

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH; HYDERABAD

OA.946/99

Dated 7.2.2001

Between

1. M. Laxmaiah
2. I. Satyanarayana
3. G. Chandra Shekar
4. G. Narayana
5. B. Adivaiah
6. N. Durga Reddy
7. K. Raghuvardhan Reddy
8. T. Kishore
9. K.M. Zahid Ali
10. M. Amarnath Reddy
11. B. Prabhakar Raju
12. M. Ranga Rao
13. G. Mallesham
14. B. Komaraiah
15. P. Narayana Reddy
16. L. Balanarasiah
17. G. Venkat Reddy
18. T. Manikya Reddy
19. L.H. Ravi
20. Ch. Janardhan
21. A. Srinivas
22. S. Balaiah
23. B. Srinivas
24. P. Ravindra Reddy
25. R. Venumadhava Rao
26. R. Lakshmikantham
27. G. Venugopal
28. N. Veeresham
29. T. Jagadeeshwar
30. K. Krishna Murthy
31. Md. Madhar Hussain
32. B. Narasimhulu
33. K. Maheswara Lingam
34. D. Ashok Reddy
35. D. Krishna reddy
36. SSR Murthy
37. Ch. Gopal
38. Shaik Gouse Samdani
39. G. Yadagiri
40. G. Prabhu
41. Mohd. Khalid
42. M. Vijaya Bhaskar Rao
43. Syed Salauddin
44. A. Narsimulu
45. P. Anjaneyulu
46. V. Ravi

47. T. Rajasakhar
 48. T. Purnachander Rao
 49. G. Pradeep
 50. V. Kondal Rao
 51. T. Mohan Singh
 52. B. Ravinder Reddy
 53. B. Durga Reddy
 54. B. Shanker
 55. P. V. NR Rama Rao
 56. U. Sambasiva Rao
 57. J. Sivanna
 58. K. Govardana Rao
 59. K. Rami Reddy
 60. V. Chalapathi Rao
 61. U. Haribabu
 62. Abdul Raheem
 63. K. Laxma Reddy
 64. P. Madhusekhar
 65. V. Prabhu Kumar
 66. P. Sathaiah
 67. B. Yogender Reddy
 68. N. Sathaiah
 69. D. Sangameshwar Reddy
 70. P. Rajendram
 71. H. Anjaiah
 72. S. Ramesh Babu
 73. P. Vijender Reddy
 74. C. Vishnu Vardhan
 75. K. Laxminarayana
 76. U. Pentaiah
 77. M. Youva Raj
 78. T. Chittaiah
 79. P. Veeresham
 80. V. Balachari
 81. K. Lingaiah
 82. M.R. Thirumalaiah
 83. G. Aravinda Kumar
 84. V. Saibabu
 85. A. Narsinga Rao
 86. R. Venkateswarlu
 87. J. Satyanarayana
 88. N. Bhoopal Reddy
 89. B. Satyanarayana
 90. B. Mallaiah
 91. P. Narendra Reddy
 92. S. Gireeswara Rao
 93. D. Venkateswara Rao
 94. P. Janardhan Reddy
 95. B. Veera Reddy
 96. M. Sreenivasulu
 97. P. Manikyam

: Applicants

and

1. General Manager
 Ordnance Factory Project
 Min. of Defence, Govt. of India
 Eddumailaram, Medak District

Ans ✓

2. K. Anantharamulu
 3. K. Mahender
 4. Syed Kalcemuddin
 5. K. Prabhu
 6. P. Yedukondala Suri
 7. P. Devadas
 8. T. Srinivasa Reddy
 9. D. Rajeswar
 10. Syed Amthaz
 11. R. Shankar
 12. A. Srinivas
 13. J. Venakata Rajaiah
 14. Ch. Sunder
 15. P. Laxman

: Respondents

Counsel for the applicants : P. Naveen Rao
 Advocate

Counsel for the respondents : B. Narasimha Sarma
 Sr. CGSC

*Counsel for the private
 Respondents 2-15 } in: L. Nanda Kishore*

Hon. Mr. Justice V. Rajagopala Reddy, Vice Chairman

Hon. Mr. M.V. Natarajan, Member (Admn.)

Order

Oral Order (per Hon. Mr. Justice V. Rajagopala Reddy, Vice Chairman)

Pursuant to the notification issued by the first respondent the names of the applicants were sponsored by the District Employment Exchange, Sanga Reddy, for selection to the posts of Fitter Semi Skilled in March, 1989 and they were selected and were empanelled in the merit list prepared by the respondents for such appointment. They were however, given appointment orders only between October, 1989 and 1990. It is their case that no seniority list of Semi Skilled grade have been published and even the seniority list of skilled grade was published recently. Even the published seniority list was not communicated to the respective employees association until 17.2.99. The grievance of the applicants in this case is that their names were shown below the

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Respondents 2 to 15 who were stated to have been appointed in September, 89 on the ground that they were apprentice trainees. After coming to know of the seniority list of the applicants they sent several representations and one such last representation was rejected on 1.4.99. Aggrieved by their seniority position vis-à-vis respondents 2 to 15 this OA is brought before us.

2. The learned counsel for the applicant Mr. P. Navin Rao contends that the respondents 2 to 15 have not been subjected to any process of selection. Hence, they were not empanelled along with the applicants in the selection held in March, 1999. It is stated that they had undergone their apprentice training under the Apprenticeship Act, 1961 and completed the same in September, 1989 and immediately thereafter they were absorbed into the posts of Fitter (General) Semi Skilled giving priority to them and the applicants were appointed only in October, 1989 though they were empanelled in the selection held in March, 1989.

3. The contention of the learned counsel is that the Apprenticeship under the above Act does not confer upon them any right for their absorption without any process of selection against any posts. They are only entitled for priority. But the respondents should subject themselves to the process of selection. It is further contended that in this case they have not even completed their apprentice training and did not participate in the selection also in March, 1989.

4. In the reply statement filed by the R-1 its stand is that R-2-15 were appointed in accordance with the Apprenticeship Act, which enjoins all Industrial Establishments to give priority to ex-trade apprentice in the matter of appointment. Accordingly, the said respondents were given training under the Act in the respondent factory and on their completion of training they were absorbed in September, 1989 in the grade of Fitter (General) Semiskilled and they were assigned seniority from the date of their absorption in the grade of Semiskilled.

5. R-2-15 are represented by the learned counsel Sri Nanda Kishore and they also filed reply affidavit. It is their case that as they were appointed after their successful completion of apprenticeship and the applicants have admitted that they were appointed



after Respondents 2 to 15 had joined Ordnance Factory Project, their claim for seniority was devoid of merits. They have also raised the plea of limitation.

6. We have gone carefully into the pleadings and considered the contentions raised either side.

7. In this case the selection for the post of Fitter (General) was made in March, 1989 and the applicants successfully came through the said selection and were empanelled in March, 1989 itself. By that time the respondents 2-15 were still undergoing training under the above Act. They have completed the training only in September, 1989. It is also not in controversy that they had not applied for the post of Fitter (General) in pursuance of the notification issued by R-1 which culminated in the process of selection held in March, 1989.

8. According to the applicants 19 vacancies were available in September, 1989 and this averment was not controverted by the respondents. These posts were to be filled up on the basis of the selection which was held in March, 1989. The applicants who were selected were not given appointment order till September, 1989 and they were expecting to be appointed in these vacancies. However, the 1st respondent without giving appointment to them, had appointed Respondents 2-15 on the ground that they were apprentice trainees. This action of the respondent No.1 is challenged in this OA and we see considerable force in the plea of the applicants.

9. Even if the apprentice trainees are entitled for being preferred in the matter of appointment unless they complete their training and offered themselves for selection which was held in March, 1989 they cannot be appointed straight away. The entire list of empanelled candidates should have been exhausted and all the vacancies be filled up against which selection was made in March, 1989, from the empanelled list, but this process was completely given a go-bye. Instead the respondents 2-15 were appointed on the premise that they are entitled for absorption, no sooner they had completed training. No such preference or entitlement was contemplated under the provisions of the Apprenticeship Training Act.

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10. Section 21 and 22 of the Apprentices Act, 1961 are the crucial provisions and they read as under

21. Holding of test and grant of certificate and conclusion of training:-

(1) Every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.

(2) Every trade apprentice who passes the test referred to in subsection (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress in apprenticeship training of every graduate of technician apprentice shall be assessed by the employer from time to time.

(4) Every graduate or technician apprentice, who completes his apprenticeship training to the satisfaction of the Central Apprenticeship Council, shall be granted a certificate of proficiency by that Council.

22, Offer and acceptance of employment :-

(1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-section (1) where there is a condition in contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer.

11. Under section 21 the Technical Apprentices who complete apprenticeship to the satisfaction of the Central Apprenticeship Council should be granted a certificate of proficiency by that Council. Section 22 makes it abundantly clear that it was not obligatory on the part of the employer to offer employment to apprentices who have completed the period of training unless a condition was provided in the contract of apprenticeship to the contrary, only then the employer was bound to employ them. Thus a combined reading of these two sections make it clear that there is no obligation on the part of the employer to absorb an apprentice upon completion of training. In the present case, Respondent 2-15 have not even completed their apprenticeship by the time the selection of the applicants was over. Even after such completion of training they are not

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entitled for automatic absorption by the employer in any posts. The 1st respondent seems to have entertained a wrong notion that the apprentices are entitled for automatic absorption and on that presumption they had given appointment to them, even without subjecting them to any process of selection in March, 1989 when the applicants alone were selected.

12. The Supreme Court in UP State Road Transport Corporation and another Vs. UP Parivahan Nigam Shishukhs Berozgar Sangh and others reported in 1995 (2) SCC 1, have summed up the principle that has to be kept in mind while dealing with the claim of trainees after their successful completion of training as follows:

- “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, V. N. Hargopal 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 service rule concerned. If the service rules be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
4. The training institute concerned would maintain a list of the persons trained yearwise. The persons 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.”

13. A trainee is therefore not liable for sponsorship through Employment exchange. He is entitled for age relaxation. His only right other things being equal, is that he should be given preference over the Direct recruits. The Supreme Court also held that they should also apply for the post and participate in the selection and considering all other things being equal relating to their eligibility etc. they are entitled for preference over others. As the Respondents 2-15 have not even applied for the posts nor completed training by March, 1989, they are not entitled for appointment in preference to the applicants who were already empanelled.

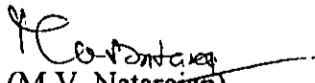
14. As the cause of action in this case arose in 1989 as the selections were held in March, 89 and appointment of R-2-15 were made in September, 1989, and also that the applicants were appointed in October, 1989, the applicants should have questioned the appointments of R-2-15 within the period of limitation soon thereafter. The question of

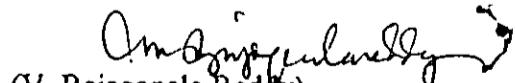


Limitation has been raised by respondents R-2 to R-15. The learned counsel for the applicants submits that the applicants came to know about the prior appointment of the R 2-15, on the ground that they were apprentices only after the seniority list of Skilled Fitters was published in February, 1999. It is also stated that no seniority list was published in Semiskilled Fitter till date and this fact was not disputed by the 1st respondent also. No material is placed before us to show that the applicants were aware about the actual date of appointment of the private respondents and that they were being shown seniors to them. Only when the Seniority list of skilled Fitter was published they became aware of the seniority position of the respondents and their prior appointment. It is also stated that the Tribunal allowed similar cases relating Millwright workers by its judgement dated 24.1.95 in OA.944/95 and the same has been implemented by the respondents. It is also submitted by the learned counsel that the applicants were awaiting for the publication of the seniority list of Semi Skilled Fitters. Hence, the delay was properly explained in filing the OA. In view of the above facts, we feel that the delay is justified as it is properly explained by the applicants and the OA cannot be thrown out on the ground of limitation. It is also not disputed by the official respondents that because of their prior appointment in the Semi Skilled Grade they were given prior promotions to the Skilled grade.

15. The OA succeeds and the seniority list of Fitter (General) Skilled is quashed to the extent of assignment of seniority to R 2-15 over and above the applicants and the respondents are directed to place the applicants over and above Respondent 2-15 in the Semi skilled Grade as well as with all consequential benefits in the skilled grade, including promotion to the next higher grade.

16. The OA accordingly is allowed, under the circumstances, without costs.


(M.V. Natarajan)
Member(Admn)


(V. Rajagopala Reddy)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

COPY TO:

1ST AND 2ND COURT

1. HONNO

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

2. HON (ADMIN) MEMBER

THE HON'BLE MR. JUSTICE DR. NASIR
VICE-CHIRMAN

3. HONJP (JUDL) MEMBER

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMIN.)

4. D.T. (ADMIN)

THE HON'BLE MR. BS. JAI PARAMESHWAR
MEMBER (JUDL)

5. SPARE

DATE OF ORDER - 22/2/2001

6. ADV. CATE

7. STANDING COUNSEL

MA/24/2001

IN
DAWN.

ADMITTED AND INTERIM DIRECTIONS

ISSUED

ALLOWED

C.P. DISMISSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

6 copies

