

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 792 of 1999

Jabalpur, this the 11th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri G. Shanthappa, Judicial Member

Sunil Kumar Tiwari, S/o. Shri  
Dineshwar Tiwari, aged about 28  
years, Village : Baburam Tiwari  
Ka Chhapra, Post & District  
Balua (U.P.).

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

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

and 12 others.

... Respondents

(By Advocate - Shri S.C. Sharma through Shri Harshit  
Patel for official respondents and none for  
private respondents)

O R D E R (Oral)

By M.P. Singh, Vice Chairman -

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

"(ii) set aside the order dated 27.3.1999 and  
dated 31.8.1997, Annexure A-2 and Annexure A-3  
respectively.

(iii) set aside the order dated 3.9.99 Annexure A-1  
which lost sight the mandate of Apex Court's  
judgment in UPSRTC's case, particularly paras 12  
and 13 of the said judgment.

**command the respondents**

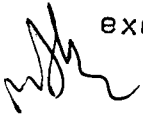
(iv) to conduct a de novo selection strictly in  
consonance with the judgment of Supreme Court  
reported in 1995(2) SCC Page-1.

(v) Accordingly, respondent No. 3 be commanded to  
prepare a institution/factory wise, year wise  
seniority list of Apprentices and select them on  
the basis of said list without there being any  
written examination or interview."

2. The brief facts of the case are that the applicant  
completed his training under the provisions of Apprentices  
Act, 1961 from the establishment of respondent No. 3. The

applicant <sup>had &</sup> undergone the training from 16.5.1989 to 15.5.92 in the trade of Instrument Mechanic. According to the applicant, some posts in the semi-skilled <sup>trades</sup> ~~were~~ lying vacant in the respondent No.3's factory. The respondent No. 3 had accordingly issued advertisement in the employment exchange. In pursuance of that advertisement the applicant has applied for a semi-skilled post. According to the applicant, he was having all eligibility and qualification to be appointed under the recruitment rules. He <sup>has &</sup> further submitted that the post of semi-skilled was a non-selection post and therefore he could have been selected. However, the respondents <sup>had</sup> conducted a written test and they <sup>did &</sup> ~~have~~ not selected and appointed <sup>the</sup> the applicant to the said post. The applicant has also submitted that as per the Supreme Court's judgment in the case of U.P. State Road Transport Corporation and another Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sanoh and others, (1995) 2 SCC 1, the trained apprentice should be given <sup>preference</sup> over direct recruits. It has been further stated by the applicant that as per the judgment, the selection through written examination is required to be held only when there is a selection post. In this case the post was non-selection one, and therefore no selection through written examination <sup>was</sup> required. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.

3. On the other hand, the respondents in their reply have stated that in order to fill up 29 vacancies, 36 ex-trade Apprentices of Ordnance Factory, Itarsi including the applicant were called for written test/interview on 1.12.1996, without reference to the employment exchange, alongwith the candidates sponsored by the employment exchange and District Sainik Welfare Office. The applicant



was not successful in passing the written test and only those who qualified the test ~~were~~ selected and appointed to the post. Later on, due to the increased production workload in the factory, sanction to fill <sup>more</sup> some vacancies in the trade of Chemical Process Worker (Semi-Skilled) was received and the vacancies were advertised in newspapers including the employment news. Although more than 40,000 applications for the said post were received in the factory, yet to comply with the judgment of the Hon'ble Supreme Court and in pursuance of OFB's letter dated 15/20.10.1999, all Ex-trade Apprentices of Ordnance Factory, Itarsi including <sup>above mentioned</sup> the applicant were called for test/interview for the post on 10.11.1999, without reference to the Employment Exchange. A separate test/interview was conducted exclusively for all the Ex-Trade Apprentices of Ordnance Factory, Itarsi available on rolls of the factory as on the date of test/interview including the applicant and on found suitable for the post, they were selected for the aforesaid post. The respondents have also stated in paragraph 5.2 of the reply that when the first recruitment action was initiated during November, 1995 and interview for the same was held during February, 1996, the respondents were not aware about the judgment of the Hon'ble Apex Court, referred to above. However, the contents of the above judgment came to the notice of the respondents during May, 1996 after receipt of Ministry of Labour letter dated 15.3.1996 through Ordnance Factory Board's letter dated 14.5.1996. Hence in the earlier selection test/interview held on 15.2.1996, the applicant was treated at par with the other candidates who had applied for the said post. However subsequently when further recruitment action was taken during November/December, 1996, the applicant was given preference and he was called for written test/interview alongwith all other Ex-Trade Apprentices of Ordnance Factory, Itarsi without

any reference to the Employment Exchange for competing alongwith the candidates sponsored by the Employment Exchange.

4. Heard the learned counsel for the parties and perused the records carefully.

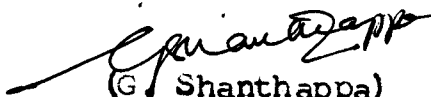
5. We have <sup>2</sup>~~also~~ given careful consideration to the rival contentions made on behalf of the parties. We find that the applicant had <sup>e</sup>earlier applied for the post in the year 1995/1996. The respondents<sup>1</sup> have treated the applicant at par with other fresh candidates and have asked him to compete with others by undergoing the written test/ interview. Later on, in the subsequent selection they have selected/appointed the applicant without asking him to undergo the selection process alongwith others. This is because of the fact that the respondents themselves have admitted in their reply that earlier they were not aware of the judgment of the Hon'ble Supreme Court, wherein it has been held that the Ex-Trade Apprentices have <sup>2</sup>not to undergo the selection process and will also not be required to compete with other persons sponsored by the Employment Exchange. This fact the respondents came to know subsequently and <sup>after knowing the fact</sup> accordingly/they have selected the applicant and appointed him to the said post. The respondents<sup>1</sup> have admitted this fact in paragraph 5.2 of the <sup>reply.</sup>the

6. During the pendency of the OA the applicant has already been appointed and the OA has become infructuous. The Original Application is dismissed as infructuous. However, as the respondents have not followed the <sup>aforesaid</sup> judgment of the Hon'ble Supreme Court while considering the applicant for appointment, we direct the applicant to make a fresh detailed representation to the respondents in this regard. If the applicant complies with this

*affr*

direction within a period of one month from the date of receipt of the copy of this order, the respondents are directed to consider the representation of the applicant in the light of the judgment of the 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 others, (1995) 2 SCC 1, within a period of three months from the date of receipt of the representation. No costs.

7. The Registry is directed to supply a copy of the memo of parties alongwith the certified copy of this order to the parties.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

"SA"

पूरांकन सं. १०३/०४ दि. १०/३/०४  
(१) उमल S. Paul  
(२) उमल SC Sharma  
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मुख्यालय, राजपुरा, १०/३/०४  
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