

27th November, 2024
(D/L No.17)
Ct. No.4
(SKB)

W.P.C.T.163 of 2023
With
CAN 1 of 2024

B. Sekhar and another
Versus
Union of India and others

Mr. Saptarshi Roy,
Mr. Shuvanil Chakroborty,
Ms. Gargi Roy,
Ms. Kakali Das Chakroborty
....for the petitioners.

Mr. Amitabha Nayek,
Ms. Ranjana Chatterjee
... for the U.O.I.

1. Heard learned counsel for the petitioner and the learned counsel for the Railways.
2. The petitioners' claim to have acquired apprentice training under The Apprenticeship Act, 1961. The fact that they are holding the certificates pursuant to such training is not in dispute.
3. The purpose of acquiring such training and the benefit of having certification of such training is contemplated in the Railway Board communication bearing No.RBE 137 of 2010 dated 17.09.2010 relied upon by the learned counsel for the petitioners. The scheme as contained in the said letter contemplates that certain skilled trades are required continuously in the railway establishment. In view of retirement,

death during service or for other reasons, vacancies occurred in the regular establishment. The process of regular recruitment is a long drawn process and takes a considerable time. The skilled persons required for maintenance and running of the railways and, therefore, cannot be dispensed with and have to be brought in the establishment as substitute, till such time, the vacancies are filled up in accordance with law. It is under such circumstances that the certificates vests the discretion in the General Manager to absorb the persons having apprentice certificates, such as the petitioners, to discharge the duties on the vacancies arising out of death, retirement or otherwise of the regular employee.

4. After going into the establishment in this manner, the apprentices are also conferred other benefits such as, consideration for regularization as well as claim of relaxation of age etc., in a regular recruitment process taking into consideration the length of service rendered by them as substitutes; and subject to fulfillment of other conditions as per the certification.
5. The writ petitioners having acquired apprenticeship training in the mechanical engineering were never asked to work as

substitutes. The learned counsel for the petitioners submits that though the petitioners had acquired their apprenticeship certificates under the Apprenticeship Act, 1961 prior to issuance of the RBE 137 of 2010 (supra), they were to be treated at par with those who acquired the same certificate after issuance of this circular by the Railway Board. These aspect stands clarified by the letter dated 05.10.2012 which, according to him, clearly states that those like the petitioners “cannot be ignored”. The petitioners, thus, had a right to be considered for absorption as substitutes and were pursuing the same by making representations repeatedly. The representations were also acknowledged and recommended by the officials but did not crystallize in absorption of the petitioners as substitutes.

6. It is under such circumstances, that they approached the Central Administrative Tribunal by filing O.A. No.1715 of 2017 seeking direction for their absorption. The tribunal has rejected the claim of the petitioners. Hence, they are before this court assailing the order of the tribunal.
7. The learned counsel for the petitioners submits that in view of the circular contained in the letter

dated 05.10.2012 the petitioners had acquired a right to be considered based on the apprenticeship certificate granted to them. The Railways, however, took a plea that the erstwhile Circular No.RBE 137/2010 (supra) has since been amended in the year 2017 by a communication dated 12.04.2017 issued by the Railway Board which reads as follows:

“Pursuant to amendment in the Apprentices Act, 1961, Board has issued instructions vide RBE No.71/2016 (E(NG)II/2016/RR-1/8 dated 21.06.2016), providing that 20% of the vacancies in case of direct recruitment to posts/categories in Pay Band-1 of Rs.5,200-20,200 having Grade Pay of Rs.1800/- shall be filled giving preference to Course Completed Act Apprentices (CCAAs) trained in Railway establishments and possessing National Apprenticeship Certificate (NAC).

In view of the above, the instructions of Board vide E(MPP)/2002/12/26/Vol.II dated 21.06.04 (RBE No.136/2004) stand withdrawn with immediate effect.”

8. It is submitted that since the petitioners had acquired the right to be considered on the basis of the certificate, the amendment dated 12.04.2017 could not take away their right to be considered. By virtue of such training, the petitioners were required to be considered. In support of such submission, he has referred to a decision of the Apex Court in the case of **Ashish Mathur Vs. Oil and Natural Gas Commission (ONGC) and others** reported in **(1991) Supp.(2) SCC 294**.
9. Another limb of submission of the petitioners' counsel is that the petitioners had acquired the

certificate prior to issuance of the amendment on 12.04.2017 in terms of the Scheme invoked at that point of time. Since they have already acquired the qualification and were legally entitled to be considered for absorption as substitutes, the amendment of 12.04.2017 could not affect their rights and would amount to changing the rules of the game to the detriment to the petitioners who had already acquired the eligibility with the legitimate expectations that they would be considered for absorption as substitutes on the basis of such certificate.

10. The learned counsel has laid great emphasis on the fact that though vacancies were there, the petitioners were deprived of their absorption on the basis of their certificate.

11. The tribunal has proceeded to dispose of the petitioners' case by referring to the subsequent amendment of 12.04.2017 since the practice of absorbing apprentices was withdrawn by the Railways by its letter dated 12.04.2017. The Tribunal was of the considered opinion that subsequent to issuance of such amendment, the petitioners could not have any claim for their absorption in terms of the earlier letter dated

02.12.2010, the same having been amended/withdrawn.

12. The learned counsel for the Railways submits that the findings of the learned Tribunal in this regard require no interference. The fact that the petitioners had acquired apprenticeship training or certificate does not create any kind of right in favour of the petitioners.

13. After issuance of the 2017 amendment, since the practice of absorbing apprentices has been withdrawn, the petitioners cannot claim any right whatsoever to absorption. Even otherwise it is submitted that the acquisition of the certificate does not create any right in favour of the petitioners.

14. Considering the rival submissions and having gone through the records, we find that the emphasis being laid by the learned counsel for the petitioners on existence of vacancies does not enure to the petitioners' benefit. A bare perusal of the Scheme of 2010, which has subsequently been extended so as to include those who had acquired certificate prior to 2010 including the petitioners does not in any way guarantee or give a commitment regarding absorption of the

persons acquiring the apprenticeship certificate. The acquisition of the certificate only gives the General Manager of the Railways a pool/reservoir of qualified persons whom in an administrative exigencies, he could have directed to discharge the duties as substitute against the vacancies arising out of death, retirement or otherwise of regular employees.

15. In this regard, we refer to the letter dated 05.10.2012 being relied upon by the learned counsel for the petitioners, wherein the clarification has been given with respect to the 2010 Scheme. Great emphasis has been laid on the fact that it says that the petitioner “cannot be ignored”. The relevant extract of the clarification is being reproduced hereunder:

Issues raised by the Railways/units	Clarification
Whether diploma/ Degree holder Act Apprentices (GOI trainees) imparted training are to be absorbed after 2.12.2010 (i.e. the date from the issue of Board’s letter) or from any other cut-off date.	Degree/Diploma holders trained in railway establishments, earlier than the issue of letter dated 02.12.2010 (RBE No. 171/2010) cannot be ignored if they are otherwise eligible for being engaged as substitutes in Group ‘D’ Seniority list as maintained for the Degree/Diploma holders Act Apprentices.

16. A bare perusal of the same and a plain reading discloses that the clarification is whether

those who had acquired the apprenticeship certificate prior to 2010 can be ignored or not in view of the fact that the Scheme was of 2010. It is in this context the clarification uses the expression that the diploma holders trained in railway establishments earlier than the issue of letter dated 02.12.2010 cannot be ignored. This expression does not vest any right in favour of the petitioners or those who had acquired the diploma or were trained in the railway establishments. Therefore, the reliance placed by the petitioners' counsel on the decision in the case of **Ashish Mathur** (supra), in our opinion, has no application in the facts and circumstances of the case. In view of the facts in the said case being totally different to the present facts and circumstances which is evident from a bare perusal of para 3 of the said judgment which reads as follows:

“3. However, the appellant who has undergone training according to the Scheme legitimately expects that he would be absorbed by the ONGC. The Scheme was started pursuant to a decision to give training to the wards of the employees of the ONGC and, if found fit, to offer them appointment in the Commission. It was the clear understanding of all concerned that the trainees would be appointed if they were found fit in accordance with the Rules then in force.”

17. The Apex Court in the said case has taken note of the fact that there was a clear

understanding of all concerned that the trainees would be appointed if they were found fit in accordance with the rules.

18. There is no such stipulation in any of the circulars relied upon by the petitioners that by virtue of acquiring the certificates, the petitioners were necessarily to be appointed/absorbed as substitute.

19. In so far as the second submission of the learned counsel for the petitioners, that the 2017 amendment cannot take away their right to be considered, we are not in agreement with the same also.

20. As noted above, the acquisition of the training or certificate did not vest any right in favour of the petitioners whatsoever.

21. Therefore, there is no question of taking away any right by the amendment of 2017. This amendment has also not been assailed in the present proceedings.

22. The judgment of the Apex Court in the case of ***Tej Prakash Pathak and others Vs. Rajasthan High Court and others*** relied upon by the learned counsel for the petitioners lays down an undisputed proposition of law that once a process of recruitment is initiated, the rules of

the game cannot be changed in the midst of such process.

23. Unfortunately, for the petitioners, there is no process of recruitment in the present case involved. The Apex Court judgment in the case of ***Tej Prakash Pathak*** (supra) also there has no application in the facts and circumstances of the present case and, therefore, the petitioners cannot derive any sustenance from the said judgment of the Apex Court.

24. In the above circumstances, we do not find any reason to interfere with the order passed by the Tribunal.

25. The writ petition is, thus, dismissed.

26. Accordingly CAN 1 of 2024 stands disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)