

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.531 of 2004

Gwalior, this the 22nd day of February, 2005

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Indra Kumar Burman,
S/o Shri Chhidami Lal Verma,
Aged about 34 years,
R/o Vill & Post-Pindrai,
Tah.Dheemarkheda, Distt.Katni - APPLICANT
(By Advocate - Shri V.Tripathi)

Versus

1. Union of India through its Secretary,
Ministry of Defence, New Delhi.
2. The Chairman, Ordnance Factory Board,
10-A, Shahid Khudiram Bose Marg, Kolkata.
3. The General Manager, Vehicle Factory,
Jabalpur.
4. Shri Dev Kumar Pachori, through the
General Manager, Vehicle Factory, Jabalpur
5. Shri Anand Kumar Dubey, through the
General Manager, Vehicle Factory, Jabalpur
(By Advocate - Shri S.P.Singh)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has sought the following main reliefs :-

- "(ii) Direct the respondents to appoint the
applicant on the post of Semi Skilled worker
with all consequential benefits.
- (v) Set aside the order dated 29/6/2004 Annexure
A/7 and direct the respondents department to
consider the applicant for appointment as
Semi Skilled worker on the basis of his
seniority".

2. The brief facts of the case are that the applicant
has undergone training of Trade Apprentices in the
respondent-Institution under the provisions of Trade
Apprentice Act, 1961 from 10.3.1988 to 9.3.1991. Respondents
2 and 3, had issued a notification to fill up 25 posts of



semi skilled worker. The names of the suitable candidates were called from the Employment Exchange. The name of the applicant was enrolled in the Employment Exchange and, therefore, his name was sponsored by the Employment Exchange along with other candidates. The applicant was directed vide letter dated 28.2.2004 to participate in the training. The applicant participated in the training which was given to him in the HRD Section of the Factory from 9.3.2004 to 25.3.2004. After the training, an interview was held on 28.3.2004, wherein the applicant also participated. At the time of final result, the name of the applicant was not included in the list of selected candidates. According to the applicant, respondent no.5 Shri Anand Kumar Dubey, who has completed his training of trade apprentice after the applicant, has been selected, and another person - respondent no.4 Shri D.K.Pachori, who had obtained 501 marks has also been selected. It is submitted by him that the applicant had obtained 512 marks in the training of apprenticeship whereas Shri D.K.Pachori and Shri Anand Dubey had obtained 501 and 490 marks respectively. Since the applicant has not been selected, he has filed this O.A.


3. The respondents in their reply have stated that to fill up the 25 posts in Semi-skilled grade, 33 Ex-Trade Apprentices of the Factory were called for practical training in Vehicle Factory, Jabalpur for a period of 15 days w.e.f. 9.3.2004 to 25.3.2004 and thereafter their suitability was assessed in the required trades. 29 Ex-Trade Apprentices of the factory attended the practical training for 15 days from 9.3.2004 to 25.3.2004. Amongst the 29 Ex-Trade Apprentices who attended the practical training, 25 individuals were selected by the Selection Board constituted for the purpose. The applicant (Indra Kumar Burman) and one Vinod Kumar Sahu- Ex-Apprentices of 29th Batch have been found not suitable in any of the trade by the Selection Board. Therefore, the applicant was not selected. It is further submitted by the respondents that as per the guidelines issued by the DGET and Ordnance Factory Board, Kolkata, there is no such directive that all the Ex-Trade Apprentices irrespective of passing the trade test be

appointed. The only liberty given while considering the cases of Ex-Trade Apprentices is that their seniority be maintained in order of highest marks obtained in the NCVT test. It does not mean that every Ex-Trade Apprentice be appointed without passing the requisite trade test, or be considered on the pretext of secured higher marks in the NCVT test. The appointment of Ex-Trade Apprentices are being made based on the functional need of the factory and after passing the requisite trade test. If the senior in the batch failed in the trade test, the next junior who scored less marks in the NCVT test will be considered, ^{and} if found successful, ^{will be given} passed in the trade test/ ~~for~~ offer of appointment, to the extent of earmarked vacancies. The respondents have further submitted that none else from the Employment Exchange/other factories were called for selection test and only the Ex-Trade Apprentices of this factory were considered for selection. Therefore, the question of giving any preferential treatment over direct recruit/outsideers does not arise. In view of these submissions, the respondents have prayed that the present OA may be dismissed.

4. Heard the learned counsel of both the parties and carefully perused the pleadings.

5. During the course of arguments, the learned counsel for the applicant has submitted that the applicant was senior to the private-respondents 4 & 5 and had also secured more marks in the NCVT test. Therefore, the respondents could not have rejected the applicant as the post was a non-selection post and the selection was to be made in the order of seniority. To support his claim, he has relied upon the judgment of the Hon'ble Supreme Court in the case of U.P. State Road Transport and Anr. Vs. U.P. Parivahan Nigam Sangh & others, 1995 (1) SCC 1.

6. On the other hand, the learned counsel for the respondents has stated that 30 Ex-Trade Apprentices were



called for trade test on 3.2.2004 and 4.2.2004. As some of the senior Ex-Trade Apprentices who attended/appeared in the trade test could not do well, the Chairman Selection Board has recommended that all the Ex-Trade Apprentices who have completed their Apprenticeship Training long back, they be given practical training before assessing their suitability in the required trade. Accordingly the respondent no.3 had cancelled the trade test and conducted a fresh trade test after imparting them 15 days practical training to brush up their skill. Even after 15 days training, the applicant could not do well and accordingly the Selection Board has declared him unsuitable and, therefore, he was not offered the appointment. Hence this OA is liable to be dismissed.

7. We have given careful consideration to the rival contentions, of both the parties.

8. We find that the judgment of the Hon'ble Supreme Court relied upon by the applicant in the case of UP State Road Transport (supra) is not applicable in the present case as in the present case the recruitment for the 25 posts was made only from ^{amongst} the Ex-trade apprentices of the Vehicle Factory, Jabalpur, whereas in the case before the Hon'ble Supreme Court, it has been held that a trained apprentice should be given preference over direct recruits. Merely securing higher marks in the NCVT test while undergoing three years training, does not confer the applicant, a vested right for appointment in the order of seniority.

Since the posts were non-selection posts, no written test was held and the suitability was assessed by holding a trade test. The applicant who had participated in the test, was not found suitable by the selection board. The contention of the applicant that since he is senior in his batch and secured more marks than the private-respondents 4 & 5, he ^{ought to} have been empanelled, is not acceptable.

Para 4(iv) of the Ordnance Factory Board's letter dated 15/20.10.1999 (Annexure-R-1) stipulates that "factory should normally testing the call of ex-trade apprentices for the test one and half times the number of vacancies intended to be

filled up. This is to provide necessary cushion to meet the eventuality of some of the candidates so called not turning up for the test or failing in test.¹. Thus we find that these guidelines itself anticipate that there would be some candidates who will fail in the test and, therefore, more number of persons than the vacancies, should be called for assessing their suitability. Therefore, the contention of the applicant that he should be appointed without being his suitability assessed for the trade is a figment of his imagination and cannot be accepted. If such a contention of the applicant is accepted, then all those who have passed their Engineering Examinations can be selected by the Selection Board for appointment in Government services on the basis of marks obtained by them in Engineering Colleges. It is beyond the comprehension that a person is seeking appointment without undergoing any test.

9. It is a well settled legal proposition that this Tribunal cannot substitute itself for a selection Board and also cannot make selection. The applicant has appeared in the test and the Selection Board has found him unsuitable. Therefore, he is not entitled for the reliefs sought for in this Original Application.

10. In the result, for the reasons stated above, we do not find any merit in this Original Application and the same is accordingly dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्जो शिल:-

- (1) सचिव, उच्च न्यायालय नगर एग्जामिनेशन, जबलपुर-
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) न्यायालय, कोषागार, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Issued
On 28.2.05
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