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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 826 of 2014

IN THE MATTER OF:

1. **BANSHRAJ SHAW**, aged about 26 years, son of Shri Ram Briksh Shaw, residing at Indrapuri, Ichapur, Post Office- Nawabganj, Police Station- Noapara, District- 24-Parganas, Pin- 743144;
2. **SASHI BHUSHAN SINGH**, son of Shri Nagendra Singh, residing at village- Pithauri Tawalaktola, Post Office- Paygambarpur, Police Station- Baniyapur, District- Chapra, Bihar, Pin-841403;
3. **PUSPRAJ RANJAN**, son of Shri Jogendar Prasad, residing at Village- Barichowk, Post Office- Itwa, Police Station- Dharhara, District- Munger, Bihar, Pin-811212;
4. **BIKASH KUMAR**, son of Shri Bipin Bihari Prasad, residing at Village- Ahirtoli Bharat Milap, Post Office and Police Station- Bhagwan Bazar, District- Chapra, Pin- 841301;

...APPLICANTS

-VERSUS-

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1. UNION OF INDIA service through the Secretary, Ministry of Defence (Defence and Production), Government of India, South Block, New Delhi-110001.
2. THE DIRECTOR GENERAL OF ORDNANCE FACTORIES AND THE CHAIRMAN, Ordnance Factories Board, Government of India, Ministry of Defence, having his office at 'Ayudh Bhawan', 10A, Shaheed Khudiram Bose Road, Kolkata- 700001;
3. THE GENERAL MANAGER, Grey Iron Foundry, Indian Ordnance Factory, Ministry of Defence, Government of India, Jabalpur- 482009, Madhya Pradesh.

...Respondents.

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 826 of 2014

Date of order: 20.9.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

(Banshraj Shaw & ors. v. Union of India & ors.)

For the Applicants : Mr. P.C. Das, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

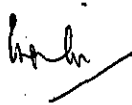
The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as all the applicants have a common grievance.

(b) To pass an appropriate order directing upon the respondent authority to consider the case of the applicants for absorption against a large number of vacancies issued by the respondent department being Annexure A-1 of this original application in their respective trade in the semi-skilled grade as per their possession of National Apprenticeship Certificate issued by the National Council of Vocational Training in which all your applicants have possessed the same who have successfully completed the Apprenticeship Court and completed the training and became successful in the same as per spending money by the respondent No. 3 in respect of such apprenticeship and it will be profitable for the respondent No. 3 if they absorb the present applicants in their respective trade against a large number of vacancies and issue appointment orders and give preference to the applicants along with other eligible candidates;"

2. Heard both Ld. Counsel, examined pleadings and documents on record.

The applicant would rely on the orders of coordinate Bench at Allahabad in O.A. 330.00881/2015 along with O.A. No. 330/00532/2015 (**Alok Kumar & ors. v. Union of India & ors.**) in support.



3. The submissions of the applicant, as conveyed through their Ld. Counsel is,

(a) That the applicants are in-house trained candidates, who completed the apprenticeship training and received their National Apprenticeship Certificates from NCVT. Cost of the said apprenticeship training was borne by the Grey Foundry, Jabalpur.

(b) That, the Ordnance Factory Board had issued a circular dated 6.11.2011 (Annexure A-3 to the O.A.) which stated that vacancies be filled up by All India Ordnance Factories through an open advertisement, that Employment Exchanges are to be notified for sponsoring list of eligible candidates, and, that, the Ex-Trade Apprentices of Ordnance Factories would not be required to get their names sponsored through the Employment Exchange.

(c) Further, the Ex-Trade Apprentices of the concerned recruiting ordnance factories would not be required to apply against such recruitment notice, but, they will be considered along with other applicants.

(d) The circular further stated that the said Ex-Trade Apprentices would be given age relaxation to the extent of the period for which they had undergone training.

(e) Despite such circular and the judicial decisions in the matter of **BHEL Ex. Trade Apprentices Association (Civil Appeal No. 10815-10816/2013)** as well as in **U.P. State of Road Transport Corporation & anr. v. U.P. Parivahan Nigam Shishukhs Berozgar Singh & ors. (Civil Appeal Nos. 4347-34 of 1990)**, the concerned ordnance factories failed to comply with such directions.

(f) The respondent authority No. 3, who is the General Manager, Grey Iron Factory, Indian Ordnance Factories, Jabalpur, thereafter published

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an advertisement on 24.5.2014 for filling up a number of vacancies in semi-skilled grade in Grey Iron Foundry, Jabalpur on direct recruitment basis in total violation of the circular and judicial order. Hence, being aggrieved, the applicants have approached the Tribunal praying for their absorption and for an interim relief in the form of restraining the respondents from filling up any vacancies in semi-skilled grade by virtue of the notification.

4. The respondents have controverted the claim of the applicants by questioning, at the outset, the jurisdiction of the Kolkata Bench to adjudicate the instant matter as the impugned recruitment advertisement had laid down that all disputes with regard to the advertisement shall be subject to jurisdiction of Courts at Jabalpur.

On merit, the respondents have disputed the claims of applicants, as follows:-

(a) That, the applicants have undergone trade apprenticeship training at the respondents' factory under the Apprenticeship Act, 1961.

(b) The circular dated 6.1.2011 clearly states that, in the selection process "other things being equal, trained apprentices shall be given preference". The respondents would argue that "other things being equal" implies that all applicants including the apprentices have to appear in the prescribed competitive test and, after such examination, if an apprentice trainee gets equal marks as that of a non-apprentice trainee, preference would be given to the said apprentice.

(c) According to the respondents, as the applicants are apprentices, they have entered into the contract of apprenticeship with the employer on such terms and conditions as may agreed to

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by the parties to the contract. The contract entered into did not oblige the respondent authorities, particularly, in terms of Section 22 of the said Act, to offer any employment to said apprentices, who had completed the period of apprenticeship training under such establishment.

(d) That, the notification calling for offline applications for filling up vacancies in semi-skilled grade with the respondent functionary categorically stated that even the trade apprentice of Ordnance Factories would be required to apply online.

5. Prima facie, prior to adjudicating this O.A. on merit, it has to be decided whether this Tribunal has jurisdiction to adjudicate on this matter.

6.1. In this, we refer to the impugned advertisement at Annexure A-1 to the O.A. as well as in R-3 to the reply wherein it has been stated in the note (below notes 1 to 10 of the said advertisement) as follows:-

"The General Manager, Grey Iron Foundry, Jabalpur reserves the right to modify/alter/restrict/cancel the recruitment process, if need so arises, without issuing any further notice or assigning any reason thereof. The decision of GM/GIF will be final and no appeal will be entertained against this issue. **All disputes will be subject to Jabalpur jurisdiction.**"

(emphasis supplied)

6.2. Further, in the proviso "r" of "Provision on compensatory time", the following is stated:-

"r) The advertisement is subject to orders, if any, by Hon'ble Courts/Tribunals/Ministry of Defence/Ordnance Factory Board having bearing on the recruitment matter and any unforeseen circumstances, if any, etc."

The applicants have not used the rejoinder to refute the maintainability of the O.A. on grounds of jurisdiction raised by the respondent authorities. We further find that, vide daily order dated 7.11.2014, the applicant was directed to file relevant documents to show that this Tribunal has jurisdiction in the matter. We find no such

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affidavit or documents on record to refute the claim of the respondents that this matter is essentially to be decided upon by the Tribunal/judicial forum having jurisdiction at Jabalpur.

6.3. Whether a Tribunal has jurisdiction on certain facts depends not on the merit of the matter or upon the correctness of its findings on these facts placed for adjudication, but upon their nature, which is determinable at the commencement and not at the conclusion of the adjudication.

Hence, since the issue of jurisdiction is a preliminary issue to be raised and decided at the threshold, we would address, *ab initio*, the preliminary objection raised by the respondents in regard to admission of the O.A.

Administrative Tribunals have been established under the aegis of the Administrative Tribunals Act 1985. Chapter III of the Act provides for jurisdiction, powers and authority of Tribunals under the Act. The provisions make it clear that the Tribunals will exercise jurisdiction on recruitments and service matters relating to civil services or posts. The Tribunal has the same jurisdiction, which a civil court or a High Court was exercising before establishment of the Tribunal, over all matters in relation to recruitment and all service matters in respect of All India Services and civil service or civil post or to a post held by a civilian in Defence Services. It is true that forum depends on litigants' discretion i.e. litigant has a right to choose the forum that will serve him better. Nevertheless it is trite law that such choice is available only in regard to choosing such a forum wherefrom the cause of action has arisen.

6.4. We note that for determination of jurisdiction of a forum, cause of action has been given great importance. In the case of **Rajasthan High**

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Court Advocates' Association vs. Union of India reported in **2001 AIR SCW 1(para 17)**, the Hon'ble Supreme Court noted as follows:-

"The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in 'cause of action'. It has to be left to be determined in each individual case as to where the cause of action arises."

This Tribunal will, therefore, assume jurisdiction when at least a part of cause of action arose within its territory.

6.5. In cases where final order has been received at the address of the respondent, jurisdiction over the cause will lie with the originating address. **[State of Rajasthan & Others vs. Swaika Properties & Another , (1985)3 SCC 217].**

7. In the instant mater, notification at A1 to the O.A. has been challenged and is the primary cause of action The notification has been issued by the authorities at Jabalpur, the applicants are aspirants for appointment in the Grey Iron factory at Jabalpur. Most importantly, the notification categorically lays down that any dispute on the notification will be decided by courts having jurisdiction at Jabalpur.

The applicants have not brought any countervailing arguments to the above; we are hence of the considered view that only a Tribunal having jurisdiction at Jabalpur can adjudicate in this matter. . In terms of Administrative Tribunals Act, 1985, C.A.T., Kolkata Bench

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lacks jurisdiction in regard to a cause of action which has arisen in Jabalpur.

8. Accordingly the O.A. fails due to lack of jurisdiction.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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