

Central Administrative Tribunal  
Principal Bench

O.A.No.2370/97

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Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 15 day of November, 1998

Shri Yashpal  
s/o Shri Dal Singh.  
r/o 249, Masjid Moth  
New Delhi - 49.  
working as Fitter, i.e., Group 'C'  
Sub-Division-V  
CPWD Office  
Srinivas Puri  
New Delhi.

... Applicant

(By Shri K.K.Patel, Advocate)

Vs.

1. Central Public Works Department  
through  
Director General (Works)  
Nirman Bhawan  
New Delhi - 110 001.
2. The Superintending Engineer  
Delhi Central Circle  
CPWD-III, Indraprastha Bhawan  
New Delhi - 110 002.
3. The Executive Engineer (Electrical)  
Electrical Construction Division - V  
CPWD, 'A' Wing, Pushpa Bhawan  
New Delhi - 110 017.

... Respondents

(By Shri V.S.R.Krishna, Advocate)

O R D E R

The applicant who claims to have worked as daily rated Fitter, Group 'C' post, since 1978, is aggrieved by his non regularisation even after passing the requisite Trade Test.

2. The plea of the respondents in the reply is that as per Recruitment Rules mentioned in CPWD Manual (Volume-III) the qualification for the post of Fitter is a trade certificate from a recognised Vocational Institute and the applicant does not possess this qualification. It has been argued before me by Shri

K.K.Patel, learned counsel for the applicant, that experience would aid the applicant in over coming the hurdle of lack of educational qualification. For this he relies on Supreme Court's decision in Bhagwati Prasad and Another Vs. Delhi State Minaral Development Corporation, 1990(1) SCC 361. Para 6 thereof reads as follows:

(23)

"The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. 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 the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation."

3. In his rejoinder, the applicant has also cited the cases of Itwari Singh, Shri Kajig Ansari, Rajbir and Sharvan Sharma who have been regularised as Fitter or Mistri on the basis of passing the Trade Test.

4. In the normal course, I would be reluctant to give a direction to the respondents to regularise a Muster Roll Employee who lacks the essential technical qualification. This would be more so where regularisation is in a post higher than Group 'D' since such regularisation adversely affects the interests of the promotees. However, considering the facts and circumstances of the case, I feel that the present case stands on a different footing. The respondents have been using the services of the applicant for the last 20 years

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as a Fitter. He has also been allowed to appear in the Trade Test, in which the applicant was successful, and the respondents seem to have regularised the services of some other Fitters and Mistries even though they did not have the requisite educational qualifications; this would indicate that the respondents have exercised the power of relaxation of the recruitment rules.

5. In these circumstances, I direct the respondents to consider the applicant for regularisation as a Fitter if a post is available in the direct recruitment quota from the date of passing the Trade Test, i.e., 6.6.1990 within a period of three months from the date of receipt of a copy of this order.

6. The OA is disposed of with the above directions. There shall be no order as to costs.

*R.K.A.*  
(R.K. Anooja)

Member (A)

/rao/