

WPCT 330 of 2012
with
CAN 1 of 2016 (Old No.11383 of 2016)
Avnish Kumar
v.
Union of India & Ors.

19.09.23
Ct-11
Sl-05
(S.R.)

Mr. Siddhartha Sankar Mandal
Ms. Arunima Das Sharma ... for the petitioner.

Mr. Partha Ghosh
Mr. Ashok Bhowmick ... for the respondent no.2.

Ms. Aparna Banerjee ... for the respondent no.3.

Ms. Ambiya Khatun ... for the respondent no.4.

The present writ petition has been preferred challenging an order dated 7th May, 2012 passed by the learned Tribunal in an original application being OA No.653 of 2009.

Mr. Mandal, learned advocate appearing for the petitioner submits that the petitioner received apprenticeship training under the Apprentice Act, 1961 at Chittaranjan Locomotive Works (in short, CLW) in the trade of '*Electronics Mechanic*'. On 19th March, 2008 a notification was issued by the competent authority inviting applications for filling up the post of Tech-Gr.III/Elect. Fitter in the Electrical Department. The petitioner was an unreserved category candidate and there were six posts in the said category. He applied and though he secured 82.67 marks, he was not called for verification of testimonials and was not appointed though candidates securing lesser marks were given

appointment. Ventilating such grievances, the petitioner approached the learned Tribunal. The said application was mechanically dismissed without considering the issues of the petitioner's eligibility and the discrimination practiced by the respondents.

He submits that a perusal of the order impugned would reveal that the contents of the same are self-contradictory. On one hand, the learned Tribunal refused to interfere with the decision since it was purportedly taken by an expert body and on the other hand observed that Electronics and Electrical are two different and distinct fields.

Drawing our attention to a notification dated 21st July 2011 pertaining to a subsequent selection process, Mr. Mandal argues that for filling up posts of Tech-Gr.III/Elect. Fitter, the relevant trade was stated to be '*Act Apprenticeship/ITI in Electrical Trade/Lineman/Wireman/Electronic Mechanic Trade*'. From such sequence it is explicit that the respondents removed the ambiguity existing in the notification of the earlier selection process by specifying the relevant trade. The letters dated 21st May, 2009 and 12th June, 2009 issued by the Chief Personnel Officer, CLW would also reveal that Chief Electrical Engineer being the competent authority had decided that Electronics Trade was a relevant Trade for the post of Tech-Gr.III/Elect. Fitter. In a letter dated 25th April, 2011 the Director of Industrial

Training, West Bengal also confirmed that the qualifications of candidates for recruitment are to be best adjudged by the employer. In the said conspectus, there was no requirement to refer the matter to the Directorate of Industrial Training, West Bengal for any opinion. The learned Tribunal, however, glossed over such arguments and such infirmity warrants interference. Initially the stand of CLW was that Electronics Trade is equivalent to Electrical Trade. Subsequently, however, a joint affidavit was filed by Railway Recruitment Board (in short, RRB), Kolkata with CLW stating, *inter alia*, that the Trade Course viz. Electronic Mechanic is not at par with Trade Course Electrician. In support of the arguments reliance has been placed upon the judgment delivered in the case of *Abid Hussain & Ors. v. Union of India & Ors.*, reported in (1987) 1 SCC 532.

Per contra, Mr. Ghosh, learned advocate appearing for the CLW submits that there was a dispute as regards the equivalence of Electronics Trade with Electrical Trade. Accordingly, the CLW authorities sought for necessary clarification from RRB, Kolkata. Thereafter, RRB referred the matter to the expert body being the Directorate of Industrial Training for opinion and in response thereto, the Director of Industrial Training by a letter dated 1st July, 2009, intimated that Electronic Mechanic was not at par with the Trade course Electrician. The required qualifications for the concerned

post were categorically specified in the memo dated 19th March, 2008 and having participated in the said selection process the petitioner could not have turned back and challenged the same.

Mr. Ghosh further informs this Court that the petitioner had subsequently been recruited to Grade-III Technician post through in-service quota in Electronics Trade.

Ms. Banerjee, learned advocate appearing for the RRB adopts the submissions of Mr. Ghosh.

Ms. Khatun, learned advocate enters appearance on behalf of the respondent no.4 and files the affidavit-in-opposition. Let same be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

By a notification dated 19th March, 2008 applications were invited from the serving employees for different categories of electrical department and under Clause iii (b) of the said memo it was stated that the minimum technical qualification should be '*Act Apprenticeship/ITI Course in the relevant trade as mentioned in the notification*'. The petitioner was denied appointment as he was not having the prescribed technical qualification. The petitioner contended that training in the trade of Electronics Mechanic entitles him to the post of Tech-Gr.III/Elect. Fitter. Such claim was

considered by the authorities and the issue was relegated to the competent expert body which opined that electronic and electrical are two different and distinct fields. The learned Tribunal refused to interfere with such decision of the expert body. Records further reveal that in a matter pertaining to the same selection process, a Coordinate Bench of this Court also observed that '*electronic and electrical are two different and distinct fields*'. In the said conspectus, we do not find any infirmity in the order of the learned Tribunal refusing to exercise discretion in favour of the petitioner. The judgment delivered in the case of *Abid Hussain (Supra)* is also distinguishable on facts.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the writ petition being WPCT 330 of 2012 is dismissed and the application being CAN 1 of 2016 (Old No.CAN 11383 of 2016) is disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)