

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2654/96

Decided on 4.6.1998

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Yasin Khan Applicant
(By Advocate: K.K. Patel ~~and~~
Shri B.S. Mainee)

Vs.

U.O.I. & Ors. Respondents
(By Advocate: Shri R.L. Dhawan)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER ((J))
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

Adige
(S.R. ADIGE)
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2654 of 1996
New Delhi, dated this the 4th June, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

(21)

Shri Yasin Khan,
S/o late Shri Munshi Khan,
Working as SOM (Constrn.),
Railway Quarter No. 112, Parker Road,
Moradabad-244001. APPLICANT

(By Advocate: Shri K.K. Patel ~~and~~
Shri B.S. Mainee
Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Administrative Officer (Constrn.),
Northern Railway, Kashmere Gate,
Delhi.
3. The Asst. Secretary,
Railway Recruitment Board,
SCO 78-79, Sector 8-C,
Chandigarh. RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

This Full Bench has been constituted to answer the reference as to whether candidates who have not successfully undergone the three year diploma course in Civil Engineering but have successfully undergone the two year certificate course in Draftsmanship (Civil) are eligible for being regularised as Sub-Overseer Mistries against the direct recruitment quota in the Railways.

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2. While a Division Bench of the CAT, PB in its judgment dated 29.1.96 inb O.A. No. 1419/94 Shri Mam Chand & Ors. Vs. UOI had directed respondents to consider the case of those applicants for appointment against the direct recruitment quota of Sub-Overseer Mistries, although they did not possess the three year diploma qualification, a Single Member Bench of the CAT PB in its judgment dated 8.12.97 in O.A. No. 2654/96 Yasin Khan Vs. UOI & Ors. disagreed with that judgment in Mam Chand's case (Supra) holding that

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"Without meeting the prescribed qualification there can be no recruitment even in respect of promotion quota only on the basis of length of service simply because the applicant worked for a long period. He should not be allowed to compete (even) if he does not have the necessary qualification. As I do not agree with the Division Bench's decision which followed the Jodhpur Bench, this matter has to be referred to the Hon'ble Chairman for constitution of a larger Bench to consider the correctness of the view held by the Principal Bench in Mam Chand's case (O.A. No. 1419/94)."

3. It needs to be mentioned that applicants Mam Chand & Ors. in O.A. No. 1419/94 as well as applicant Yasin Khan in O.A. No. 2654/96 were initially appointed as daily wage casual labourers and were later granted temporary status. Subsequently they were appointed as Sub Overseer Mistries on ad hoc/casual basis during 1981-84 and were working as such continuously since then. Their grievance was that although they had successfully done the two year certificate course in Draftsmanship (Civil) they were not being

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regularised as Sub Overseer Mistries, while respondents were going ahead with regularising those who had successfully completed the three year diploma course.

4. We have heard Shri K.K. Patel for applicant and Shri R.L. Dhawan for respondents. Shri Patel has referred to a number of rulings including AIR 1990 SC 371 Bhagwati Prasad Vs. Delhi State Mineral Development Corporation; JT 1993 (4) SC 143 Dr. M.S. Maudhel & Anr. Vs. Shri S.D. Halekar & Ors.; SLJ 1998 (1) SC 130 Dr. H.S. Gupta Vs. Chairman Board of Governors; ATJ 1997 (1) 16 Mam Chand & Ors. Vs. UOI; SLR 1975 (1) 153 Amrit Lal Berry Vs. Collector, Central Excise; ATR 1988 (2) 518 A.K. Khanna Vs. UOI; AIR 1979 SC 621 and AIR 1968 SC 718 Padampar Sugar. On the other hand, Shri Dhawan has cited Moti Lal & Ors. Vs. UOI; 1997 SCC (L&S) 717 UOI Vs. Mohinder Singh; 1997 SCC (L&S) 1119; Jawahar Lal Nehru Vishwa Vidyalaya; 1996 (10) SCC 565 E. Rama Krishan & Ors. Vs. State of Kerala and 1997 (4) SCC 388. We have perused the materials on record and given the matter our careful consideration.

5. The Note below Rule 159 (1) IREM Vol. I (1989 Edition) lays down that skilled Artisans Gr. I (Rs.1320-2040) are eligible for promotions as Mistries (Rs.1400-2300) as also for fitment in

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Master Craftsmen Scale (Rs.1400-2300) in accordance with rules/orders governing such promotion/fitment. Although respondents in Para 4.3 of their reply dated 21.2.97 to O.A. No. 2654/96 have stated that there is no direct recruitment of Sub Overseer Mistris (Rs.1400-2300), a copy of Chief Engineer (Construction) Northern Railway's letter dated 30.5.88 (Ann. R-4) which circulates the revised avenued of promotion chart of works staff upto the post of Sub-Overseer Mistry/Mistry (Works) grade Rs.1400-2300 (RPS) provides that 33 1/3% of vacancies are to be filled by promotion on the basis of seniority-cum-suitability and the remaining 66 2/3% by way of direct recruitment. The CAT PB in its judgment dated 29.1.96 in Mam Chand's case (supra) has also recognised the existence of the direct recruitment quota while making appointment to posts of Sub Overseer Mistris (Rs.1400-2300).

6. It is settled law that if the rules/instructions prescribe quotas for filling up of vacancies those vacancies have not only to be filled up as per the prescribed quotas, but also in the manner and by following the prescribed procedure, and from amongst those who are eligible according to each of the prescribed quotas. Thus the direct recruitment quota posts have to be filled in the manner, and by following the

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procedure prescribed in the rules/instructions for direct recruitment, and from amongst those who are eligible, to be appointed by direct recruitment as per those rules/instructions.

7. As the term 'direct recruitment' referred to in letter dated 30.5.88 (Supra) has not been limited, circumscribed, or qualified in any way, it would ordinarily mean recruitment through the open market, in which only those candidates possessing the necessary minimum qualifications would be eligible. This view is supported by the Employment Notice dated 29.9.80 which has been shown to us and a copy of which is on record, by which the Railway Service Commission had invited applications in the prescribed form from candidates for filling up 33 posts of SubOverseer Mistry (Civil) in which the qualification prescribed is a diploma in Civil Engineering from a recognised Institution or University. There is no mention in that Employment Notice of candidates possessing a certificate or having successfully completed two year course in Draftsmanship (Civil), as being eligible for direct recruitment as Sub Overseer Mistry. Nothing has been shown to us to suggest that the aforesaid Employment Notice was successfully challenged and stayed, modified or quashed and set aside.

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8. Therefore as a general rule candidates who have not successfully undergone the three year diploma course in Civil Engineering from a recognised Institution/University, and have undergone only the two year certificate course in Draftsmanship (Civil) are not eligible for regularisation as Sub Overseer Mistries against the direct recruitment quota in the Railways.

9. There are however some peculiar features in the matter before us which merit notice.

10. Admittedly respondents had engaged persons possessing the three years diploma, as well as those possessing the two year certificate as Sub Overseer Mistries on casual basis, and both categories were continued as such for many years. Aggrieved by their non-regularisation as Sub Overseer Mistries some of the diploma holder casual Sub Overseer Mistries had approached CAT, Jodhpur Bench in O.A. No. 359/89 who allowed the O.A. on 5.4.94 and directed that necessary steps be taken to regularise them after preparing a Scheme for the purpose. It is not denied that those persons were regularised. Thereupon Mam Chand and Ors., who were similarly engaged certificate holder causal Sub Overseer Mistries filed O.A. No. 1419/94 claiming similar benefits. Relying upon the ratio of the Hon'ble Supreme Court's judgment in Bhagwati Prasad Vs.

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Delhi State Mineral Dev. Corporation AIR 1990 SC 371 wherein it had been held that practical experience would always aid persons to effectively discharge their duties, and once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation on the ground that they lacked the prescribed educational qualifications, the CAT, PB in its judgment dated 29.1.96 in Mam Chand's case (Supra) directed respondents to consider them for regularisation as Sub Overseer Mistris (Civil) (Rs.1400-2300) against direct recruitment quota. It is not denied that the judgment in Mam Chand's case (Supra) was not challenged by respondents and has also been implemented by them. If so, the decision being beneficial to the employee, cannot be denied by the respondents to present applicant Yasin Khan (see observations of the Hon'ble Supreme Court in Ram Kumar & Ors. Vs. UOI & Ors. CMP 31378 of 1988 dated 6.9. 90) more particularly as he is admittedly senior to Mam Chand & Others.

11. Accordingly while on the point of law, the reference is answered as in Paragraph 8 above, in the facts and circumstances of this particular case, we hold that applicant Yasin Khan would be entitled to consideration for regularisation as Sub Overseer Mistry (Civil) (Rs.1400-2300) under

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direct recruitment quota, in the same manner as respondents have considered the case of Mam Chand and others with consequential benefits in accordance with law.

12. This reference is accordingly returned to Registry for being placed before Hon'ble Chairman and thereafter for further action in accordance with law.

S.R. Adige
(S.R. ADIGE)

VICE CHAIRMAN (A)

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)

MEMBER (J)

R.K. Ahuja
(R.K. AHOOJA)

MEMBER (A)

/GK/