

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16469 of 2014 (O&M)

Date of decision: 29.04.2016

Amresh Upadhyay

....Petitioner

Versus

Union of India and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Mr. Aman Chaudhary, Advocate for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi Raheja, Advocate for
respondents No. 1 to 3.

P.B. Bajanthri, J.

The petitioner has questioned the validity of order dated 11.03.2014 (Annexure P-4) and 23.04.2014 (Annexure P6) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'Tribunal') in O.A. No.106/PB/2013 and R.A. No. 060/00056 of 2014.

2. The Railway Board vide memo dated 02.12.2010 issued to all the General Managers of Indian Railways including Production Units informed and explained regarding the engagement of Course Completed Act

Apprentices as 'substitutes' in Group 'D' in Indian Railways which reads as follows:-

“No.E(MPP)2005/6 New Delhi, dated 02.12.2010

*The General Managers,
All Indian Railways including Production Units*

*Sub: Engagement of Course Completed Act Apprentices
as substitutes in Group 'D' on Indian Railways.*

*Board vide its letter No. E(MPP)2002/12/26/Vo.II
dated 21.06.2004 had clarified that Course Completed Act
Apprentices can be engaged as Substitutes in Group 'D' under
General Managers' powers in administrative exigencies.*

*It is further clarified that Diploma/Degree holders
trained under the Apprentices Act 1961(as amended from time
to time) in Railway establishments can also be considered,
(similar to ITI, etc. trained Act Apprentices engaged as
substitutes) for engagement as substitutes in Group 'D' posts
within the General Managers' powers in administrative
exigencies, subject to their fulfilment of the extent instructions
prescribed for such engagement.*

*(Anil Wasoo)
Dy.Director E(MPP)
Railway Board
New Delhi, dated 02.12.2010”*

3. In view of the aforesaid communication the General Managers have been given powers in Administrative exigency to engage as “substitutes” in Group D Posts, those who have completed Course Completed Act Apprentices.

4. Respondent No. 3 issued a notification to fill up “engagement of Course Completed Act Apprentices as substitutes in pay scale of Rs.5200-20200+1800” in Rail Coach Factory, Kapurthala. It was indicated as follows:-

*“It has been decided to form a panel for
filling up post in pay band of Rs. 5200-20200+1800 G.P.
As substitutes in RCF from Course Completed Act
Apprentices who passed out in various trades of 93rd*

Batch and left out candidates of earlier than 93rd batch of All India Trade Test in Technical Training Centre, RCF, Kapurthala.”

5. Physical Efficiency Test is also prescribed with reference to Annexure A-16 for recruitment to Group 'D' post.

6. Petitioner has undertaken his apprenticeship training from North Western Railway Carriage Workshop at Jodhpur. By virtue of employment notice 02/11/RCF/Subs. for engagement of Course Completed Act Apprentices as 'substitutes' restricted to 93rd Batch and left out candidates of earlier than 93rd Batch of All India Trade Test in Technical Training Centre, RCF, Kapurthala, the petitioner was denied participation in the selection and appointment as a 'substitutes' in the pay scale of Rs.5200-12200+1800. He has thus, also questioned the validity of the prescription of Physical Efficiency Test vide Annexure A-16 before the Tribunal. The petitioner contended that employment notice dated 28.10.2011 bearing No.02/11/RCF/Subs. restricting the recruitment to such of the candidates who have obtained apprentice in 93rd Batch or left out candidates of earlier than 93rd Batch of All India Trade Test in Technical Training Centre, RCF, Kapurthala and denying others who have obtained similar apprenticeship, is illegal, arbitrary and discriminatory. It was further contended that Physical Efficiency Test prescription by the 3rd respondent, General Manager, RCF, Kapurthala (Punjab) is contrary to the directions issued by the Railway Board dated 21.06.2004 read with communication dated 02.12.2010. The Tribunal rejected the petitioner's application on the following points:-

- (i) Petitioner has no locus standi.
- (ii) The 3rd respondent -General Manager, RCF, Kapurthala (Punjab) is competent to prescribe mode of recruitment

like Physical Efficiency Test.

- (iii) Questioning the communication dated 04.09.2002 was
barred by time

7. The petitioner preferred review application but the same was rejected on 23.04.2014 vide Annexure P-6. Thus, the petitioner has filed this petition.

8. On 17.10.2014, this Court was pleased to order as follows:-

“List on 11.12.2014 for arguments. The respondent-Railway Board may file the short reply/affidavit, if any. The short reply/affidavit shall briefly mention the manufacturing or other industrial activities carried out at Kapurthala as well as Jodhpur. The curriculum difference, if any, in the apprenticeship training be also brought on record.”

and further on 11.12.2014 ordered as follows:

“Present: Mr. Aman Chaudhary, Advocate for the petitioner.

*Mr. Puneet Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate for
respondents No. 1 to 3.*

*The order dated 17.10.2014 yet to be complied with. One more but last opportunity is granted to respondents to do the needful, failing which it is directed that the petitioner shall be employed as substitute subject to final outcome of the writ petition and further subject to a report to be submitted by the respondents with regard to the skill/knowledge which he is expected to possess.
List on 27.04.2015.”*

9. Pursuant to the aforesaid orders one Sh. Harbhajan Lal working as Senior Personnel Officer, Rail Coach Factory, Kapurthala has

filed an affidavit. An extract of the affidavit is reproduced herein:-

“That in compliance with the order/directions dated 17.10.2014, a team of two officers from the Rail Coach Factory, Kapurthala had visited North Western Railway Carriage Workshop, Jodhpur on 18.12.2014. The said officers had compared the curriculum for the various trades of Machinist, Welder etc. and found that the curriculum of Apprenticeship in RCF and Jodhpur is the same. It was found that “on job training” at shop-floor is different.”

(emphasis applied)

10. It is admitted fact that the curriculum of Apprenticeship in Rail Coach Factory, Kapurthala and Jodhpur is one and the same. Engagement of Course Completed Apprentice as substitutes in pay scale of Rs.5200-20200+1800 in Rail Coach Factory, Kapurthala is a public employment therefore, the third respondent-General Manager/RCF, Kapurthala (Punjab) cannot restrict selection and appointment to those persons only who have passed out in various trades of 93rd Batch and left out candidates of earlier than 93rd Batch of All India Trade Test in Technical Training Centre, RCF, Kapurthala. Restricting to a class of persons and 'apprenticeship' obtained from a particular Technical Training Centre is in violation of Article 14, 15(1) and 16 of the Constitution of India. Therefore, employment notice dated 28.10.2011 issued by 3rd respondent itself is liable to be set aside.

11. Supreme Court in the case titled as ***Radhey Sham Singh vs. Union of India*** reported in 1997(1) S.C.T. 627 held as follows:-

“8. It is needless to emphasis that the purpose and object behind holding a recruitment examination is to select suitable and best

candidates out of the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones would be deprived of their selection resulting in great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates.

..... xxx xxx xxx

The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the advertisement in question is violative of [Article 14](#) and [16](#) of the Constitution of India as it has been demonstrated from the marks of the appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the selected candidates.”

This court in Full Bench decision titled as ***Abhishek Rishi vs. State of Punjab*** reported in (2013)3 SCT 1 held as follows:-

*“80. In the same theme territorial reservation based district-wise without indicating any connection between such reservation with the object sought to be achieved was held constitutionally bad and violative of [Article 14](#) of the Constitution in [Govind A Mane and others v. State of Maharashtra and others](#); (2000) 4 SCC 200. The Supreme Court applied its earlier dicta in *Minor P. Rajendran and (Minor) A. Periakaruppan cases*”.*

12. In view of the settled legal principles cited above, the 3rd respondent's employment notice dated 28.10.2011 restricting recruitment to those candidates who obtained Apprenticeship during particular period or from a particular place only is violative of Article 15(1), 14 and 16 of

Constitution of India, arbitrary and illegal.

13. The 3rd respondent has meanwhile completed the process of selection and appointment pursuant to employment notice dated 28.10.2011 while holding physical efficiency test. The selection and appointment have not been stayed by the Tribunal or by this Court. Therefore, it is not appropriate to quash the selection of the selected and appointed substitutes at this distance of time. Respondent no. 3 having committed constitutional error in issuing employment notice dated 28.10.2011 and restricting to particular class of candidates, it is appropriate to direct 3rd respondent to consider the petitioner and appoint him on notional basis. 3rd respondent is directed to complete the process of selection and appointment of the petitioner within a period of 2 months from the receipt of the copy of this order.

14. CWP stands disposed of.

29.04.2016
pooja saini

(SURYA KANT)
JUDGE

(P.B.BAJANTHRI)
JUDGE