IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR

O.A. No. 152/1999 Date of Decision: 17/9/2002

(1) Brij Mohan Sharma son of Shri Prabhu Lal Sharma, aged about 34 years, resident of Chawari, Kota.

...APPLICANT.

versus

1. Union of India through
the General Manager,
Western Railway,
Churchgate,
Mumbai.

2. Chief Works Manager,
Western Railway,
Kota Division,
Kota.

...RESPONDENTS.

Mr. P .V. Calla, counsel for applicant.
Mr. U.D. Sharma, counsel for respondents.

(2) O.A. No. 214/1999

Lalit Kumar Maluka S/o Shri R.P. Maluka, aged about 31 years, R/o 351-A, W/Rs Colony, Kota Junction.

...APPLICANT.

versus

1. The Union of India,
through the General Manager,
Western Railway,
Churchgate,
Mumbai.

2. The Chief Works Manager,
Western Railway,
Kota Division, Kota.

.. 2 ..

3. Surendra Nath Jha, S/o Shri Virendra Nath Jha,
C/o Chief Works Manager, Western Railway,
Kota Division, Kota.

...RESPONDENTS.

Mr. P.V. Calla, counsel for applicant.
Mr. U.D. Sharma, counsel for respondents No. 1 & 2.
None is present for respondent No. 3.

(3) O.A. No. 264/1999

Yashveer Verma s/o Shri Ram Babu, aged about 28 years,
R/o Sanjay Nagar, Chambel Marg, Gali No. 6, Kota Junction.

...APPLICANT.

versus

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Mumbai.

2. The Chief Works Manager,
Western Railway, Kota Division,
Kota.

...RESPONDENTS.

Mr. P.V. Calla, counsel for applicant.
Mr. U.D. Sharma, counsel for respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

(per Hon'ble Mr. J.K. Kaushik, Judicial Member)

O.A. No. 152/1999

Brij Mohan Sharma has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. The relief sought as under:-

"The Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or direction ;

i) direct the respondents railway administration to absorb the applicant on the post of Skilled Artisan in Group-C post against 25% quota meant for direct recruitment.

ii) further, the impugned order dated 27.2.1998 (Annex. A-1) to the extent to asking the course completed Apprentices trainees to appear in the written examination may kindly be declared illegal.

iii) the impugned order dated 4.1.1999 (Annexure A-2), the result of the written examination, may also be declared illegal and the official respondents may be restrained to proceed further in the matter of appointment as per result dated 4.1.1999.

Any other relief to which the Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the present case, may kindly be granted.

The applicant may also be awarded with costs. "

2. The factual matrix of the case as narrated in the O.A. is that the applicant was imparted Apprenticeship Training in the trade of welder in Kota Workshop under Apprentices Act, 1961. The duration of the training was for 2 years from 16.7.85 to 15.7.87. He secured the highest marks i.e. 400 out of 650 and stood at Sl. No. 1 in the merit. As per para

159 of Indian Railway Establishment Manual volume-1, 25% of the total posts/vacancies of Skilled Artisan are to be filled in from amongst course completed Apprentices or I.T.I. qualified, from open market.

3. It has been stated that the course completed Apprentices trained in the Railways have to be absorbed against the existing vacancies as they do not need further training and such course of action has been followed by the Central Railway, Mumbai vide letter dated 12.3.1987 (Annexure A/4). A selection process for filling up the 25% of direct recruitment quota was resorted to ignoring the claim of candidates who completed Apprenticeship courses but on serious objections raised by Western Railway Mazdoor Sangh, the entire selection process was cancelled and it was decided that the direct recruitment post will be filled in from course completed apprentices directly by absorbing them.

4. The second respondent vide advertisement dated 25.11.93 invited applications for filling up 12 posts of Skilled Artisans against direct recruitment quota for various trades. A specific annotation was made in the said advertisement that preference will be given to those who have completed apprentices course from Railway and also the course completed apprentices will be directly absorbed as Skilled Artisans. Another letter dated 24.12.1993 was issued and it was made clear that post lying vacant will be filled from only such dependants and wards of the Railway employees. The same was assailed before this Hon'ble Tribunal and was decided vide order dated 4.2.1998 wherein a direction was given that candidature of the applicant would be considered alongwith other candidate for the post falling in the category of Skilled Artisan in the various Engineering Department. Further a reference of the judgement passed by Apex Court in U.P. State Road Transport Corporation vs. U.P. Parivahan Nigam Shishuka Berojgar Sangh and others, 1995 (29)

ATC 171 has been made. The guideline laid down in the said judgement were required to be taken into account.

5. Despite clear direction of the Apex Court the second respondent issued a guideline to all the DRM and Officials that if sufficient course completed Act Apprentices are available as per the registration made in the respective Workshops, Divisions, such course completed Act Apprentices will be considered for appointment against the available vacancies in Group-C and D subject to passing the selection as per normal procedure. The respondent no. 2 vide letter dated 27.2.98 invited application from open market to fill up 38 vacancies against direct recruitment quota. The notification contained a clause that candidate will be required to appear in the written and oral examination and those who will qualify in the selection, their names will be arranged as per the merit and on being selected, they will be finally appointed. A representation was made, against the said notification, vide letter dated 11.3.98. Apprising authorities that the course completed Apprentices are to be absorbed against 25% of vacancies and also they are not required to appear in the written test. However, no decision was taken and a case as O.A. No. 88/98 (Arvind Shinde and others vs. Union of India and Others) was filed before this Hon'ble Tribunal. The applicant has narrated the selection process was continued in that case and has submitted that it was incumbent upon the respondents to absorb all the course completed apprentices against the vacancies but they have declared the result of all the candidates and have called them for viva voce test. The same is going to result in depriving him in particular and the course completed Apprentices in general from absorption, against the vacant post of Skilled Artisan against 25% direct recruitment quota.

6. The Original Application has been filed on multiple grounds e.g. the applicant have been imparted the training by the Railway and a lot of amount has been spent of them. They are required to be absorbed in the Skilled category without subjecting them to any written examination as per the verdict of Apex Court in case of U.P. State Road Transport Corporation (supra). The action of the respondents in conducting the written test was contrary to the Article 141 of the Constitution and the impugned order is not sustainable in law, the result of the written test was declared without absorbing the course completed Apprentices etc.

7. Counter reply has been filed on behalf of the Govt. respondents and the facts and grounds taken in the O.A. have been controverted. It has been averred that the applicant has appeared in the written test but he could not qualify in the same and was not eligible for appearing in viva voce test. The passing of the selection test is essential even in cases of course completed Act Apprentices. Even in the judgement of the Apex Court nowhere it has been held that course completed Apprentices are required to be absorbed straightway and they have followed the ratio of the judgement which has been mentioned in the O.A. and on which the reliance has been placed by the applicant.

8. We have heard the learned counsel for the parties at length and have carefully perused the records of this case.

9. At the very out set, the learned counsel for the respondents has placed reliance on a subsequent judgement dated 17.7.2000 of this Hon'ble Tribunal passed in O.A. No. 88/98 (Arvind Shinde and Ors. vs. Union of India and Another) wherein it has been specifically provided that the Apprentice training are also

required to participate in the competitive examination or test. The relevant para 9 of the same is extracted as under:-

"9. Allahabad High Court, Full Bench, in Arvind Gautam v. State of U.P. and others, Civil Misc. Writ Petition No. 23076 of 1998, decided on 27.5.99, held that directives of the judgement of the Hon'ble Supreme Court, as contained in para-12 of the said judgement in the case of U.P. State Road Transport Corporation v. U.P. Parivahan Nigam Shishuksha Berozgar Sangh is not confined to UPSRTC alone but they are applicable to all departments and corporations. It was further held that apprentices trainee are also required to participate in competitive examination or test as may be provided by the rules of the concerned employer in respect of recruitment and when any of them is found equal to a non-apprentices candidate after the selection test then only preference is to be given in such a case to the apprentice trainee. This protects the possibility of meritorious non-appearance candidates from being discriminated vis-a-vis apprentice trainee."

10. On the other hand, the learned counsel for the applicant submitted that he wanted to abandon the prayer No. (ii) & (iii) from the relief sought and the same may be treated as deleted. He only insisted on prayer no. (i). Therefore, his request was accepted and he was asked to lead the argument in relation to the prayer no. (i). The learned counsel for the applicant submitted that his case has not been considered as per the rules and he ought to have been absorbed on the Skilled Artisan post. The learned counsel for the respondents vehemently opposed the contention of the applicant and invited our attention to para 16 of the reply wherein it has been mentioned that the applicant appeared in the written test but he could not be included in

the list of 64 candidates, who were held eligible for appearing in the viva voce test. In this way he failed to clear the written test. Thus there is no illegality in conducting the selection and the action of the respondents does not suffer from any infirmity and therefore no interference is called for in the matter.

11. We have given our considerable thought to the rival contentions of the parties. As per the arguments, the law position, the admitted position of the case is that the candidates who have applied for recruitment to the post of Skilled Artisan against 25% direct recruitment quota, may be course completed Apprentices in Railway or at other place, were required to pass the selection test consisting of written test and viva voce test. The question of preference would only arise if the merit of the course completed Apprentices and the other direct recruits is the same as has been held in the case of Arvind Shinde and Ors. (supra). Since the applicant has not passed the selection test, the question of his appointment or giving any preference in appointment does not arise. Thus in our opinion, there is no illegality, infirmity or arbitrariness in the action of the respondents. Further, no illegality in conducting of the selection has been pointed out.

12. Further, the learned counsel for the respondents have also argued that once the applicants have undertaken these selection test without any objection, they are estopped from challenging the same specially when they have failed in the same. Thus they have no locus standi to challenge the selection and the Original Application deserves to be dismissed on this count alone. We find force in the contention raised by the learned counsel for the ~~xxxxxxx~~ respondents and are supported with the verdict

of Apex Court, ~~xxxxxx~~ in Madan Lal vs. State of J & K and Ors., 1995 SCC (L&S) 712.

13. In view of the foregoing discussions, we do not find any merit in the Original Application and same is hereby dismissed with no order as to costs.

O.A. Nos. 214/1999 & 264/1999

The question raised in each of these Original Applications is identical to that of O.A. No. 152/1999. Following the said decision and for the reasons stated therein, these OAs are dismissed in the same terms as set forth therein.

(J.K. KAUSHIK)
Judl. Member

(A.P. NAGRATH)
Adm. Member

kumawat