

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 187/95

14.09.99

Date of Decision:

Y.Kutty

.. Applicant

Shri R.C.Ravalani

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty

.. Advocate for  
Respondent(s)

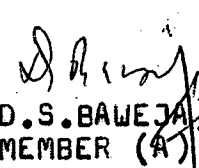
CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

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

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ?

  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.No.187/95

Dated this the 1st day of October 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

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

1. Yohannan Kutty
2. Anil Dhondiba Kale
3. Sampat S.Gaikwad
4. Dattatraya K.Mohite

All are working at Ordnance  
Factory, Dehu Road, Pune.

... Applicants

By Advocate Shri R.C.Ravalani

V/S.

1. Union of India  
through the Secretary,  
Ministry of Defence,  
South Block, New Delhi.
2. The Chairman,  
Ordnance Factories Board,  
10-A, Auckland Road,  
Calcutta.
3. The General Manager,  
Ordnance Factory,  
Dehu Road, Pune.

... Respondents

By Advocate Shri R.K.Shetty

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

OA No. 187/95

Dated this the \_\_\_\_ day of \_\_\_\_ 1999.

CORAM : Hon'ble Shri D.S. Bawale, Member (A)

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

1. Yashwantrao Kulkarni
2. Anil Dhanoo Kale
3. Sampat S. Jadhav
4. Dattatraya V. Mohite

... Applicants  
 1. The Workers at Ordnance  
 Factory, Debra Road, Pune.

By Advocate Shri R.C. Ravabani

Vs.

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

2. The Chairman,  
 Ordnance Factories Board,  
 10-A, Auckland Road,  
 Coimbatore.

... Respondents  
 1. The General Manager,  
 Ordnance Factory,  
 Debra Road, Pune.

By Advocate Shri R.K. Shetty

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This application has been jointly filed by 4 applicants who are working as Labourers (Semi-skilled) in the grade of Rs.800-1150 in the Ordnance Factory, Dehu Road, Pune. All the 4 applicants were selected and appointed as Apprentice-Trainee in the Ordnance Factory to undergo one year of training. The Applicant No. 1 successfully completed training from 15.5.1989 to 14.5.1990 while the other three applicants completed the training from 11.6.1988 to 10.6.1989. The applicants submit that they are in possession of the certificate in the trade of Fitter issued by National Council of Trades for Vocational Training (NCTVT). As per the applicants, they were entitled to be appointed as Fitter(General) on completion of one year training but were appointed as Labourers (unskilled) temporarily on account of non-availability of vacancies at the relevant time. The applicants state that they were assured that their case will be considered for posting as Fitter (General) with other candidates as and when vacancies arise. The applicants had no option but to join the Factory as Labourer (Unskilled) in the scale of Rs.750-940. Thereafter, in due course of time, the applicants have been also promoted as Labourer in the Semi-skilled category (Applicant No. 1 on 15.5.1990, Applicant No. 2 on 27.7.1989 and Applicants No. 3 & 4 on 31.7.1989). The applicants alleged that the respondents did not appoint them as Fitter(General) for which they were eligible to be appointed in



terms of order dated 22/30.4.1979 issued by Director General, Ordnance Factories which provides that 20% of the posts are to be filled in each year in the semi-skilled category from amongst the Trade Apprentices who have successfully completed the training. The applicants have filed the present OA. on 2.2.1995 on knowing that some vacancies of Fitter (General) are likely to be filled up by direct recruitment through Employment Exchange.

2. The applicants with the above background have sought the relief of directing the respondents to consider the case of the applicants for the post of Fitter (General) and redesignate or promote them to the said post/trade of Fitter (General) if found fit.

3. The respondents have filed the written statement opposing the OA. The respondents submit that the Circular dated 22/30.4.1979 which has been relied upon by the applicants in support of their plea has been superseded by the order dated 19.7.1983 which provides that ex-trade apprentices who are in possession of NCTVT certificate are only to be appointed in the Ordnance Factory in any trade/grade. The respondents submit that the applicants were not having the required certificate at the time of their consideration for appointment as Labourer (Unskilled) and therefore were not eligible for the post of Fitter (General). The respondents also deny of giving any assurance that they will be absorbed as Fitter (General) as and when vacancies arise. The

respondents further add that Recruitment Rules have been laid down for recruitment to the post of Industrial Posts of Group 'C' and 'D' in Ordnance Factories as per order dated 6.7.1989 which will be applicable to the case of the applicants. The respondents contend that as per these Recruitment Rules, the applicants can be considered for promotion only against 20% quota and the applicants' claim cannot be considered as prayed for in violation of the prescribed rules. As per the Recruitment Rules, 80% of the vacancies are to be filled by direct recruitment and the applicants cannot have any claim against the same, since the applicants have already been promoted to the grade of Rs.800-1150 as Labourer (Semi-skilled). The respondents have also stated that the recruitment through Employment Exchange as alleged by the applicants has been abandoned and no recruitment has been done for want of vacancies. With these submissions, the respondents plead that the applicants have no case and the OA. deserves to be dismissed.

4. The applicants have filed rejoinder reply controverting the submissions of the respondents. The applicants have further brought out that as per Recruitment Rules SRO-18E, 20% of the posts in semi-skilled trades are to be filled by promotion while balance 80% are to be filled by transfer and in the event of failure to do so, the posts are to be filled by direct recruitment. With this provision in the recruitment rules, the applicants contend that since they are already working in the

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semi-skilled grade, they are entitled to be promoted as Fitter (General) in the semi-skilled grade against the 80% quota to be filled by transfer. The applicants have also averred that similar redesignation had been allowed in the case of an Armature -Winder as per Factory Order No.753 dated 17.11.1994.

5. We have heard the arguments of Shri R.C.Ravalani, learned counsel for the applicants and Shri R.K.Shetty, learned counsel for the respondents.

6. As brought out earlier, the applicants in the original application have based their claim of the relief prayed for seeking support from the letter dated 22/30.4.1979 issued by Director General, Ordnance Factories brought on record at Annexure-'A-2'. Referring to this order, the applicants have contended that 20% of the posts are required to be filled in the semi-skilled category from the ex-Trade Apprentices who have successfully completed the training. The respondents have, however, contested this stating that this Circular has been since superseded by another Circular issued on 19.7.1983 (Exhibit 'R-1' with the written statement). The respondents have also further contended that the recruitment rules have been issued on 6.7.1989 as per SRO-18E for recruitment to the post of semi-skilled trades. With the issue of the recruitment rules as per SRO-18E, the Circular dated 22/30.4.1979 which is subsequently superseded by Circular

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dated 19.7.1983 have no relevance. The claim of the applicants has to be seen in the light of the recruitment rules. The respondents in the written statement have disclosed about the recruitment rules of 1989 and the same were existing at the time of filing of the OA. in 1995. The applicants have not relied upon these rules in the original application but have based their claim on the order dated 22/30.4.1979. Even after the disclosure with regard to recruitment rules of 1989 by the respondents, the applicants have not chosen to make any amendment in the OA. However, the applicants in the rejoinder reply have referred to the recruitment rules and have moulded their claim that they are entitled for the relief prayed for as per the recruitment rules. The applicants have contended that as per the recruitment rules, 80% of the posts are to be filled in on transfer basis and since the applicants in the meantime have already been promoted to the semi-skilled grade Labourer, they are entitled to be considered for posting as Fitter (General) (semi-skilled) against the transfer quota. Though the applicants have not made to this effect any specific averments in the OA. referring to the recruitment rules, we are however considering on merits even on this plea made by the applicants in the rejoinder reply. We note that the applicants have sought the relief of directing respondents to consider the applicants for the post of Fitter (General) either by redesignation or through promotion. The applicants, however, have not brought out as to how cause of action has arisen to the applicants for filing the present OA.

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If the case of the applicants is that as per recruitment rules they are eligible for posting as Fitter (General) against the transfer quota, then the cause of action can arise only when the respondents have not considered their case and juniors have been considered and appointed. The relief as prayed for based on the pleadings in rejoinder reply will imply to issue direction to the respondents to ensure that the filling up the vacancies of Fitter (General) is done as per the recruitment rules. No such direction is called for. It is for the respondents to follow the recruitment rules and if there is some violation which causes a grievance to an employee then that will give cause of action for seeking legal remedy. In the present case, the applicants have not brought out whether any appointment on transfer basis has been considered by the respondents and the applicants being senior and eligible have been ignored. The applicants have cited one case of change in designation but no details have been furnished to indicate whether the same has been done as per recruitment rules. In the light of these observations, the present OA. is premature as there is no cause of action arising to the applicants.

7. It is noted that the applicants have approached the Tribunal through this OA. on the apprehension that some direct recruitment was being done to fill up the posts. The respondents, however, in the written statement have brought out that direct recruitment has since abandoned as there are no vacancies. In view of this position also no cause of action at present arises to the applicants on this score to sustain the present OA.

8. In the result of the above, we do not find any merit in the OA and the same is dismissed accordingly. No order as to costs.

*S.L. Jain*  
(S.L.JAIN)

MEMBER (J)

*D.S. Baweja*  
(D.S.BAWEJA)

MEMBER (A)

mrj.