

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/01016/2016

Pronounced on : 28.03.2018

Reserved on : 12.03.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

1. Sumit Kumar S/o Sh. Jai Pal Singh, R/o H. No. 170, Joginder Nagar, C/o Bawa Colony, Workshop Road, Yamunanagar (Haryana).
2. Robin S/o Sh. Subhash Kumar, R/o H. No. 41, Nanda Colony, Farakpur, Jagadhri Workshop, Yamunanagar.
3. Vineet Kumar S/o Sh. Subhash Kumar, R/o H. No. 41, Nanda Colony, Farakpur, Jagadhri Workshop, Yamunanagar (Haryana).
4. Gurpreet Singh S/o Sh. Kashmir Singh, R/o 28/1, Tarapuri Colony, Vishnu Nagar, Jagadhri Workshop, Yamunanagar.
5. Swarndeeep Singh S/o Sh. Gurmukh Singh R/o H. No. B-IX-968A, 17A, Vishnu Nagar, Jagadhri Workshop, Yamunanagar.
6. Vinod Kumar S/o Sh. Birm Singh, R/o Village Nannu Majra, PO Sarsawa, Saharanpur (U.P).
7. Hardeep Singh S/o Rameshwar Dass R/o Village Bhari PO.
8. Vijay Kumar S/o Sh. Naresh Kumar R/o 128-C, Railway Colony, Jagadhri Workshop, Yamunanagar (Haryana).

.....Applicant

BY ADVOCATE: Sh. Ashish Sareen

VERSUS

1. Union of India through the General Manager, Northern Railway Headquarters, Baroda House, New Delhi.
2. Chief Works Manager, Northern Railway, Jagadhri, Haryana.

.....Respondents

BY ADVOCATE: Sh. Rohit Sharma

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicants are persons who have completed their apprenticeship from the Jagadhari Workshop. The applicants were offered various posts under Group 'D' category of Cleaner etc. in April, 2010 and were advised to attend for medical examination latest by 27.04.2010. Applicants argue that the respondents should have absorbed them for an alternate post in Group 'D' on account of their being declared as medically unfit.

2. In response to a Legal Notice dated 18.02.2016 issued by the applicants, the respondents submit that as the applicants failed in the medical examination in the prescribed A-1 medical standard of the post allotted to them, they were considered for engagement as Substitute in Group 'D'. The applicant's argument is that several persons junior to them have got appointment and hence they fear discrimination on the part of the respondents in respect of the applicants. The prayer of the applicants is to quash Annexure A-1, reply to the Legal Notice and to absorb the applicants against Group D posts.

3. The respondents submit that under Section 22 of the Apprenticeship Act, 1961, it is not obligatory for the respondents to offer any appointment to apprentices who have completed their training under the Act in the Railway Establishment. The Act does not uphold any enforceable right of the applicants by which they can claim employment on completion of the course under the Apprenticeship Act. However, such apprentices may be considered for engagement against administrative exigencies existing at

the point of time of finishing the apprenticeship course. Applicants No. 1 & 2 were considered with other apprentices for engagement as substitute in Grade Pay Rs. 1800 against administrative exigencies existing at that particular point of time by the General Manager. Applicants were considered for the post of Diesel Cleaner/Mechanic in the Diesel Shed Ludhiana and were sent for medical examination in AA-2 and below medical categories. Applicants No. 3 to 8 were also considered for engagement as substitute for the post of Trackman/Gateman in Delhi Division as administrative exigencies and were sent for medical examination in A-2 and below category by the DRM. Applicants appeared for medical examination for their respective posts, but were declared unfit in Aye-Two medical standards prescribed for the posts and therefore, could not be engaged in the allotted posts. However, other candidates who appeared alongwith them for medical examination and were found medically eligible, were absorbed as substitutes in Group 'D' posts.

4. As per R-3 guidelines/policy issued by the Railway Board, the claim of providing alternate appointment to medically unfit candidates selected through RRBs/RRCs for Group 'C'/Group 'D' posts was discontinued. Earlier, such candidates who failed in one category were considered for alternative appointment, provided there was an acute shortage of staff in the alternative posts. Thus, the power of the General Manager to engage medically failed candidates in another category was taken away. The Bench notes that this may be on account of the fact that such entry into service without a proper recruitment procedure may have been viewed as

backdoor entry without following the fully prescribed recruitment procedures and hence discontinued.

5. It is argued that as the Railways Recruitment Cell (RRC) is now making regular selection of Group 'D' candidates, no administrative exigency exists resulting in engagement of Course Completed Act Apprentices. Applicants are persons who have been taken on by the respondents to be trained under the Apprenticeship Act at their workshop. As per Apprenticeship Act, there is no commitment to engage such apprentices by setting aside the procedures laid down in the Recruitment Rules as regular employees. However, such persons were engaged as substitutes in Group 'D' posts in administrative exigencies. As per Northern Railway letter dated 10.09.2014, due to regularly selected candidates being made available by the RRC through competition, the engagement of the apprentices was not encouraged.

6. The applicants' case is one in which they were considered for engagement in Group 'D' and were medically unfit for being placed in the vacant post. There was also no provision in the recruitment rules for making available alternate post for Act Apprentices in the event they are declared medically unfit in the post being considered in the exigency of service. The applicants were also not found fit in the prescribed medical classifications of the post for which they were being considered. Hence, their appointment by overlooking the medical rules for the post would not arise. Applicants being declared unfit in A-2 category medical standards for the post, for which they were being considered, were not offered any appointment. As per Railway Board policy, system of alternative appointment to the medically failed

candidates, even those selected through RRC/RRB for Group C/D posts was discontinued. This may have been on the ground of safety of the operating respondents. Medical fitness of those who operate the Railway Rolling Stock or the fixed assets of the Railways like tracks etc. is very important in the light of the safety of the passengers using the service.

7. Applicants bring to our notice OAs 471 and 472 of 2010 of CAT Jabalpur in their favour. It is argued by the respondents that these judgements relied upon by the applicants are not applicable as they relate to selection to Group 'C' posts of Traffic Apprentice Shop whereas applicant's prayer is for Group 'D' posts. Further, the advertisement of Traffic Apprenticeship related to the date 17.12.2005 which was prior to the Railway Board Notification of 30.07.2014 discontinuing the engagement of Apprenticeship Act apprentices proposed for group 'D' posts under consideration in this OA.

8. From the arguments made by both sides, it is clear that the scheme was available for those who completed the apprenticeship training under the Apprenticeship Act subject to availability of vacancies wherein there was an exigency to engage persons, and subject to fulfillment of medical fitness as per category for which persons under the Apprenticeship Act were being considered. The applicants having failed in the medical examination, are also hit by the Railway Board order dispensing with the scheme of giving apprentices alternate engagement. The applicants' citation of minutes of a union meeting (Annexure A-6) would not come to their assistance as the same has to be supported by rules and regulations on the subject.

9. We also note that the applicants were considered for the post apprenticeship engagement on 12.04.2010 and are before us in November, 2016 after 5-1/2 years. Hence, the applicants are also hit by delay in approaching the Tribunal. The applicants as early as on 20.09.2012 were aware of their medically unfit status and had sufficient time to approach the Tribunal. That they issued a Legal Notice as late as on 18.02.2016, would not add strength or give advantage of time to their case.

10. Applicants cite Annexure A-10 recruitment notice dated 13.12.2013 related to another recruitment conducted by the RRC which was an open market recruitment with closing date 10.12.2014. Applicants argue that posts were available in the year 2013-14 also and they could have been considered against these posts advertised. In response to a query raised by the Bench as to whether the applicants had applied against this advertisement cited, the answer was in the negative. Hence, any right for being considered, outside those persons who had applied in response to the advertisement would not only be infringing the rights of those who have applied in response to the advertisement, but also give way to back door appointment, and hence cannot be encouraged. The applicants and respondents placed judgements supporting their respective contentions. However, an order of a three Member Bench of this Tribunal in OA No. 1125-PB-2011 helps us to understand the subject matter better. The relevant extracts of the judgement are as follows:-

“6. A perusal of the 1961 Act and also the rule formulation, which came to be framed thereunder, would indicate that the candidates who successfully undertake apprenticeship, cannot raise an enforceable claim for the grant of compulsive appointment. The apprenticeship undertaken by them only makes them qualified and eligible for applying for and obtaining the relevant category of

appointment. For that (i.e. employment), the applicants have to apply independently. The 1961 Act does not, at all, hold out an assurance that those undertaking apprenticeship would be absorbed in service or will be offered any time of employment.

8. We have not been able to persuade ourselves to find force in the plea raised on behalf of the applicants. The conceptualization of an offer of employment, much less any compulsive nature thereof, is found to be foreign to the provisions of the 1961 Act. It may be that those who undertake apprenticeship in the relevant trades may thereby become eligible for appointment to the various categories of posts in the Rail Coach Factory. That would, however, be an altogether different issue. For enforcement of a claim, the plea raised and the documentation enclosed in support thereof must indicate an enforceable assurance and in cognizable terms, on the part of the competent authority. That undertaking is conspicuously missing in the documentation made available on record.

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12.Even otherwise, it does not solve the riddle for the applicants for the simple reason that the controversy herein is not qua any pre-recruitment and recruitment matter. It is a pure and simple case in which Respondent No. 2 had invited applications for undergoing apprenticeship under the 1961 Act. The aspect of any employment to follow thereafter was not conceptualized. In that view of things, it cannot be averred that the controversy under adjudication pertains to any recruitment or pre-recruitment matter.

13. In the light of the foregoing discussion, we are of the considered opinion that this Tribunal has no jurisdiction to examine the validity or otherwise of the impugned cancellation. It is to state the obvious that it would be for the applicants, in their own discretion, to have recourse to the remedy available to them before an appropriate forum on the judicial side.”

11. The Delhi High Court in RSA 151 of 2009 titled Indian Telephone Industries Ltd. Vs. Surinder Mohan has held as follows:-

“16. Also because of the provision of Section 22 of the Apprentices Act, and read with Para VI of the Apprenticeship Contract, there was no entitlement of the respondent/plaintiff to secure either temporary or permanent employment with the appellant/defendant after completion of the period of his employment as an apprentice and hence the period

of employment of the respondent/plaintiff with the appellant/defendant has necessarily to come to an end at the expiry of the period of apprenticeship.

17. xxxxxxxxxxxxxxxxxxxxxxxx

18. xxxxxxxxxxxxxxxxxxxxxxxx

19. In view of the above discussion, the substantial question of law is answered in favour of the appellant/defendant and it is held that the judgments of the courts below are completely perverse and wholly illegal, and are therefore set aside. Suit of the respondent/plaintiff seeking declaration of quashing of the termination order and therefore of continuation of the respondent/plaintiff as an apprentice with the appellant/defendant for an interminable period being completely misconceived and against the provisions of the Apprentices Act is dismissed/rejected. Although, I was inclined to impose costs of at least Rs.50,000/- upon the respondent/plaintiff for continuing this litigation for more than 42 years, however, taking a lenient view, no costs are imposed.”

12. Apprenticeship Act 1961 provides for engaging persons as apprentice with no commitment of a confirmed job in the organization thereafter. The apprenticeship period is defined and is not of an indefinite period. The applicants were definitely given an opportunity of engagement by the respondent post apprenticeship. Applicants not having availed the available opportunity in time, belatedly approach the Tribunal to seek relief.

14. For the aforestated discussion, we find no merit in the present OA and the same is dismissed both on merit and on account of delay. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 28.03.2018
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