

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 259 of 1999

Jabalpur, this the 12th day of March 2003

**Hon'ble Mr. Justice N.N. Singh - Vice Chairman
Hon'ble Mr. R. K. Upadhyaya - Member (Administrative)**

- 1. Prahlad Choudhary
S/o Shri Chananlal Choudhary
C/o Chaman Suitcase Repairing Shop,
Ranjhi.**
- 2. Arvind Dubey
S/o Ravishankar Dubey,
resident of Nav Nivesh 1597/1,
Ganga Nagar Colony,
Garha, Jabalpur.**
- 3. Manoj Agre
s/o Shri U.D Agre,
resident of Shanti Nagar,
Damoh Naka, Jabalpur.**
- 4. Praveen Yadav,
S/o Shri B.L. Yadav,
Resident of MIG 115,
Shanti Nagar,
Damoh Naka Jabalpur.**
- 5. Ganesh Vishwakarma
S/o Shri M.L. Vishwakarma,
resident of Garha Phatak,
Subhash Colony, Jabalpur.**
- 6. Deepak Raikwar,
S/o Shri Mathura Prasad,
resident of Gate No. 1
Opp. of Telecom Factory,
Garha Road, Jabalpur.**
- 7. Chandreshkhare Jaiswal,
S/o Shri Shyamlal,
resident of 312- survey of India Colony,
Near Vijay Nagar, Jabalpur.**
- 7A. Manish Kumar Jha
S/o Shri L.S. Jha,
resident of G-358,
Shankar Shah Nagar,
Jabalpur.**
- 8. Arun Tiwari
S/o Shri Bhagwandas Tiwari
resident of Damoh Naka,
Opp. of Yash Vechile,
Nagar Nagam Building,
Jabalpur.**

Contd...2/-

Manish

9. Brijesh Malviya,
S/o Shri Bharatlal Malviya,
resident of Raddi Chowki,
Behind Sanjeevnee Hospital,
Jabalpur.
10. Rameshwar Malviya
S/o Shri Ramkrishan Malviya
resident of LIG - 11,
Puneet Nagar,
Jabalpur.
11. Sunil Kumar Tiwari
S/o Shri Sitaram Tiwari
resident of 927, Champanagar,
Manegaon.
12. Pawan Kumar Kanth
S/o Shri Suratlal Kanth,
resident of Otr. No. 481/ West,
Q-Type, Khamaria,
Jabalpur.
13. Ritesh Kive
S/o Shri Rajendra Kive
resident of Ranjhi Raksha Colony,
Jabalpur.
14. Ajay Vykey
S/o Shri Dhanshyam Vykey,
resident of Garha Phatak,
Subhah Colony,
15. Akhilesh Chourasiya,
S/o Shri P.L. Chourasiya,
resident of 1634, Gupteshwar,
Jabalpur.

- APPLICANTS

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Commandant,
506, Army Base Workshop,
P.O. Box No. 41,
Jabalpur.
3. Vijay Shingade
S/o Shri V. D. Shingade,
Telecom Mechanic,
C/o Commandant,
506 Army Base Workshop,
P.O. Box No. 41, Jabalpur

M. Paul

Contd...3/-

4. Satyendra Kumar
S/o Shri R.K. Vishwakarma,
Telecom Machanic,
C/o Commandant,
506, Army Base Work Shop,
P.O. Box No. 41,
Jabalpur.
5. Rajesh Prasad
S/o Shri Matadeen,
Telecom Mechanic
C/o Commandant,
506, Army Base Workshop,
Jabalpur.

-RESPONDENTS

(By Advocate - Shri S.C. Sharma for official respondent)
Shri P. Shankaran for private respondents)

ORDER

By Hon'ble Mr. Justice N.N. Singh - Vice Chairman :-

The applicants, who were trained apprentices, filed this O.A for direction to the respondents to prepare or follow the establishmentwise yearwise seniority list of apprentices and to make selection strictly as per seniority by following the judgement of the Supreme Court reported in 1995(2) SCC page 1. They further prayed to set aside the appointment order (Annexure-A/1) dated 17-5-1999. They also prayed ^{to} ~~hold~~ that Annexure R-I-2 dated 17 August 1998 was ~~unconstitutional~~, ultra vires and against the aforesaid judgement of the Supreme Court.

2. The case of the applicants is that they have completed their apprentice training from respondent No. 2 establishment and before that, they had completed their 2 years I.T.I. course in Telecom Mechanic trade and other relevant trade. They had applied for

M. Singh

appointment as Telecom Mechanic, as per advertisement which was published in daily " Nav Bharat " dated 26.1.1999 (Annexure A/2). The applicants annexed a chart (Annexure A/3) mentioning educational qualification, trade batch and year, of all the applicants. It was claimed that as per law laid down by Hon'ble Supreme Court in the case of UPSRTC Vs. Shishukhs Berozgar Sangh, reported at 1995(2) SCC page 1, the trained apprentices should have been given preferance over direct recruits and the trainees could not be required to be sponsored by the Employment Exchange and in case of age bar, age relaxation should be given and that the Training Institute would maintain a list of the persons trained yearwise. It was further claimed that the aforesaid judgement was in rem and ought to be followed by the respondent. According to the applicants, there are 4 vacancies of Telecom Mechanic and the eligibility was prescribed as I.T.I., 10+2 (Maths and Physics) or equivalent in relevant trade of I.T.I. which applicants possessed. It was alleged that respondents No. 3,4, and 5, who were neither trained Apprentices nor have the requisite qualification, as per advertisement, were selected by the respondents. It was further alleged that some of those selected private-respondents were sons of existing employees of 506 Army Base Work Shop. The applicants also alleged that after the judgement of the Apex Court in UPSRTC's case (supra) the respondents subsequently made amendment by order dated 17-8-1998 (Annexure-R-1-2) which was against the sprit of law laid down by the Supreme Court and was violative of Article 14,16 and 141 of the Constitution of India.



On these grounds the applicants have prayed for granting the reliefs claimed.

3. Respondents No. 1 and 2 have contested the claim of the applicant ^{by} ~~/filing~~ their reply ^{and} ~~/asserted~~ that applicants were not at all entitled to any relief claimed. It was claimed that in compliance of the direction issued by the Ministry of Defence (Annexure R-1) a yearwise seniority list of trainees were prepared and maintained by the Department. It was admitted that in January 1998, 2 vacancies of O.B.C., 1 of S.C. and 1 of S.T. had occurred and an advertisement ^{ment} ~~/~~ was issued inviting applications as per the recruitment rules, 1989. The qualification for the post was prescribed as under : -

"ESSENTIAL

A certificate from a recognised Industrial Training Institute or equivalent in the appropriate field of trade.

OR

Intermediate/10+2 educational system or its equivalent with Mathematics and Physics.

DESIRABLE

3 Years experience in the trade."

3.1 Copies of the extracts of the Recruitment Rules were filed as Annexure R-II-1 to R-II-3. According to the respondents, pursuant to the advertisement issued on 26th January 1999, 51 candidates from open market (O.B.C.-34 and S.C.-17) and 8 candidates who had undergone Apprentices Training in 506 Army Base Work Shop (O.B.C.-4 and S.C.-4)

Dr. S. M. L.

were found eligible to appear in the Trade Test, which was conducted on 3-2-1999 and 4-2-1999 and only applicants No. 1,3,4, and 15 (only 4 applicants out of 16) appeared in the Trade Test along with the open market candidates and 3 candidates were finally selected based on their performance as per merit list prepared, on the basis of written examination, practical and interview and they^{were}/appointed. It was further claimed that against 1 vacancy of S.T. candidate, again advertisement was published in News Paper on 24.4.1999 from open market and 1 Apprentice Trainee appeared in the test conducted ^{on} /4th may and 5th May 1999 and 1 candidate was selected, based on the performance as per merit list prepared after written examination, practical and interview and was accordingly appointed. It was also claimed that applicant No. 1 passed in all the aforesaid test, but he could not find place in the merit list because of his inferior over all performance as compared to candidates of open market. The respondents asserted that as per verdict of Hon'ble Supreme Court in Paragraph 12 of the Judgement cited by the applicants, it was directed to grant certain relaxation, to the apprentice trainees but there was no direction to give any relaxation to apprentice trainees with regard to Trade Test. It was also emphasised that apprentice trainee were not absolved from under-going Trade Test for the purpose of their selection for appointment and they were required to that Trade Test as per Service regulations. According to respondents, the applicants utterly failed to make out a case inference by this Tribunal and on this ground they have prayed to ~~dismiss~~ ^{the} / application filed by the applicants.

4. The respondents 3 to 5 have also contested the claim of the applicants stating that the applicants have made the allegations when they could not get selected,

M. N. S.

because of their poor performance. It was claimed that the applicants Nos. 1,3,4,14 and 15 faced the selection process whereas the other applicants even failed to otherwise they were not eligible to appear for selection appear before the selection board or/because of nature of reservation of the vacancies for SC/ST and OBC candidates. They claimed that they had passed XII standard Board Exam with Science, Maths as compulsory subjects and they had also gained practical experience in the required field i.e., Electronic/T.V. Radio Technology etc. It was also claimed that they had the requisite qualifications and after due process of selection, they were appointed. They challenged the stand taken by the applicants, that trained apprentices should be considered for an appointment without facing test and interview, purely on the basis of their seniority of apprentice training. They also maintained that as per Supreme Court decision in MPSRTC's case certain concessions ^{be} could/given to ex-apprentices but their stand of considering them without assessing their suitability was not correct. They asserted that selection was based purely on merits and only the deserving candidates were selected based on their merit.

5. We have heard Shri S. Paul learned Counsel for the applicant, Shri S.C. Sharma learned counsel for official respondents, and Shri P. Shankaran learned counsel for private respondents No. 3 to 5 whose appointment order, dated 17-5-1999 (Annexure A/1) has been challenged by the applicants and we have also perused the record and decisions relied upon by the parties.

5.1. The applicants have challenged appointment of private-respondents on the post of Telecom-Mechanic alleging that their selection was out of favouritism,

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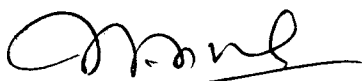
and
arbitrariness/against the settled legal position.

The ground taken by the applicants was that the private-respondents had not even the requisite qualification for the post and that having completed apprentice training in the establishment of the respondent No. 2, the applicants should not be required to appear in the Written/Trade Test, as directed in paragraph 13 of the decision of Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation and another Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and another, (supra) where their Lordships have held that while considering cases of the trainees for giving employment in suitable posts, the rules which have been laid down in the service regulation 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 regulation. Shri Paul appearing on behalf of the applicants fairly conceded that in subsequent decision of the Hon'ble Supreme Court reported at (2000)5, SCC 438, the Supreme Court held that dispensing of the requirement of examination, which was applicable only to the petitioner in that case and not to all apprentices generally. He further contended that as per aforesaid, preference should have been given to the applicants, who were trained apprentices and as requirement of passing written test was not mentioned in Annexure R-II-2 and Annexure R-II-3, they could not have been required to appear in written test. He also challenged the subsequent order dated 17th August 1998 (Annexure R-I-2) by which the order dated 4th May 1998 was amended, deleting the words 'Except that the trainees would not be required to appear in written examination'. He also pointed out that Annexure R-III filed by the respondents, regarding Trade Test standard of EME, and it could not have universal application.

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5.2 As against that, Shri S.C. Sharma learned counsel for the respondents No. 1 and 2 contended that the subsequent judgment of Hon'ble Supreme Court reported at (2000) 5 SCC 438 C.W.P. (Rajya Vidyut Parishad Welfare Association Vs. U.P State) clearly mentioned that direction regarding exemption of apprentices for appearing in written test was not a judgement in rem rather it was the direction related to the applicants of that case only. He also contended that in the recruitment rules, procedure are not mentioned and only requisite qualification is mentioned, and procedure has to be prescribed separately and vacancies are to be filled on the basis of the said procedure. He also contended that Annexure R-I-2 dated 17th August 1998 which was regarding employment in EME/Defence Estt. makes it clear that the procedure for appointment, vide Ministry of Defence letter No. B/O 3251/EME CIV-2/379/C/98/D(0-II) dated 14 May 1998 providing procedure for selection was amended in 1998 itself by which the earlier provision of not requiring trainees to appear in any written test was, deleted. According to him this deletion, by the amendment in the procedure, clearly makes out the case that even apprentices who were earlier not required to appear in written examination, were subsequently required to appear in the written examination as other candidates were required to appear.

5.3. Admittedly the advertisement to fill up the post of Telecom Mechanic was published in daily News Paper "Nav Bharat" on 26-1-1999 and the amendment dated 17.8.1998 deleting the operative portion absolving the trainees to appear in written test fully applied in filling up the said vacancies. There is no dispute, regarding the Apex Court direction, regarding grant of relaxation to the



Apprenticeship trainees which is as under :-

- "(a) Other things being equal, a trained apprentice should be given preference over direct recruits.
- (b) For this, an apprentice trainee would not required to get his name sponsored by any Employment Exchange for employment.
- (c) If age bar come in the way of trainee, the same would be relaxed to the extent of the period for which the apprentice had undergone training.
- (d) The concerned training institute would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as seniors to the persons trained later. In between the trained apprentices preference would be given to those who are seniors.
- (e) While considering the cases of the trainees for giving employment in suitable posts, all provisions of Service Regulations shall be followed."

5.4. These directions do not provide that the apprentices were not required to appear in the written test. Reliance was placed on behalf of official-respondents on the decision of Hon'ble High Court of Delhi in the case of Shri Bhagwan Verma Vs. Union of India in Civil Writ Petition No. 2750/2000, a copy of which has been filed, in which similar plea was considered by the Hon'ble Judge of Delhi High Court, and their Lordships considered a full Bench Judgment of Allahabad High Court in the case of Arvind Gautam Vs. State of U.P. 1999(2) UPLBC 1397, in which, it was held that such trainees were required to undergo trade test, and paragraph 13 of UPBRTC's case did not apply in that case. Another decision of Hon'ble Supreme Court in the case of Bhoodev Singh was also referred, where it was held that petitioner had no option but to take requisite test and he could not be exempted from appearing in the test. On behalf of respondents, reliance was also placed on another decision of High Court of Gauhati in the case of Indian Oil Corporation Ltd. and another Vs. Loti Chandra Gogoi reported at 2000-1-LLJ page 271 where it was

held that in U.P.S.R.T.C.'s case the Supreme Court did not lay down law prohibiting the employer from holding any written test or other test for judging the suitability competence or merit of trainee apprentices for the post. From the discussion of decisions made above, it is clear that exempting apprentices from written Exam/Trade Test was not approved by the Apex Court and full Bench of Allahabad High Court and other courts.

5.5. The applicants have challenged the appointment of respondents No. 3 to 5 who were direct recruits alleging that they had no requisite essential qualification for the post. This was denied by respondents No. 3 to 5 claiming that they have passed 10+2 with mathematics and Physics and had experience in the trade also (Annexure - II-2). The recruitment rules provide the essential qualifications as such :-

" ESSENTIAL

A certificat from a recognised Industrial Training Institue or equivalent in the appropriate field of trade.

OR

Interm^odiat^e/10+2 Educational system or its equivalent with mathematics and Physics.

OR

Armed Forces Personnel/Ex-Servicemen in the appropriate trade and grade I at minimum.

DESIRABLE


3 years experience in the trade."



since the respondents 3 to 5 had passed 10+2 exam with Maths and Physics, it is clear that they had the essential qualifications to be considered for the vacancies.

5.6. From the discussion made above, it is quite clear that the provision was made requiring the candidates including apprentices to appear in written, interview, practical examinations and there are 4 vacancies which were reserved for OBC-2 SC-1 and ST-1 as per advertisement Annexure A/2. The test was conducted on 3rd and 4th February 1999, in which the applicants No. 1, 3, 4 and 15 only, as per claim of the respondents, appeared alongwith open market candidates and 3 candidates out of 59 were finally selected based on performance as per merit list prepared on the basis of written examination, practical and interview. It was also submitted that against the vacancy of one ST candidate, another advertisement asking application was made from open market and applicant No. 14, who was apprentice trainee of ST Category, appeared in the Trade Test but another candidate was selected on the basis of performance. Thus it is clear that all the applicants did not appear in the test and those who had appeared i.e., applicant Nos. 3, 14 and 15, did not pass the Trade Test and applicant No. 1 passed the written test, but he could not find place in merit list because of his inferior overall performance as against that of the candidates of open market.

6. Summing up the entire discussion made above, we find and hold that law laid down in this regard does not exempt the applicants i.e., apprentice trainees from appearing in the written/trade test. It is also clear that before publication of the vacancies, amendment was made deleting the provision by which the apprentice trainees were not required to appear in the written test.



7. In the result, we find no merit in this application and it is accordingly dismissed but without any order as to cost.

Greg Johnson

North

(N.N. SINGH)
VICE CHAIRMAN

"S.M."

पृष्ठांकन सं. के. त्या., ...
रा. वि. नि. ...

पुनः प्रारम्भः

(1) ...
 (2) ... जबलपुर

(7) —————

के काउंसल

(4) सत्यमेव जयते

सूचना: एम. जी. नं. १०००/२००८

Therese
उप निदेशक

उप ~~रजिस्ट्रार~~

सुल S. Paul, Adv

SC Shannar, p. Shannar

Adce.

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