

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

+ **W.P.(C) 2756/2015**

UNION OF INDIA & ORS.

Through

..... Petitioners
Mr. Ruchir Mishra, Mr. Sanjiv Kr.
Saxena & Mr. Mukesh Kr. Tiwari,
Advocates

versus

ADITYA NARAYAN & ANR.

Through

..... Respondents
None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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20.03.2015

KAILASH GAMBHIR, J. (ORAL)

CM APPL. Nos. 4929-4930/2015 (Exemptions)

Exemption allowed subject to just exceptions.

Applications stand disposed of.

W.P.(C) 2756/2015 & CM APPL. Nos. 4928 & 4931/2015

Challenge in the present Writ Petition filed under Articles 226 and 227 of the Constitution of India is to order dated 19.08.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) whereby the learned Tribunal had disposed of the Original Applications (*in short 'OAs'*) No.3752/2012 preferred by the respondents with a direction to the

petitioners to cull out the suitability of the candidates on the basis of the trade test held in the selection process set in motion in November, 2007 with reference to seniority-cum-suitability of the candidates (apprentices).

Assailing the legality and correctness of the said order, Mr. Ruchir Mishra, the learned counsel for the petitioners submits that the post of Assistant Binder is a non-selection post and the appointment on the said post was made on seniority-cum-suitability basis and not merely based on seniority. The learned counsel further argued that on 08.02.2008, practical test/ trade test was conducted and on 09.08.2008, the Recruitment Board in its meeting declared a panel of 37 candidates who had qualified in this test. Challenging this declaration of Recruitment board two applicants, Puneet and Nafe Singh filed O.A No. 2318/2008 before the learned CAT, alleging that the persons who had done apprenticeship much after them had been selected. Vide Order dated 20.11.2008, the learned CAT dismissed the said O.A. Challenging the order passed by learned CAT, these applicants filed W.P.C No. 26 of 2009 before this court. This court vide its judgment and order dated 20.07.2010, while disposing off this petition directed the 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. Pursuant to the directions issued by this court, the respondent redrew the panel of selected candidates on 06.12.2011, in which they did not include the name of respondent Nos.1 and 2 on the ground that they being candidates of general category have failed to secure 60% marks.

The learned counsel argued that in July, 2012 in the Contempt Petition, i.e. CP No.723/2011 preferred by the respondents, the petitioners had filed a reply wherein they had taken a categorical stand that they have redrawn the panel in terms of the direction given by the this court vide judgment dated 20.07.2010 and based on this reply filed by the petitioners only, the learned Tribunal disposed of the said Contempt Petition preferred by the respondents, giving them a liberty to file a fresh OA. The learned counsel also argued that the learned Tribunal has failed to appreciate the difference between the appointment on seniority-cum-merit and merit-cum-seniority basis and thus erred in holding that the petitioners based the entire selection process on marks obtained by the respondents in the trade test. The learned counsel also argued that the learned Tribunal has failed to appreciate the fact that if seniority of

apprenticeship is made, the sole criteria for appointment then the seniors would get appointment regardless of their unsuitability and the same will defeat the rights of the other meritorious candidates and therefore, the petitioners adopted the criteria of seniority-cum-suitability wherein a trade test would be conducted in which the candidates appearing in UR category shall obtain minimum 60% marks and in SC/ST/OBC/PH category shall obtain 50% marks. Based on these submissions, the learned counsel for the petitioners prays for setting aside the order passed by the learned Tribunal.

We have heard the learned counsel for the petitioners at considerable length and have given our conscious consideration to the arguments advanced by him.

In November, 2007, an advertisement was issued by the petitioners inviting applications for filling up 45 vacancies of Assistant Binder in the Directorate of Printing. The respondents herein had participated in the selection process but were not included in the panel of selected candidates. There were some other candidates, namely, Puneet and Nafe Singh who had undergone apprenticeship from 07.10.1997 to 06.10.1999 and 07.10.1998 to 06.10.2000 respectively, and participated in the

selection process but remain unsuccessful. These two applicants had approached the learned Tribunal by way of OA NO.2318/2008, raising the plea that the candidates who had done apprenticeship much after them were selected in utter disregard to their preferential claim of having completed the apprenticeship much earlier in comparison to the successful candidates. The claim of these applicants before the learned Tribunal was that the post being ‘non-selection post’, the question of ‘comparative merit’ was not the criteria and that the criteria was that the ones who had completed apprenticeship earlier would be required to be treated as senior and hence would be entitled to be appointed. The learned Tribunal did not agree with the plea raised by these applicants and dismissed the OA preferred by them.

To challenge the order of the learned Tribunal, these applicants preferred a writ petition being W.P. (C) 26/2009 and vide order dated 20th July, 2010, accepting the plea of these applicants, this Court gave the following directions:

“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.*

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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.”

Pursuant to the said direction, the petitioners had redrawn the panel but since the redrawn panel was also based on the same criteria adopted by the petitioners, therefore, fresh challenge was laid by the respondents to the said panel and by impugned order dated 19.08.2014, the learned Tribunal gave fresh direction to the petitioners to cull out the suitability of the candidates on the basis of the trade test held in the selection process set in motion in November, 2007 with reference to seniority-cum-suitability of the candidates (apprentices). In our view the learned tribunal is right in holding that since the petitioners have again based the entire selection process on qualifying marks and standard merit of the respondents, ignoring the direction given by the Hon’ble High Court vide W.P.(C) 2756/2015

order dated 20.07.2010, they shall cull out the suitability of the candidates on the basis of the trade test with reference to seniority-cum-suitability of the candidates (apprentices).

Since the decision of this Court dated 20.07.2010 was not challenged or assailed by the petitioners, therefore, the same has attained finality and now the petitioners have to carry out the direction given by the Hon'ble High Court in terms of the order dated 20.07.2010 and the directions given by the learned tribunal in the impugned order are mere reproduction of the directions given by this court in its earlier order dated 20.07.2010.

There is no merit in the present petition and the same is hereby dismissed. The petitioners are accordingly directed to carry out the implementation of the direction given by the learned Tribunal without causing any further delay in the matter.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MARCH 20, 2015

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