

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 7th July, 2010*
Judgment Delivered On: 20th July, 2010

+ **W.P.(C) NO.26/2009**

PUNEET & ANR. Petitioners
Through: Mr.K.C.Mittal, Advocate

versus

UOI & ORS. Respondents
Through: Mr.H.K.Gangwani, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Petitioners Puneet and Nafe Singh underwent apprenticeship training at the Government of India Press Faridabad and successfully completed the apprenticeship for a period of two years. Nafe Singh underwent apprenticeship from 7.10.1997 to 6.10.1999. Puneet underwent apprenticeship from 7.10.1998 to 6.10.2000.

2. They applied for being appointed as Assistant Binders when respondent No.3 issued an advertisement in the month of November 2007 to fill up 23 unreserved seats, 1 seat in SC category, 4 seats in ST category and 17 seats in OBC category. It may be noted that whereas Nafe Singh applied under the OBC category, Puneet applied under the SC category.

3. It is important to state here that as per the applicable Recruitment Rule the post in question has been listed as a 'Non-Selection'.

4. Needless to state there were many applicants who were subjected to a practical test and an interview and when the final list was notified, the petitioners found that their names were not on the select panel.

5. The petitioners filed a petition before the Central Administrative Tribunal which was registered as OA No.2318/2008 in which they claimed that persons who had done apprenticeship much after them had been selected. In a nut shell, they claimed before the Tribunal that as per the decision of the Supreme Court reported as 1995 (2) SCC 1 *U.P.State Road Transport Corporation & Anr. Vs. U.P.Parivahan Nigam Shishukhs Berozgar Sangh & Ors.*, they i.e. the petitioners having successfully undergone apprenticeship course for which necessary certificates were issued to them, they would be entitled for appointment on account of they being senior.

6. Though not pleaded very clearly, but it is apparent that what the petitioners were saying was that the post being a 'Non Selection Post' the question of comparative merit as was being claimed by the respondents was not the criteria and that the criteria was that those who were declared suitable, irrespective of who was better than the other, the ones who has completed apprenticeship earlier would be required to be treated as senior and hence would be entitled to be appointed.

7. For the reason, as would be evident from what we would be noting hereinafter, the claim was not predicated with clarity before the Tribunal, the real issue has got side-tracked.

8. Needless to state as per the respondents, a stand taken before the Tribunal and reflected in the decision of the Tribunal, the petitioners having participated in the trade test conducted by the respondents and having subjected themselves to an interview, could not stake a claim that the post was a 'Non Selection Post'. It was further the case of the respondents that having subjected themselves to the trade test and an interview, petitioners had acquiesced in the selection process being merit based.

9. The Tribunal has found favour with the arguments projected by the respondents. The Tribunal has held that for the reasons given by the Tribunal in its decision dated 22.7.2008 deciding OA No.1188/2008 Yogesh Kumar Giri & Ors. Vs. UOI & Ors., the decision of the Supreme Court in U.P.State Road Transport Corporation's case (supra) was not applicable and that since the petitioners had undergone the trade test and the interview, they could not question the selection process which resulted in the candidates securing higher marks being offered the appointments.

10. In U.P.State Road Transport Corporation's case (supra) the Supreme Court was considering the provisions of the Apprentices Act 1961 and the Rules framed thereunder in the year 1991 and noted that due to the resource crunch in this country, whenever and wherever public money is invested, it has to be ensured that there is a proper utilization of the same and in that context held that where people successfully undergo apprenticeship training under the Government, for appointment whenever regular vacancies are notified under the Government, employment should be based as under:-

“(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India Vs. N.Hargopal would permit this.

(3) IF age bar would come in the way of the trainee, the same would be relaxed in accordance with what is staged in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.”

11. In Yogesh Kumar's case, the Tribunal was considering appointments to the post of 'Off Set Machine Attendant' and in the decision it has not been noted as to whether the notified Recruitment Rules treated the post as a 'Selection' or a 'Non Selection Post'. The claim therein that those who had successfully undergone apprenticeship training earlier would be entitled to be appointed in preference to their junior brothers, was negated by holding that direction 4 of the Supreme Court in U.P.State Road Transport Corporation's case did not require this to be followed. It only requires that in between trained apprentices, preference would be given to those who are senior.

12. Needless to state the 4 directions issued by the Supreme Court require that other things being equal, a trained apprentice should be given preference, should not be required to get his name sponsored by any employment exchange and

if the bar of age comes in his way, benefit of age relaxation should be granted as per the service rule and if the service rule is silent on this aspect, for the period apprenticeship training was undergone should be excluded and lastly a seniority list of trained apprentices should be maintained and preference should be given to those who are senior.

13. For the reason we do not know as to what was the nature of the category of the post in Yogesh Kumar Giri's case, and since in the instant decision the Tribunal has not noted said fact, it is apparent that the Tribunal has blindly followed the decision in Yogesh Kumar Giri's case, without going into the meat of the matter.

14. Let us do so.

15. What is the distinction between a 'Non Selection Post' and a 'Selection Post'? This is not a new question and has not arisen for being answered for the first time. The Supreme Court had an occasion to clarify on this issue and we have located two decisions, which unfortunately were not brought to our notice by either counsel. What are the decisions and what do they hold?

16. In the decision reported as 1993 Supp. (2) SCC 326 UOI Vs. Dr.B.Rajaram & Ors., (vide para 28) *the basic distinction between the 'Selection Post' and the 'Non Selection Post' is, whether it is to be filled by a comparative assessment on merit of all eligible candidates or on the basis of continuous length of service.*

17. In the decision reported as 1995 (6) SCC 684 UOI & Ors. Vs. Virpal Singh Chauhan & Ors., (vide para 23 and 24), it can be culled out that where appointment is in the category of seniority-cum-suitability it would be a case of 'Non Selection

Post Appointment' and where the requirement is to prepare a panel on inter se merit, the post is a 'Selection Post'.

18. It is thus apparent that a post which is treated as a 'Non Selection Post' would usually be a 'Promotional Post' for only then does the issue of seniority come into being. We repeat the essence of a post being a 'Non Selection Post' means that subject to eligibility and suitability, seniority would be the criteria to fill up the post.

19. In the instant case the post in question is to be filled up by Direct Recruitment and yet it has been classified as a 'Non Selection Post'.

20. What would this situation require us to do?

21. We have to harmonize the principles of law laid down by the Supreme Court in U.P.State Road Transport Corporation's case, which interpreted the law arising out of and relating to the Apprentices Act 1961 and the 1991 Rules by requiring, vide direction No.4 a seniority list of apprentices to be maintained on the basis of those who have successfully undergone the apprentice earlier to be reckoned senior to those who successfully complete the apprenticeship course in later years and the post in question being declared to be a 'Non Selection' post but being the entry level post.

22. The harmony would be that the requirement to fill up the post would be to subject the eligible candidates to a trade test and an interview and not prepare a select panel in order of merit. All those who are declared suitable would then be put in a panel based on their seniority position as apprentices maintained as per direction 4 of the Supreme Court in U.P.State Road Transport Corporation's case.

23. It is in this context that the requirement of conducting a trade test and an interview assumes importance.

The requirement of the test was to determine suitability and not a select panel.

24. Unfortunately, for the reason the pleadings are not clear and neither counsel drew the attention of the Tribunal to the legal issues which arose, the Tribunal has led itself into error by holding that the petitioners, having participated in the trade test and the interview, cannot challenge the result thereof and that the selection had to be on merit.

25. We may highlight the requirement of conducting a trade test notwithstanding candidates holding the necessary apprenticeship certificates. As in the instant case, it be noted that Nafe Singh underwent the apprenticeship course from 7.10.1997 to 6.10.1999 and Puneet from 7.10.1998 to 6.10.2000, but the appointments were sought to be made in the year 2007. Due to passage of time, not knowing whether the apprentices were engaged in jobs in which they had attained proficiency or some other, it becomes important to subject the candidate to a proficiency test when appointments have to be made. The experience of life tells us that not all engage themselves in professions relatable to the degrees they hold or the qualifications they acquire. We have seen children with degrees in Business Administration joining NGOs to help the poorer sections of society. We have come across doctors who have become lawyers and are successfully appearing before the Consumer Forums pertaining to issues of medical negligence. In today's multi disciplinary era people change professions and go into streams unrelated to their degrees or skills.

26. To summarize on the legal position, pertaining to direct recruitment posts of a technical nature, declared as 'Non Selection' posts, persons who have apprenticeship

certificates have to be put in a seniority list as per the direction No.4 issued by the Supreme Court in U.P.Road State Transport Corporation's case and after subjecting the eligible candidates to a trade test and an interview, all those who are declared suitable for being appointed, irrespective of their merit which actually need not be tested at all and the test being restricted to determine suitability, be offered appointment in order of seniority.

27. Vide CM No.9237/2010 our attention was drawn to the fact that sensing a scam in the recruitment process, a vigilance enquiry has been ordered. We were called upon to call for the report of the vigilance enquiry, which has yet to be borne for the reason the vigilance enquiry is still on.

28. We need not wait for any report in view of the legal position, as per our understanding above, which requires us to dispose of the instant petition setting aside the impugned order dated 20.11.2008 and disposing of the instant writ petition as also OA No.2318/2008 by passing the directions to the 3rd respondent to redraw a list of empanelled candidates, not on the basis of their merit position, but on the basis of their seniority reckoned from the dates they successfully obtained the apprenticeship certificates, subject to their suitability. We clarify that if on the basis of the trade test and the interview which was conducted, suitability can be culled out de hors the merit, same should be done and if not the candidates be re-subjected to a trade test with the focus of the test being to determine suitability and not the relative merit.

29. We clarify that since appointments in the unreserved category and the ST category are not in question for the reason one petitioner applied for the sole post in the SC category and the other applied for a post in the OBC category,

needful would be done only in respect of the SC and OBC candidates and not the candidates in the unreserved category and ST category.

30. Needful be done within a period of 4 months from today. Till the directions issued are complied with, existing empanelled candidates in the category of SC and OBS shall continue to work.

31. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 20, 2010
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