

(Reserved on 12.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00549/2016

This the **27th** day of **July, 2018**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Rohit Kumar Rajput, T. No. 100875, son of Shri Sujan Singh, R/o Quarter No. 43/4, Type-I O.E.F. Hazaratpur, Firozabad, District Firozabad (U.P.).
2. Sita Ram Meena, T. No. 200195, son of Late Kallu Ram Meena, R/o Quarter No. 60/8, Type-I, O.E.F. Hazaratpur, Firozabad, District Firozabad (U.P.).

.....**Applicants**

By Advocate: Shri A.D. Singh

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. General Manager, Ordnance Equipment Factory, Hazaratpur, District Firozabad - 283103.
3. Additional General Manager & Chairman / Trade Test of Examiner / SS & SK, Ordnance Equipment Factory, Hazaratpur, District Firozabad.
4. Joint General Manager / Administration, Ordnance Equipment Factory, Hazaratpur, District Firozabad.
5. Director General, Ordnance Factory Board, Ayudh Bhawan, 10A, S.K. Bose Road, Kolkata.

.....**Respondents**

By Advocate : Shri V.S. Sisodia

ORDER**DELIVERED BY:-****HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)**

By way of the instant original application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for following main reliefs :-

“i). Quash and set-aside the impugned order dated 23.04.2016 passed by the respondent no. 3 (shown as Annexure No. A-1) to this O.A in compilation No. 1.

ii). Direct the respondents to issue the appointment letter and appoint them on the post of Examiner for which they have been declared successful by the Selection Committee without any delay with all consequential benefit”.

2. The facts in brief are that the applicants, who are presently working as Tailor and Durwan under the respondent No. 4, appeared in the examination held on 10.02.2016 for the post of Examiner in PB 5200-20200+ GP 1800/- pursuant to the advertisement dated 20.10.2015 (Annexure A-2) issued by the respondent No. 4. The result of the examination of both posts was declared on 10.02.2016 (Annexure A-5) in which the applicants were shown at Sl. No. 1 for panels prepared for both the posts. Thereafter, the trade test of the applicants was also held on 11.02.2016 but the respondents did not finalize the selection. A letter dated 02.02.2016 from the workers' union of the factory was received by the management objecting to the selection process and suggesting selection on suitability basis. Them some of the unions of the Factory wrote letters dated 12.02.2016, 13.02.2016 and 20.02.2016 (Annexure A-

6) to the respondents No. 3 to finalize the selection of the selected candidate on the basis of merit list. The applicants also submitted applications dated 16.02.2016, 04.03.2016, 17.03.2016 and 29.03.2016 (Annexure A-7) to the respondent No. 2 regarding their appointment pursuant to their selection vide result dated 10.02.2016. But instead of finalizing the selection, the respondent No. 3 issued letter dated 23.04.2016 (Annexure A-1) for trade test of lower merit candidates ignoring the applicants.

3. Aggrieved, the applicants have filed the instant OA on the ground that that the action of the respondents is illegal and arbitrary as the Selection Committee has approved the selection of the applicants on the post of Examiner being meritorious candidate, therefore, they should be posted on the said post. It is alleged in the O.A that the respondents are trying to appoint undeserving candidates on the basis of pick and choose basis ignoring the applicants.

4. The respondents have filed counter affidavit (in short CA). It is stated that the respondents issued two circulars vide letter dated 20.10.2015 for filing up two posts of Examiner /skilled from Tailor / Skilled by transfer and two posts of Examiner/ semi skilled from Labourer/semi skilled by promotion. A Board was constituted for trade test, which, as per the notification SRO 185, Note 6, include written , oral and practical examination and aptitude test and interview. The Test Board was also instructed that the result of the written test should be given only pass or fail vide letter dated 06.02.2016 (Annexed to the CA). However, the aforesaid Board declared the merit list of all the

candidates based on the written examination marks, instead of declaring only written test pass candidates. The Board call three candidates in order of merit on written test marks from both categories for trade test. In the meantime, a clarification was sought from the Ordnance Factory Board vide letter dated 11.03.2016 (annexed to the CA) as to whether the Ordnance Equipment Factory, Hazarapatpur should go ahead with the result as per the declared merit list or select the pass candidates from seniority cum fitness or to scrap the above examination and re-conduct the test afresh. The Ordnance Factory Board, Kolkata (respondent No. 5) clarified vide letter dated 19.04.2016 (annexed to the CA) that promotions are to be granted on seniority cum fitness basis with minimum passing marks in written test, if any, as would be decided by the Factory with approval of the General Manager. Accordingly, it was decided that minimum passing marks in the written test would be 25 and the same was intimated to the Trade Test Board vide letter dated 22.04.2016 (Appendix No. F to the CA). Thereafter, as per seniority from both side, five eligible candidates, who have scored 25 marks or more, were called for the trade test vide letter dated 23.04.2016 (Annexure A-1 to the OA).

5. The applicants have filed Rejoinder Affidavit (in short RA). It is stated that the selection was initiated for re-designation on the basis of examination and not for promotion on the basis of seniority and as per Note 6 of SRO 185 dated 01.11.1994 (Annexure No. 1 to the RA), the trade test will include written, oral and practical examination and aptitude test and interview. The respondent No. 5 subsequently issued

another SRO dated 16.09.2014 (Annexure No. 2 to the RA) to conduct the selection as per para (b) in which it has been provided that the merit of the selected candidate will be decided solely on the basis of result of written examination and also directed the authority vide letter dated 05.01.2015 to conduct the selection. In pursuant to this letter, the respondents have conducted the selection of the applicants. It is stated that the applicants have fulfilled all the requirements and they are entitled for being posted on the post of Examiner on the basis of the merits in the written test. It is further stated that in response to an application dated 22.03.2016 filed by the applicants under RTI Act, the respondents vide letter dated 02.05.2016 (Annexure No. 3 to the RA) informed that the selection process is pending before the Board. But the respondents have issued the impugned order dated 23.04.2016 calling ineligible candidates for trade test. The applicants have contended that the selection committee has approved the selection on 10.02.2016, hence the further action of the respondents from debarring the posting of the applicants is illegal.

6. We have heard Shri A.D. Singh, learned counsel for the applicants, who argued vehemently that when the recruitment process has been started as per notification dated 20.10.2015, the respondents cannot change the criteria for selection by making written marks to pass or to qualify for being selected on the basis of seniority cum fitness basis as per letter of the respondent No. 5 dated 19.04.2016. He further argued that as per the SRO dated 16.09.2014 (Annexure No. 2 to the RA), the merit of selected candidates would be based on written test marks,

trade test being only for the purpose of qualifying in nature. He argued that the procedure for recruitment as per notification dated 20.10.2015 should be as per SRO dated 16.09.2014 as the instructions in letter dated 19.04.2016 is not in accordance with the SRO dated 16.09.2014 and that the result dated 10.02.2016 is in accordance with the SRO dated 16.04.2014.

7. Shri V.S. Sisodia, learned counsel for respondents, on the other hand, submitted that the recruitment is as per the instructions of the Ordnance Factory Board (in short OFB) dated 19.04.2016 copy of which is annexed to the Counter Affidavit. He further submitted that the declaration of the written test result on the basis of marks vide notice dated 10.02.2016 is against the order dated 06.02.2016 (copy of which is annexed to CA) passed by the respondent No. 2 directing the Trade Test Board that written test marks may be treated for pass or fail. But the Board in violation of the order of the respondent No. 2 notified the list dated 10.01.2016 based on written test marks.

8. The dispute in this case is whether the criteria for selection should be based on written test marks after qualifying the trade test (as claimed by the applicants) or based on seniority cum fitness with passing of trade test with written examination (as claimed by the respondents). It is noted that this Tribunal vide order dated 28.04.2016 directed the respondents to go ahead with the trade test but not to declare the result of the said test. Then there was another recruitment vide notification dated 22.06.2016 and on 06.08.2016 on which order dated 12.08.2016 was passed directing the selection made by the respondents as per the

notification dated 22.06.2016 and 06.08.2016 shall be subject to final decision of the O.A.

9. It is seen that the notification dated 20.10.2015 notifying recruitment of 2 posts of Examiner, it is mentioned that the selection will be only after passing the trade test as per specification and no criteria for selection has been specified. Vide letter dated 06.02.2018, the respondent No. 2 issued the following instructions to Chairman, Trade Test Board in charge of the trade test for the said recruitment: -

“.....It is also intimated that written examination may be treated as pass/ fail because as per SRO, it is part of Trade Test.”

10. From above, the written examination should be the basis for pass/ fail as the SRO, but the letter dated 06.02.2016 has not been specified the SRO number and date. Vide letter dated 19.04.2016, the following instructions were issued : -

“.....Promotions are to be granted on seniority cum fitness basis. The minimum passing marks in written test, if any, may be decided by the factory at its own end, with due approval of the General Manager.”

It is also noticed that the letter dated 19.04.2016 issued by the respondent No. 5 as well as the letter dated 06.02.2016 issued on behalf of the respondent No. 2, have not been impugned / challenged in this OA.

11. The applicants in their Rejoinder, have annexed a copy of the SRO dated 16.09.2014 (Annexure No. 2 to the RA) wherein the following stipulations have been made in sub para (b): -

“(b). Trade test will be merely qualifying in nature. It will not decide the merit of the selected candidates. The merit will be decided solely based on the results of the written examination.”

The respondents have not contradicted the contentions in respect of SRO dated 16.09.2014 in para 7 of the RA through supplementary counter or during oral submissions. In letter dated 06.02.2016, reference to SRO is there for criteria of seniority cum fitness, but the details of such SRO or its copy has not been furnished by the respondents in support of their plea that the selection would be on the basis seniority cum fitness. The order dated 19.04.2016 is not a SRO and hence, it will not supersede or override the SRO dated 16.09.2014, particularly since no such criteria for selection has been specified in recruitment notification dated 20.10.2015. Further, the respondents have not cancelled the result dated 10.02.2016 declared by Trade Test Board in pursuance to order dated 19.04.2016 of OFB before issuing the letter dated 23.04.2016.

12. It is noticed by us that the subsequent notification of dated 22.06.2016 for recruitment of the same post clearly indicates the selection criteria as seniority cum fitness in the notification itself for which there is no doubt among the candidates.

13. From the above discussions, we note that the fact that the recruitment notification dated 20.10.2015 did not specify the criteria for selection and the Trade Test Board has gone ahead to declare the written test result dated 10.02.2016 in order of marks obtained in the written examination, which is as per the SRO dated 16.09.2014 (Annexure No. 2 to the RA) and the said result dated 10.02.2016 has not been cancelled by the respondents before issuing the order / letter dated 23.04.2016 in pursuance to the OFB's letter dated 19.04.2016 as per the pleadings of the respondents. For the reasons as aforesaid, we are of the considered view that the impugned order dated 23.04.2016 to call the candidates for trade test in deviation to the result dated 10.02.2016, cannot be sustained. Accordingly, the impugned order dated 23.04.2016 is set aside and quashed and the respondents are directed to complete the recruitment process in accordance with the result dated 10.02.2016 (Annexure A-5 to the OA) declared by the Trade Test Board as per rules, within a period of three months from the date of receipt of a certified copy of this order.

14. The OA is allowed as above. The interim order dated 12.08.2016 is vacated and the interim order dated 28.04.2016 stands merged with this final order. There will no order as to costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...