. Regarding J.S.Sonone who belonged to the trade of 'Tool and Die maker' it is stated that he can be easily accommodated in the existing identical trades like Fitter General, Grinder, Machinist Tool Maker etc, as has been the practice in the Ordnance Factories since long.

6. We have considered the R.P., the additional submissions filed by the original respondents and reply of the original applicants to the additional submissions. We are not satisfied that the review petitioners have made out a case for review of our order dt. 13-3-95. At the same time we also take note of the additional submissions made by the original respondents and the

20

reply of the original applicants. While dismissing the R.P. we direct the original respondents to accommodate remaining three employees viz. S/Shri B.K.Shrivastava, S.K.Kathwate and J.S.Sonone in some of the existing identical trades like Fitter General, Grinder, Machinist, ToolMaker etc. This R.P. stands disposed of accordingly.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

B.S. Hegde
(B.S. HEGDE)
Member(J)

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