

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

MISCELLANEOUS PETITION NO. 12 OF 96

IN
ORIGINAL APPLICATION NO. 869 OF 94.

Decided this the 26th day of March, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A),
Hon'ble Shri D.C.Verma, Member(J).

B.S.Mohite & Ors. ... Applicants.
(By Advocate Shri G.S.Walia)

V/s.

Union of India & Ors. ... Respondents.
(By Advocate Shri S.C.Dhawan)

O R D E R

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

Miscellaneous Petition No.12/96 is an M.P.
filed by the Respondents praying for vacation or
variation of Interim Relief granted by this Tribunal
on 22.7.1994 in the following terms :

"Mr.G.S.Walia for the applicant and Mr.S.C.Dhawan
for the respondents.

Notice before admission returnable on 23.8.1994.

Though we permit selection process to be
completed we direct that appointment pursuant
to the selection shall not be made until
further orders."

2. The respondents have contended that Notifications
dt. 9.7.1993, 17.7.1993 and 26.7.1993 are for filling
up the posts of skilled artisans in various trades in
Parel Workshop from open market. The Recruitment to
the post of skilled artisans is made according to the
following quota: 50% by promotion, 25% from service
staff with educational qualifications as laid down
in Apprentices Act and 25% by selection from open market.
All the notifications relate to selection of 25% from
open market quota. The notifications are impugned

essentially on the ground that the modalities adopted by the respondents for assessment of number of posts to be filled from open market is vitiated because the Respondents have been calculating the same on the basis of annual vacancies and not on the basis of sanctioned posts. As a result, it is contended by the applicants that there is an excess of direct recruits and that the applicants who are Khalasis, but who are otherwise qualified except from the point of view of age have a prior right to be considered for selection in preference to candidates from the open market.

3. The official respondents (Miscellaneous Petitioners) have contended that in the absence of the adequate qualified and selected persons/working of the workshop is adversely affected especially as these are safety category posts and that interim relief is required to be vacated or varied.

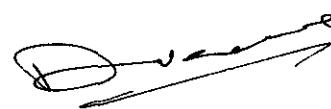
4. The Tribunal in its order dt. 8.4.1996 directed the respondents to file an affidavit regarding the vacancy position and the number of posts kept for direct recruits and the increase in the posts pursuant to the re-creation/upgradation of the posts. These orders were reiterated on 8.7.1996. Pursuant to these orders respondents have filed an affidavit on 5.9.1996, from the annexure of which it is seen that if the vacancies of all the three years 1990, 1991 and 1992 are taken into account, the backlog would be 138 against which a sanction of 30 posts/to be filled against 25% quota from the open market, has been received.

5. We have heard the learned counsel for both sides. The original applicants/respondents to the M.P.

has questioned the basis of assessment of vacancies. We have noticed above the nature of the dispute and it appears to us that the counsel for the original applicants is essentially arguing on merits of the case which will require us to go into the correct basis for assessment of posts, whether sanctioned posts or vacancies. We are not inclined to launch into this investigation at this stage. We are required to consider the matter on the basis of balance of convenience. The Official Respondents have also pointed out that there are 5 applicants, 3 of whom belong to the trade of Diesel Transmission and two of whom belong to the trade of Diesel Mechanic and it is seen that it is only the trade of Diesel Mechanic in respect of which the selection has been notified. It is further pointed out by the official respondents that Shri L.R.Shetty belonging to the trade of Diesel Mechanic (Applicant No.4) has already been selected in the normal course against the promotion quota and only one applicant belonging to the notified category viz. Shri P.N.Patil (Applicant No.5) remains. The question also arises whether this O.A. is to be treated as having been filed by the Khalasis in a representative capacity. The counsel for the applicant would submit that the O.A. has to be treated as representative, whereas, the counsel for the respondents would oppose the said submission. This is again an issue which we can consider ^{only} at the stage of final hearing. For the present, after considering the submissions of the counsel on both the sides, we are of the view that

there is no justification for continuance of the interim relief and we vacate the same. We, however, clarify that appointments pursuant to the selection shall be subject to the final outcome of the O.A.

6. M.P. is therefore ~~dismissed~~ ^{disposed of} and the O.A. is directed to be consigned to the sine die list for being taken up for final hearing in its turn. A copy of the order may be given to both the parties.



(D.C. VERMA)
MEMBER (J)

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.