

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 710 of 2003

Indore, this the 10th day of January, 2005

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

Ashwini Rajput, S/o. Shri O.P. Rajput,
Date of Birth – 17.5.1979, R/o. C/o. Om Geeta
Kirana & General, H. No. 2928, Chandan Colony,
Gabriel School front of Sant. Thomas Church,
Ranjhi, Jabalpur,

and 5 others. Applicants

(By Advocate – Shri S. Paul)

V e r s u s

Union of India, through its Secretary,
Ministry of Defence, New Delhi,

and 3 others. Respondents

(By Advocate – Shri K.N. Pethia)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicants have claimed the following main reliefs :

“(ii) set aside the impugned selection pursuant to advertisement dated 24.4.2003 and command the respondents to conduct reselection strictly in consonance to para 12 & 13 of the judgment of the Apex Court in UPSRTC's case (supra),

(iii) for future, the respondents be directed to conduct selection strictly in consonance with the judgment of the Apex Court reported in UPSRTC's case.”

2. The brief facts of the case are that the applicants are calling in question the recruitment held pursuant to the advertisement dated 24.4.2003 published in Rojgar and Nirman. The applicants have



undergone training in respondents No. 3's institution under the provisions of Apprentice Act, 1961. The applicants have undergone the said training for a period of one year in the trades mentioned in their certificate of proficiency. The respondents have issued an advertisement dated 24.4.2003 whereby they intended to fill up various posts in the different Ordnance factories. The applicants submitted their candidature being eligible persons. Accordingly, they were issued admit cards and a written test was called by the factories. The said selection was held for the post of Chargeman Grade-II (Probationers). The applicants undergone the written examination but they were not selected by the Department and preference were given to the direct recruits. There is no provision under the statutory recruitment rules for the post of Chargeman Grade-II for conducting a written examination. Therefore, the written examination is bad in law. Apart from this the respondents have earlier appointed persons on semi skilled posts following the judgment of the Hon'ble Apex Court. Thus the action of the respondents is in violation of Article 14 and 16 of the Constitution of India and hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicants that according to the principles laid down by the Hon'ble Supreme Court reported in 1995(2)-SCC 1, that "we make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed except that the trainees would not be required to appear in any written examination, if any provided by the Regulations." Hence, the written examination conducted by the respondents was not required at all. The learned counsel for the applicants further argued that the applicants Nos. 1, 2, 4 & 5 (except applicant Nos. 3 & 6) have filed their certificates of proficiency as Annexure RJ-1 to the rejoinder filed by them. These

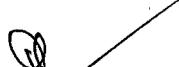


documents could not be filed with the OA. Hence, the applicants are fully eligible for the reliefs claimed.

5. In reply the learned counsel for the respondents argued that the applicants have appeared in the written examination and they could not succeed. Our attention is drawn towards the judgment of the Hon'ble Apex Court in the case of Union of India & Anr. Vs. N. Chandrasekharan & Ors., 1998(3) SCC 694, wherein the Hon'ble Apex Court held that "Service law – Promotion – Selection - Procedure for – When cannot be challenged - Selection procedure made known to the candidate before selection - Unsuccessful candidate, held on facts, not entitled to challenge it afterwards - Estoppel." As the applicants appeared in the written test and could not succeed in it, now are estopped to say that the written examination was not necessary. He further argued that the certificate of proficiency/training filed by the applicants are merely certified by the Factory administration. The applicants have not undergone the technical training for one year and they have not undergone any examination by any Department of Ministry of Labour, Union of India or Ministry of Human Resources Development, Union of India. So these certificates cannot be equated with NCVT certificates which are issued by the Apprentice Training after undergoing three years training and examination. The training was not given under the Indian Apprentice Act, 1961 as amended in 1973 and 1981. The applicants have not passed any examination conducted by any board or any Department. The applicants have undergone one calendar year training as per the guidelines of Board of Apprenticeship Training, Western Region, Mumbai, Ministry of Human Resource and Development, Govt. of India. An All India trade test of NCVT certificate is awarded after completion of training period of three years. The trade apprentices who failed in All India Trade Test are not considered for appointment in the organization. The respondents have drawn our attention towards the Annexure R-4 which is a National Apprenticeship certificate issued by the National Council for Vocational Training. The learned counsel for the respondents argued that this type of

certificate is legally required from the applicants which they have not filed. Hence, the action of the respondents is legally justified and the certificates filed by the applicants are not sufficient to be considered under the rules. Accordingly, the Original Application is liable to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings we find that the applicants have stated that there is no provision in the recruitment rules for the post of Chargeman Grade-II (Probationers) of conducting the written examination. In this context they have relied upon the decision of this Tribunal in the case of **R. Harish & Ors. Vs. Debijit Chatterjee & Ors.** in RA No. 78 of 1996 decided on 17th July, 1996 wherein it has been held that the persons having obtained their Apprentice training from Ordnance Factory, Khamaria and Ordnance Factory, Katni are entitled to be considered for appointment on the basis of their seniority in apprenticeship training. We find that in the present case also the applicants have already completed the apprenticeship training but it is a specific and clear averment on the part of the respondents that 3 years Apprentice training was required to be completed by the applicants, whereas the applicants had completed only one year training. Further it is an admitted fact that the applicants have not challenged the advertisement dated 24.4.2003 in which it has been specifically stated that the candidates will be selected on the basis of the written examination, interview and medical board. The applicants having accepted the terms and conditions of the advertisement have applied for their recruitment for the post of Chargeman Grade-II (Probationer) and have participated in the examination without any protest. When they find that they were not selected in the written examination, they have filed this OA with a plea that there should not have been any written examination. The Hon'ble Supreme Court in the case of **Om Prakash Vs. Akhilesh Kumar**, AIR 1986 SC 1043, has clearly stated that "having appeared in a test, one cannot question its validity after failing in the test or finding himself



unlikely to pass. There is no estoppel against challenging the rules of examination even after appearing in the test."

7. In view of the aforesaid, we are of the considered opinion that the applicants have failed to prove their case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

8. The Registry is directed to supply the copy of the memo of parties to the parties while issuing the certified copies of this order.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन दर्ता जो/ज्ञा. जलपुर, दि.
 दर्ताप्रिवारी दर्ता जिता:—
 (1) सचिव, राज्य प्रशासन विभाग, राज्य प्रशासन, जलपुर
 (2) जलपुर विभागीय काउंसल, जलपुर
 (3) जलपुर विभागीय काउंसल, जलपुर
 (4) जलपुर विभागीय काउंसल, जलपुर

सूचना हर्दि आवश्यक दर्ता देता है।

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 K. D. Pethi, 6210
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 on 23/01/88*