

Central Administrative Tribunal

Principal Bench

UA.1419/94

12

New Delhi, this 29<sup>th</sup> day of January, 1996.

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)  
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Mam Chand  
S/o Sh. Saram Singh  
Sub-Overseer Mistry  
under Chief Administrative Officer  
(Constrn) NR, Kashmire Gate, Delhi  
and 6 others. .. Applicants

( Advocate Shri B.S. Mainee)

VERSUS

Union of India; Through

1. General Manager,  
NR Baroda House  
New Delhi.
2. The Chief Administrative  
Officer(Constrn.)  
NR Kashmire Gate,  
Delhi.

.. Respondents

( Advocate: Sh. Ramesh Gautam)

ORDER

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

The applicants, seven in numbers, claim that they were appointed as Sub-overseer Mistryes (SOM) between the years 1981-84. Initially they were appointed as Casual workers on daily wages but subsequently they were given temporary status and were placed in the scale of Rs.330-560 which was later converted to Rs.1200-2040. Their grievance is that they were continuously

DR

(13)

working as SGM for more than 10 years / but they have not been regularised and instead respondent No.2 has invited applications from SGMs who are diploma-holders for regularisation excluding the applicants on the ground that they are holding only two years certificate as Draftsman(Civil).

2. The case of the applicant is that two years course of Draftsman(Civil) which they have passed is recognised by the National Council for Training in Vocational Trade. Further, when the jobs of SGM were advertised by the Northern Railway, no distinction was made between the three year diploma holders and two years certificate holders and they along with diploma holders were selected and adjudged suitably. For the post of SGM the scale of Rs.330-560 was also common to both the certificate holders as well as the diploma holders and the duties assigned to them were also of the same. The scale of Rs.330-560 was later converted to Rs.1200-2040 as a result of Fourth Pay Commission Report. The applicants state that the respondents further revised the pay scale of SGM to Rs.1320-2040 from Rs.1200-2040 and the applicants were allowed the same higher scale in the month of May, 1988. They allege that at this stage, the respondents drew a distinction between two categories and passed an order on 13.7.88

X  
A

whereby the SCM holding diplomas were continued in the grade of Rs.1320-2040 and those holding Certificates, like the applicants, were ordered to be placed in the lower grade of Rs.950-1500 corresponding to the scale of Rs.260-400 prior to the Fourth Pay Commission Report. The applicants then approached the Tribunal in OA-264/85 and the same was allowed partly on 1.6.94 by the Tribunal which ordered that the respondents had no right to place the applicants in a scale lower than Rs.1200-2040. ( Annexure A-3). The applicants further state that some of the SCMs filed OA-359/89 before the Jodhpur Bench of the Tribunal challenging the proposed decision of the respondents to regularise and them in class-IV categories/not in the category of SCM and the same OA was allowed ( SLJ 1991(3) page 391) with the direction that necessary steps need to be taken by the respondents for regularisation after preparing the necessary scheme for the purpose. The respondents thereafter in pursuance of the aforesaid directions of the Tribunal issued a notice for special recruitment to the post of SCM in the grade of Rs.1400-2300 but laid down that persons eligible for this recruitment would be only diploma holders. The applicants are aggrieved that when no distinction had been

X  
⑤

made between the diploma holders and certificate holders at the time of initial appointment and the same pay scales had been given to both the categories and the same duties were also assigned to all of them, the action of the respondents in denying an opportunity to be regularised to the certificate holders is inequitable and unjustified.

3. The respondents in their reply have denied the claim of the applicant and have submitted that the judgement of the Tribunal in CA-359/89 gave a specific direction for regularisation of those who were having three years diploma course and hence the applicants could not claim the benefit of the same decision and the scheme prepared in pursuance thereof. The respondents also stated that the applicants were wrongly engaged as casual labour by different officers in violation of rules and without any authority and as such the very initial engagement of the applicants was ab initio not right and they have no right for consideration to the post of SOM. The Department had for this reason placed the applicants in the grade of R.950-1500 but they were restored to the grade of R.1200-2040 on account of the interim order of the Tribunal in CA-264/89. The respondents also denied that the applicants are working as diploma holders SOM and are discharging similar responsibilities.

J

4. We have heard the ld. counsel on both sides. Shri Maginee, counsel for the applicant has vehemently argued that since the diploma holders and the certificate holders were recruited together and remained in the same position in the same grade till the respondents tried to discriminate them vide their orders in 1988, they are to be treated as similarly placed for the purpose of regularisation in terms of the orders of the Jodhpur Bench of the Tribunal. We find however that the Jodhpur Bench observed in its orders that "It will obviously neither be just nor fair to compel the applicants who are diploma holders and have been working against Class-III post for six to eight years to seek their regularisation against much lower post in Class-IV post." This make it clear that the orders in the said CA were meant for the ~~xxxexxxxxxxxxxx~~ diploma holders. However, the issue before the Jodhpur Bench of the Tribunal was that there were no scheme available for regularisation of casual labour who had acquired temporary status in the Class-III posts. It was concluded by the Coordinate Bench that before it the applicants/should also be considered for regularisation against Class-III post and the respondents were directed to prepare a scheme

(17)

accordingly. We therefore feel that the ratio of the order also applies to the applicants at least to the extent that the respondents should consider their regularisation against Class III posts since the applicants have rendered such a long service continuously.

5. The next question which arises is whether such a regularisation should be a part of the scheme prepared for SCMs who hold diplomas. The applicants claim and the respondents deny that the nature of duties of the certificate holders are the same as those of diploma holders.

It has however not been denied that the applicants were also recruited for the same work as the diploma holders, though now respondents claim that this was done ~~erroneously~~ <sup>erroneously</sup> ~~wrongly~~. Further more, till the Fourth Pay Commission's Recommendations came and were implemented vide orders of the respondents issued in 1988, both the categories continued to receive the same pay scale. The distinction was thus drawn by the respondents only while implementing the recommendations of the Fourth Pay Commission.

6. The 1<sup>st</sup> counsel for the applicants argued that the recruitment rules for the post of work mistries which is a class-III post, analogous to SCM, is matriculation in second Division with Mathematics. According to the 1<sup>st</sup> counsel, the applicants have in any case the minimum qualification prescribed for the job. He further sought to rely on the orders of the Supreme Court in Bhagwati Frased.

17

X  
13

vs Delhi State Mineral Development Corporation -

( AIR 1990 SC 371) wherein their lordships have observed as follows:

" Practical experience would always aid the person of 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 of petitioners 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. It can be said that three years experience, ignoring artificial break in service for short period/periods created by the management, in the circumstances would be sufficient for confirmation."

The above observation has also been relied upon by the Coordinate Bench at Jodhpur while giving directions to the respondents regarding the regularisation scheme for SDMs who are diploma holders. We have no hesitation in concluding that the ratio of the Bhagwati Prasad vs. SMDC (supra) applies equally to the applicants in the present OA. Since the applicants were recruited along with the diploma holders and drew the same pay scales for a number of years, they are in our view entitled to be considered for regularization

2

in terms of the scheme prepared by the respondents which has been denied to them vide the impugned letter of the Headquarters, Northern Railway, dt. 5.4.94 (Annexure A-1).

7. Taking various aspects of the case discussed above, we direct that the respondents will consider the applicants also with those who are similarly placed for the appointment as SCM in the grade of Rs.1400-2300 against the direct recruitment quota on the same terms and conditions as prescribed in the impugned order of 5th April, 1994, though they do not possess the qualification of three year diploma. The respondents will also complete this action within six months of the receipt of this order. The application is accordingly allowed. No order as to costs.

~~R.K. Ahoja~~  
( R.K. Ahoja )  
Member (A)

( A.V. Haridasan )  
Vice-Chairman (J)

scs