

Surendra Kumar and ors. Vs. Union of India (Uoi) and ors.

Surendra Kumar and ors. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/54475

Court : Central Administrative Tribunal CAT Jodhpur

Decided On : Jul-07-2003

Reported in : (2004)(2)SLJ220CAT

Judge : U A R.K., J Kaushik

Appellant : Surendra Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Shri Surendra Kumar and six others have filed this Original Application under Section 19 of the Administrative Tribunals Act, and have sought the following reliefs: (i) "the impugned advertisement Annexure-A/1, so far as it relates to appointment on the post of Diesel Khalasi, may be set aside to the extent of 6 posts, 'to be filled up by offering appointment to applicant Act Apprentices as per directions of Hon'ble Supreme Court; (ii) in case during pendency of this Original Application any steps consequential to Annexure-A.1 are taken by the respondents, the respondents may kindly be ordered to place the same on record and the same may kindly be declared null and void; (iii) the respondents may kindly be directed to act upon, in accordance with the decision of Hon'ble Supreme Court, as referred herein above, by way of providing employment to applicant Act Apprentices on the Group D posts of Diesel Khalasi, on preferential basis, without subjecting them to go for the written examination, with all consequential benefits and reliefs, as if same was never denied to the applicants; (iv) it may kindly be declared that order Annex.-A/9 is in contravention of the judgment of Hon'ble

Supreme Court as well as earlier decision of the Railway Board and the same may kindly be quashed and set aside; (v) any other direction or order which this Hon'ble Tribunal may keep just and proper in the facts and circumstances of the case, in the interest of justice, may also kindly be passed in favour of the applicants; (vi) the cost of this original application may kindly be awarded in favour of the applicants." 2. The indubitable facts of the case necessary for adjudication of the controversy involved are that applicants have undergone a training under the Apprenticeship Act, 1961 and have passed in 69th All India Trade Test Examination vide letter dated 15th January, 1999 (Annex.-P/5). Their names are placed Sl. Nos. 7, 9, 6, 10, 3 and 12 respectively. The said training was imparted in the Northern Railway Workshop, Jodhpur. The Railway Board have issued the instructions regarding recruitment of Course completed Act Apprentices on the Railways vide letter dated 26.8.1996 (Annexure-A/2). This has been issued in view of the verdict of Hon'ble the Supreme Court's judgment in the case of U.P. State Road Transport Corporation and Ors. v. U.P. Parivahan Nigam Shikshukh Berozgar Sangh and Ors. (hereinafter referred to as 'UPSRTC' for brevity) case for reported in (1995) 2 SCC 1, on the basis of which the Ministry of Labour also have issued directions on 26.2.1996 (Annex.-A/3). It has been also averred that as per the judgment of the Supreme Court in the said case, it has been specifically directed that Act Apprentices trainees could not be required to appear in any written examination for employment, if any, provided by the Regulation. A common seniority list was prepared by the respondent No. 4 of Act Apprentices trainees for appointment on the post of Diesel Khalasi. The interview letters were issued on 11.2.1999 to the applicants. However, for want of vacancies, the applicants had not alternative except to stand in the queue and wait for their turn.

Further, before their turns were to come the Railway Board, issued an order dated 19.8.1999 restraining the concerned authorities from providing appointment to Act Apprentices on Group 'D' post.

3. Thereafter, an order dated 15.2.2000 (Annex.-A/10) came to be issued through which 72 persons were given regular appointment on completion of two years service on the post of Substitute Khalasi. The matter was represented against but of no avail. Subsequently, the Notification was issued on 13/19.7.2002, for inviting

applications for appointment to the post of Diesel Khalasi. In the Notification, it has been provided that a written test is to be conducted for the post of Gangmen, Diesel Khalasi and Khalasies. The Notification does not contain any clause for considering the cases of Act Apprentices in the Railways on preferential basis without subjecting to written test.

4. The O.A. has been filed on multiple grounds mentioned in Para 5 and its sub-para of the O.A. We are skipping up narrating the same here and would be dealing the grounds which are stressed during the arguments, in the later part of this order.

5. Separate detailed replies have been filed on behalf of the respondents No. 1 to 3 and 4. In the reply filed on behalf of official respondents, a preliminary objection regarding the jurisdiction and maintainability of this O.A. at Jodhpur has been taken. It has been averred that the Railway Board have issued specific instructions that the written examination is a must and one is required to appear in the examination and also should pass the same. It has been specifically provided in Para 2(1) of the Circular that there will be no change in the procedure of recruitment and selection will be in accordance with the merits of the eligible candidates. However, where other things are equal between two candidates then the candidates who has completed Apprentices course in Railway Establishment will be given preference over the candidates who are not such apprentices. Thus, this being the position, the applicants cannot be exempted from the written test to be conducted by the respondents. The impugned notification Annexure-A/1 has been issued perfectly in accordance with the instructions issued by the Railway Board. The grounds raised in support of the O.A. are denied. It has also been averred that the applicants are trying to open the judgment of Supreme Court delivered in UPSRTC's case (supra) but, the ratio of the said judgment in no way can be applied in the instant case in as much as that judgment has been delivered in view of the circulars delivered by the State of Uttar Pradesh, wherein, the Act Apprentices were not required to under go any written examination. On the other hand, it has been specifically provided in the instant case that while making recruitment to Group 'D' posts, there will be no change in the procedure of recruitment. The Act Apprentices will be given preference in case of equal number

of marks secured in the written examination to be conducted by the respondents, the preference shall be given to the Act Apprentices. Thus, there is no violation of Articles 14, 16, 21 or 300 (A) of the Constitution. The application may be ordered to be dismissed with costs.

6. The respondent No. 4 through a separate reply, has taken a preliminary objection that the Deputy Chief Mechanical Engineer, North Western Railway, Jodhpur, cannot be impleaded as respondent in the instant case. By virtue of the provisions contained in the Code of Civil Procedure in the cases of Railways, the O.A. can be filed against the Railway through the General Manager only and in absence of that, the O.A. itself is not maintainable. No direction can be issued to the respondent No. 4.

7. Further, the applicants are not the Railway Employees and the O.A. cannot be entertained for want of jurisdiction. In the year 1997, selection was held for recruitment of 13 substitute Group 'D' employees and the same was objected by the Railway Board. There is no circular issued by the Railway Board that no written examination is to be conducted. The assignment of seniority to Act Apprentices in the trade test and their entitlement to be called for selection are separate issues. The Supreme Court has observed that persons who are Act course completed, do not have any right to be appointed under the Act. The post of Group 'D' is required to be filled only through the Railway Recruitment Board as per Annexure-A/9 and accordingly, the Railway Recruitment Board, Ajmer, have issued the Notification Annexure-A/1.

The North Western Railway has come into operation w.e.f. 1.10.2002 and there is no question of receipt of any representation by the General Manager, North-Western Railway prior to that date. The grounds have been generally denied. No rejoinder has been filed on behalf of the applicants.

8. On the joint request and consent of the learned Counsel for the parties, the matter was heard for final disposal at the admission stage. We have heard the learned Counsel for the parties at considerable length and have bestowed our earnest consideration to the submissions made, pleadings and the records of this case.

9. The learned Counsel for the applicant has first dealt with the preliminary objections raised on behalf of the respondents regarding maintainability of this very O.A. As regard the objection of territorial jurisdiction of this Bench of the Tribunal is concerned, it has been submitted that as per the very Notification Annexure A/1, Jodhpur is one of the examination centre on which the written test for the post of Diesel Khalasi has been held. He has also submitted that during the pendency of this case, the respondents have conducted the written test for the said post and the applicant as an abundant caution, has also appeared in the same at Jodhpur Centre. Thus, a substantial part of cause of action has arisen at Jodhpur and as per Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, an application can be filed at the Bench within whose jurisdiction cause of action wholly or in part, has arisen. On the other hand, the learned Counsel for the opposite party has reiterated the pleadings relating to this preliminary objection. However, the position regarding appearing of the applicant in the written test which was held at Jodhpur has been admitted in express terms. Thus, there can hardly be any objection regarding territorial jurisdiction of this Bench since the complete selection is based only on written test and the same has been conducted at Jodhpur. Condition relating to jurisdiction in Annexure A-1 has no relevance. If that be so, it would be safe to come to an inescapable conclusion that this Bench of the Tribunal has jurisdiction to entertain this O.A. Hence, the preliminary objection regarding the point of jurisdiction stands replied.

10. As regards the objection relating to impleading the respondent No.4 in the array of the respondents, the learned Counsel for the respondents has with his usual vehemence stated that respondent No. 4 has absolutely nothing to do with the matter and he has been wrongly impleaded as respondent No. 4. The learned Counsel for the applicant has countered this argument and has stated that the seniority list as per the verdict of the Supreme Court in the case of UPSRTC (supra) is required to maintain the seniority list, and it was only the respondent No. 4 who could have explained the correct position regarding eligibility and seniority of the applicants and thus, he is one of the necessary party. We find force in the contention of Mr. Choudhary and the factual statistics has also been furnished by the respondent No. 4 in Para 3 of the reply. Hence, this preliminary objection also stands over ruled.

11. There is an another objection regarding impleading of the General Manager of the Northern Railway as one of the respondents. The learned Counsel for the respondents has submitted that as per the provisions of the Code of Civil Procedure, the General Manager is required to be impleaded as one of the respondents. On the other hand, the learned Counsel for the applicants has submitted that the provisions of the Civil Procedure Code as such, do not apply to the applications filed before the Tribunal and the Tribunal is to be guided by the principles of natural justice and has power to regulate its own procedure.

However, it has been submitted in this case that the impugned order has been issued by the UPSRTC and the other order has been issued by the 3rd respondent. There is no order which has been issued by the General Manager in the present case. Further, it has been submitted that the subject matter of this case also relates to a policy matter and the policy has been framed by the Railway Board which has been rightly impleaded as one of the respondent, hence, there is no infirmity in non-impleading the General Manager as one of the respondent. We find that the arguments of the learned Counsel for the applicants are in consonance of Section 22 of the Administrative Tribunals Act. As a matter of fact, it is the Railway Board, who have ordered for stopping the recruitment which was being done by the General Manager and, therefore, the Railway Board is a necessary party. In this view of the matter, the objection relating to the non-impleading the General Manager, as one of the party, stands repelled and is hereby over-ruled.

12. Now, advertng to the facts of this case. The learned Counsel for the applicant invited our attention to the case of UPSRTC case. He has taken us to almost all the paras of the said judgment and placed heavy reliance on the same. He has submitted that the respondents should be directed to follow the said judgment and the clauses in Annexure A-1 relating to holding of a written examination should be struck down and applicants should be considered for the post of Diesel Khalasi without subjecting them to a written test and to that extent, the impugned order Annexure A/1 deserves to be quashed. He has also invited our attention to various circulars issued in this respect by the Railway Board, wherein, the law laid down by the Supreme Court has been ordered to be specifically followed. He has

stressed that in the past also the Selections to the post of Diesel Khalasi were done without subjecting to any written test and number of persons have been so appointed who were similarly situated as that of the applicants' and even they were in the same merit/seniority list. In this way, the respondents have chosen to adopt double standard and are subjecting the applicants to a written test which is contrary to law laid down by the Supreme Court in the case of UPSRTC.¹³ On the contrary, Mr. Trivedi, learned Counsel for the official respondents has reiterated the contentions of the reply and has submitted that the respondents are more than willing to follow the law laid down by the Apex Court in the aforesaid case. He has submitted that they are strongly following the same keeping in view the very Railway Board's Circular on which reliance has been placed by the applicants. He has also submitted that none of the circulars including Annexure A-2 or R-1 are under challenge in this O.A. and the complete action has been taken in accordance with the procedure established by law. He has tried to explain as to how the clause of preference is to be administered and has clarified that other classification must be equal and thereafter, the preference is to be given to the Apprentices who have been given training in the Railway establishments. He has also submitted that the Railway Recruitment Board issued a Notification Annexure-A/1 perfectly as per rules in force and there is no illegality or arbitrariness or violation of Articles 14, 16, 21 and 300(A) of the Constitution of India, therefore, the applicants have no case calling interference by this Tribunal.

14. He has also placed reliance on one judgment delivered by Hon'ble the Supreme Court in *Mitrangshu Roy Choudhary and Ors. v. Union of India and Ors.*, 1999 AIR SCW 1215=1999(3) SLJ 173 (SC), and has submitted that there is no guarantee or promise for employment while sending a person for Apprenticeship Course. Thus, the applicants do not have any right for appointment.

15. At the very out-set, for appreciation of the controversy involved in this case, it would be necessary to extract Paras 12 and 13 of the judgment delivered by Hon'ble the Supreme Court in the case of UPSRTC and Anr. (supra) which reads as under: "12. In the back ground of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training; (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 v. N. Hargopal*

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated 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.

13. Insofar as the cases at hand are concerned, we find that the Corporation filed an additional affidavit in C.A. Nos. 4347-4354 of 1990 (As desired by the Court) on 20.10.1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. Insofar as the age requirement is concerned, the same shall be relaxed as indicated above." A perusal of the aforesaid judgment reveals that the Supreme Court has laid down the four principles which should be kept in mind while dealing with the claim of trainees and incidently, the learned Counsel for the respondents have absolutely no objection in adhering to these principles and it has been fairly stated that they are strictly adhering to the same. However, the controversy remains only as regards the conducting of the written examination. Para No. 13 of the UPSRTC case relates to the particular facts of that case wherein it was observed that the trainee would not be required to appear in any written

examination, if any, provided to, by the Regulation. It is, on this point, now the controversy hinges and the fate of the applicants would entirely depend on the finding of this issue and in case, the finding is that the written test is not required to be held, the applicants will swim and in case, finding is otherwise, i.e., they are required to appear in the written test the applicants would sink.

16. It would be profitable to recall some of the arguments of the learned Counsel for the respondents. The learned Counsel had submitted that the Supreme Court did not lay down any law that no written test is required to be conducted in case of the Act completed Apprentices and the relief which has been granted by the Supreme Court, cannot be construed to be precedent as per the Article 14 of the Constitution. On the other hand, it was contended by the learned Counsel for applicant that the applicants are similarly situated and their case is fully covered on all fours by the judgment of the Supreme Court in the case of UPSRTC and others and the applicants should be given the same treatment and the relief as given in that case. Therefore, they should not be subjected to any written test.

17. We have given a thoughtful consideration in the matter. It would be relevant to point out that as per Para 12.1 of the Annexure-A/1, the selection procedure for the post in question has been prescribed which reads as under: "12.1. Selection for category Nos. 01, 02, 03 will be based on written exam. Followed by physical efficiency test to assess the candidates physical fitness for the posts. RRB reserves the right to conduct second stage examination if required. The physical efficiency test will be of qualifying nature. There will be no interview for these categories." 18. Thus, the complete selection for the post of Diesel Khalasi is required to be based on the written test alone. The Railway Board also while issuing their policy dated 26.8.1996 (Annex. A/2) have categorically submitted that there will be no change in the procedure of recruitment and selection and the recruitment will be in accordance with the merits of the eligible candidates and they will be given preference as per the judgment of the Supreme Court. It is nowhere mentioned in the policy that no written test is to be conducted.

19. Nextly, we have also gone through the complete judgment which is heavily relied upon by both the parties, i.e., UPSRTC. In this case, no question seems to

have been raised regarding the conducting of the written test or otherwise and consequently no finding has been given on this point. We only find that when dealing with the matter regarding grant of the relief, the Supreme Court has observed that in the particular case the trainee would not be required to appear in the written examination. The law on the precedent is well settled. The essence of a decision has been lucidly dealt with by the Supreme Court in the case of *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647, wherein their Lordships has held as under: "That every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides.

A case cannot be quoted for a proposition which follows from it logically as law is not always logical at all--Also not proper to build upon a case on a sentence/sentences of judgment extracted from here and there "A decision is only an authority for what it actually decides--What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it." Further, it has also been held that it is the ratio and the principle laid down therein which makes a decision binding precedent and not its conclusion. This proposition of law has been laid down in *State of Orissa v. Sudhansu Sekhar Misra's* 20. We are of the firm opinion that the Hon'ble Supreme Court did not lay down any proposition of law that no written test should be conducted in case of the Act Apprentices who have completed their course in a particular establishment to be considered for appointment.

Thus, the contention of the learned Counsel for the applicants that the applicants should not be subjected to written test as per the judgment of the Apex Court in UPSRTC's case falls on the ground and has no substance.

21. Now looking from the other angle. The only basis of preparing the merit as per the procedure for the post of Diesel Khalasi is written examination and if the submissions of the learned Counsel for the applicant that no written test should be

held in the matter is taken to its logical conclusion as true and acceptable, the result would be absurd as there will be no basis for preparing the merit and how the question of preference will be decided in absence of any merit. Thus, there is no justification for holding that no written test was required to be held in the present case.

22. One of the argument of the learned Counsel for the respondents has been that the applicants have not challenged the very policy which has been framed by the Railway Board and until the very policy is challenged, he would have no cause at all. Since, we have come to the conclusion that there has been nothing wrong in the action of the respondents in subjecting the applicants to the written test, there is hardly any need for adjudicating upon this point. Framing of the Recruitment Rules is a matter of policy and there are limits of judicial review of the Government policy as laid down in Para 12 of the judgment in Federation of Railway Officers Association and Ors. v. Union of India, AIR "12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which of the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be unrestricted discretion. On matter affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issue. Unless the policy of action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, this Court will not interfere with such matter." 23. In view of the aforesaid proposition of law also there was hardly any question of carrying out of the judicial review of the rules of recruitment meant for the post in question.

24. The judgment relied upon by the learned Counsel for the Respondents, i.e., in Mitranshu Roy Chaudhary and Ors. (supra), has no relevance to the controversy involved in the present case. However, the concept of preference as put, forward by him has our concurrence since the matter find support from a recent judgment of the Supreme Court in The Secretary, Andhra Pradesh Public Service Commission v. Y.V.V.R.Srinivasulu and Ors., 2003(2) SLJ 321 (SC). As regards the plea of discrimination put forward on behalf of applicant, since we have come to the firm conclusion that there has been no illegality in holding of the selection on

the basis of written test, there is no question of entertaining the plea of discrimination. If at all any relief has been granted to any person contrary to the law that cannot become a cause of action for the other similarly situated person. After all, illegality cannot be perpetuated on the ground of discrimination. We find support of our view from a recent judgment of the Supreme Court in the case of State of Bihar and Ors. v Kameshwar Prasad Singh and Ors., 2000(9.) SGC 94=2001(1) SLJ 76 (SC). Thus, the O.A. fails on all counts and the action of the respondents is well in conformity with the rules in force as well as the law laid down by the Hon'ble Supreme Court.

25. The upshot of the aforesaid discussions is that the O.A. is merit less and devoid of any substance. The same stands dismissed accordingly. However, in the facts and circumstances of this case, the parties are left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com