

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 776/97

Transfer Application No.

Date of Decision 20/1/98

V.K.Jonwal & Ors.

Petitioner/s

Shri D.V.Gangal

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

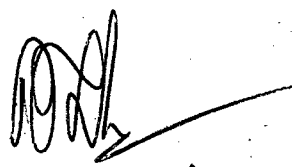
CORAM :

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

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

Yes
No


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 776/97

Pronounced this the 20th day of January 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

1. Vijaykumar Jonwal
2. Kishor Mukunda Badhe
3. Kiran Kachru Bauskar
4. Shrishkumar Vasant Rao Shinde
5. Prakash Yashwant Kadam
6. Ashok Pandurang Kurambhatti

By Advocate Shri D.V.Gangal

... Applicants

V/S.

1. The Union of India through
the Director General,
Ordinance Factory Board,
10A Auckland Road, Calcutta.
2. The General Manager,
Indian Ordinance Factories
Ordinance Factory, Varangaon,
Dist. Jalgaon.
3. The General Manager,
Indian Ordinance Factories,
Ordinance Factory, Bhusawal,
Dist. Jalgaon.
4. The District Employment Officer,
Employment Exchange, Jalgaon.

By Advocate Shri R.K.Shetty
C.G.S.C.

... Respondents

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicants are Ex-Trade Apprentices trained at Bhusaval Ordnance Factory and have passed NCTVT examination. The applicants' name were sponsored by Employment Exchange for appointment under Respondent No. 2, i.e. Varangaon Ordnance Factory. The applicants No. 1 to 5 were called for the interview by the respondents along



with others who were non-apprentices but had passed NCTVT. The applicants further state that after the interview the Respondent No. 4 had issued call letters for appointment to other than the applicants.

2. As far as Applicant No. 6 is concerned, the applicant's name was sponsored but the respondents failed to call him for interview. Applicant No. 6 also made representation to Respondent No. 2 but no reply has been received.

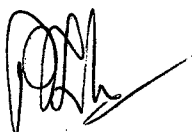
3. The applicants have further brought out that the 2nd Respondent, i.e. General Manager, Indian Ordnance Factory, Varangaon did not consider the case of the applicants on the ground that they were trained at Bhusawal. The applicants have further brought out that the applicants were trained under Apprentices Act and the National Council has granted certificate of proficiency to them. Hence the certificate granted is not by Bhusawal Ordnance Factory or Varangaon Ordnance Factory but by National Council and therefore the applicants will have to be granted appointment in preference to non-apprentices. Aggrieved by the action of the respondent administration, the applicants have approached the Tribunal and have prayed that the selection of non-apprentices who are screened along with applicants on 21st/22nd August, 1997 be quashed and have further prayed that the applicants as Indian Ordnance Factory trained apprentices have preferential right of appointment over the non-factory trained apprentices and should be appointed. They have further prayed that the consideration of non ordnance factory trained apprentices when Indian Ordnance Factory trained apprentices are available is illegal and their appointment should be prohibited.



4. The respondents have filed a reply. In the written statement the respondents have brought out that as no Ex-Trade Apprentice of Ordnance Factory Varangaon were available, since all had been given appointment already, the administration called for names from the Employment Exchange for recruitment 29 posts of Machinists which is a semi-skilled post. The requirement in the S.R.O. for this post is "National Council of Trades for Vocational Training Certificates in the relevant trades. The respondents have brought out that Employment Exchange sponsored the names of 63 candidates meeting the above requirements. The candidates were duly interviewed and examined orally. The respondents have brought out that after due consideration from Selection Committee the applicants from 1 to 5 were ^{found} not upto the mark and hence they were not selected.

5. As far as Applicant No. 6 is concerned, the respondents have brought out that his application was received by Ordnance Factory, Varangaon on 26th August when the interview was already held on 22nd hence he could not be considered. The respondents have further brought out in the written statement that since Applicants No. 1 to 5 were duly considered and rejected and Applicant No. 6's case was received after the date of interview, hence no injustice has been done to these applicants.

6. The respondents have further brought out that out of the 29 vacancies that were sought to be filled in, 22 persons were those who had completed their Apprentices Training in the Ordnance Factory Bhusawal including the Applicants No. 1 to 5 and the remaining had completed their apprentice training in some other organisation and awarded NCTVT. The respondents have further brought out that out of 22 Ex. Ordnance Factory Bhusawal, 13 were found to be fit by the appointing committee and the remaining persons who



were rejected after due consideration includes the 5 applicants from No. 1 to 5. The respondents have further brought out that even for the Ex-Trade Apprentices of Ordnance Factory, Varangaon also a selection interview was held on same lines and only those found fit were finally selected.

7. The learned counsel for the applicant has heavily relied on the judgement of the Hon'ble Supreme Court in the case of Uttar Pradesh State Road Transport Corporation vs. U.P. Parivahan Nigam Shashuk Berozgar Sangh reported in ¹⁹⁹⁵⁽¹⁾ S.C. SLJ p. 276. The ld. counsel for the applicant has argued that in view of the Hon'ble Supreme Court decision, the Ex-Trade Apprentices are required to be given preference over the others and since the applicants belong to the Ordnance Factories Board, they have as much right for preferential appointment over non-apprentices in Varangaon Factory even though they have been trained at Bhusawal. The ld. counsel for the applicant has argued that the respondents cannot differentiate ^{between} Ex-Trade Apprentices trained at Ordnance Factory, Bhusawal and those who have been trained at Varangaon since the training of the Apprentices is held under the Apprentices Act and the appointing authority ^{is} Ordnance Factory Board *was of the applicant and contract *signed with the President and not with any specific Ordnance Factory administration.

Learned counsel for the respondents on this issue has submitted that the respondent administration has acted within the frame work of ratio laid down in Hon'ble Supreme Court decision in U.P. Parivahan case cited above. The ld. counsel for the respondents has further brought out that the administration has considered the issue which has been decided by the Hon'ble Supreme Court in the above judgement and have issued a Circular dated 15.3.1996 wherein they have



laid down the procedure to be followed in Para 3 & 4
which read as under :-

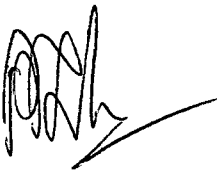
"3. The Hon'ble Supreme Court, while deciding the civil appeal, inter-alia directed as under :-

"In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training :

- i. Other things being equal, a trained apprentice should be given preference over direct recruits.
- ii. For this trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India versus Hargopal AIR 1987 SC 1227 would permit this.
- iii. If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rules. If the service rules being silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
- iv. The concerned training institute would maintain a list of person trained year wise. The person trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

4. 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."

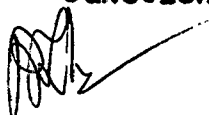
The ld. counsel for the respondents has argued that the respondents have completely followed the law laid down by the Hon'ble Supreme Court in the above case. The ld. counsel has further argued that the Ex-Trade Apprentices who are trained at Bhusawal cannot be directly appointed at Varangaon as it will create a situation by which



Ex-Trade Apprentices in all other Ordnance Factories would also claim the similar rights. In this connection, the ld. counsel for the respondents has brought out that the Government of India have laid down a procedure in their letter dated 10.10.1973 for recruitment by the establishment of its own Apprentices without reference to Employment Exchange, in Para 1 of the above Circular it has been laid down as under :-

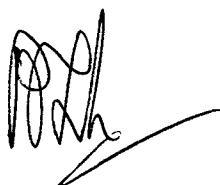
"As the Ministries etc. are aware, all direct recruitment vacancies in Central Government establishments, other than those filled through the Union Public Service Commission or Institute of Secretariate Training and Management should be notified to the nearest Employment Exchange and no Department/ Office can fill these vacancies by advertisement or any other method, unless the E.E. certified that they were unable to supply suitable candidates (vide para 6 of the Ministry of Home Affairs O.M.No. 71/49-DGS(Appts) dated 11th December 1949). In May, 1968, it was decided that there should be no objection to an apprentice, trained in a particular establishment under the Apprentices Act 1961, being employed by it on successful completion of training without going through the employment exchange, provided there is no time-gap between completion of training and commencement of paid employment. This would however, not absolve the establishment concerned from its obligation to notify the vacancies to the Employment Exchange under the Act, 1959. Where it was not possible for the establishment concerned to employ its own apprentices immediately on completion of training, the apprentices were to be advised to get themselves registered with the Employment Exchange which would sponsor such candidates as and when suitable vacancies were notified by the establishment concerned."

8. The ld. counsel for the applicant has also argued that the Ordnance Factories Board while giving sanction vide their letter dated 31.5.1996 which is the



subject matter of the present OA. has laid down that "Factory should conduct interview for assessing suitability of candidates" and that the contents of Ministry's letter which was issued after the Hon'ble Supreme Court judgement in the U.P. Parivahan case will be complied with. The ld. counsel has, therefore, argued that the respondent administration is duty bound to conduct an interview and call for the names from Employment Exchange. Therefore, the argument of the ld. counsel for the applicant that the Ex-Trade Apprentices trained at Bhusawal Factory be appointed without interview at Varangaon factory cannot be accepted.

9. After considering the arguments of both the counsels on this issue, we are of the view that the Apprentices who are trained at Bhusawal do not have a right for being appointed straightaway in the Ordnance Factory at Varangaon. It is nowhere provided and it is not the ratio of the Hon'ble Supreme Court judgement in U.P. Parivahan's case. In U.P. Parivahan Nigam case the Hon'ble Supreme Court was hearing the appeal filed by the U.P. State Road Transport Corporation against the decision of the Allahabad High Court wherein the High Court has given the direction ^{to employ those} /who had received the training in the Workshop of the Corpora^{tion.} /The Hon'ble Supreme Court after considering the provisions of the Apprentices Act as well as the instructions issued by the Government in their Circular dated 21.12.1977 have reversed the decision of the Allahabad High Court by which direction has been given mainly on the basis of promissory estoppel. In Para 10 of the judgement the Hon'ble Supreme Court has observed as under :-



"10. For a promise to be enforceable, the same has, however, to be clear and unequivocal. We do not read any such promise in the aforesaid three documents and we, therefore, hold that at the call of promissory estoppel, the direction in question could not have been given by the High Court. But then, we are left in no doubt that the Government of India did desire that preference should be given to the trained apprentices and it is because of this that the State Government state in its letter No. 735/38-6-16(T)-79 dt. 12.11.79 that where such apprentices are available, direct recruitment should not to be made. Indeed, the Government of India in its letter dated 23.3.1983 even desired reservation of 50 percent vacancies for apprentice trainees."

In Para 12 the Hon'ble Supreme Court has given the final direction about the employment of the trainees apprentices which reads as under :-

"12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training :-

(1) Other things being equal a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India vs. Hargopal, AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

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



10. It is seen from the procedure followed by the respondent administration that they have not gone against the observations made by the Hon'ble Supreme Court in the U.P. Parivahan's case and therefore the Hon'ble Supreme Court's observations made in that case do not help the applicants.

11. Learned counsel for the respondents has brought to our notice a decision of Hon'ble Supreme Court in Madan Lal & Ors. vs. The State of Jammu & Kashmir & Ors. reported in ¹⁹⁹⁵⁽¹⁾ S.C. SLJ 369 decided on 6.2.1995. The ld. counsel for the respondents has argued that the applicants have availed of the process of interview held for selection by the Ordnance Factory, Varangaon and they cannot challenge after being declared unsuccessful. The Hon'ble Supreme Court while deciding this issue has held that "the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. In Para 10 of the above judgement the Hon'ble Supreme Court has observed as under :-

"10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

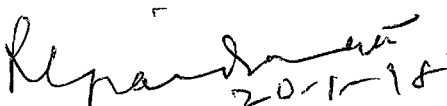


12. The respondents have produced the results, the proceedings of the interview Board wherein they have decided the Bench Mark for passing the candidates and it can be seen that the Applicants No. 1 to 5 have ^{the marks} got less than the Bench Mark and therefore were not selected. Although the counsel for the applicant has referred to in passing that extraneous consideration has played a part in the interview, no material has been placed for alleging malafides on the committee Members or on any other administrative authority. In view of the above observation of the Hon'ble Supreme Court that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful also the applicants No. 1 to 5 cannot challenge their non-selection after having availed the process of interview.

13. As far as Applicant No. 6 is concerned, the respondents have brought out that his name reached there after the interview was over and therefore he could not be considered and therefore his claim also does not survive.

14. In the result, the claim of the applicant against their non-selection to the post of Machinist held at Varangaon Ordnance Factory is rejected. The OA. is, therefore, dismissed. No orders on cost.


(P.P. SRIVASTAVA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.