

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.NO.1222/90

New Delhi, dated this the 22nd of September, 1994

Shri N.V. Krishnan, Hon.Vice Chairman(A)

Mrs.Lakshmi Swaminathan, Hon. Member(J)

1. Shri Ishar Din S/o Shri Bhagelu Ram
2. Shri Kalloo Ram " Tirmal
3. Shri Komal " Baru
4. Shri Tulsi " Babu Lal
5. Shri Nabboo Ram " Tirmal
6. Shri Daryaw Singh " Khushi Ram
7. Shri Ram Murat " Khushyal
8. Shri Avadhu " Munasar Applicants

All are Malis C/o Garden Superintendent working in
President's Gardens, President Estates, New Delhi.

By Advocate:Shri Ashish Kalia, proxy for Shri R.L.Sethi.

versus

Union of India through

1. The Secretary,
President's Secretariat,
Rashtrapati Nivas, New Delhi.
2. Nathu Ram S/o Shri Chet Ram
3. Mam Chand " Nanak Chand
4. Dharam Singh " Naubat Singh
5. Raghbir Singh " Sohan Lal
6. Radhey Shyam " Kharag Singh
7. Ram naval " Ram Bodh
8. Chandu Lal " Tej Singh
9. Bishamber " Mohan Respondents

The names at Sl.No.2 to 9 are Senior Malis C/o Garden
Superintendent, President Gardens, President Estates, New
Delhi.

By Advocate: Shri M.K. Gupta for respondent No.1.
None for other respondents, though served.

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ORDER (Oral)

(By Shri N.V. Krishnan)

The applicants are substantive/permanent Malis in the pay scale of Rs.750-940 in the President's Secretariat (Respondent No.1). The next post of promotion is Senior Mali in the pay scale of Rs.800-1150. According to the applicants, the post of Senior Mali is to be filled up, 25% by direct recruitment and 75% by promotion, on the basis of seniority-cum-fitness. Though the applicants are otherwise eligible and are seniors, yet the respondent No.1 has, by the Annexure A-1 order dated 26.2.90, promoted respondents No.2 to 9 as Senior Malis, overlooking their claims. By the Annexure A-2 impugned order dated 28.3.90, the applicant No.1 has been informed that his case for promotion has been considered by the DPC but, not found fit for such promotion. The applicants have prayed that the Annexure A1 and A2 orders dated 26.2.90 and 28.3.90 respectively be quashed and the respondents be directed to fill up the post of Senior Mali, strictly in accordance with the notified recruitment rules on the basis of seniority-cum-fitness.

2. In the reply filed by the respondent No.1, it is stated that the duties of the Senior Mali include the responsibility to maintain records of equipments, output of work relating to manpower as may be prescribed, and therefore, persons who are illiterate cannot discharge essential duties. According to the guidelines for promotion to Senior Mali (Annexure R-1), qualification of High School would be a preferred qualification or the candidates should have the ability to maintain diary, elementary accounts and roster of duties etc.

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3. The applicants were also considered for promotion. The DPC held a test on 6.5.89, in which, they were asked to write the names of some flowers, vegetables and some adding and substraction problems were given. 14 Malis including the applicants gave in writing that they are totally illiterate and could not read and write. Their statement is at Annexure R-3. This statement appears to have been written for them by some one else and all but three have signed it. 3 persons including Nabbooram (applicant No.5), have appended their thumb impressions. It is clear from the signature that the contents of the statement have been written for them by someone else. In the circumstances, the respondents contend that the applicants are not eligible for promotion.

4. The learned counsel for the applicant relied on the relevant rules at Annexure A-4 to contend that no educational qualification is prescribed.

5. The question, therefore, centres on what exactly are the recruitment rules for this category. The applicants have stated in para 4.4 of the OA that the recruitment rule (Annexure A-4) states that Malis and Bullockman who have completed 5 years service after qualifying the departmental test are eligible for promotion. No particular educational qualification has been prescribed in column-11 of the Schedule. However in column-7, there is a stipulation that he should be able to read and write. Unfortunately, the Annexure A-4 is only an extract of the Schedule of the Recruitment Rules which contains 13 columns, without column headings. In this schedule, it appears that the stipulation column-7 regarding educational qualification would apply to direct recruits for whom age would have been

prescribed at column-6. Column-10 for the first time refers to the promotion and column-11 indicates categories eligible for promotion. However, in the absence of column headings, we are unable to interpret this schedule in regard to promotion to the post of Senior Mali.

6. The learned counsel for the respondents was asked to produce the full text of Annexure A-4 document from which the Schedule alone has been brought on record and also the recruitment rules applicable to the President's Gardens as mentioned in para 4.4 of the reply. He states that the Annexure A-4 is the rule applicable to C.P.W.D. For the President's household there are separate instructions. This has been produced for our perusal. It is the document which contains the present criteria relating to the categories, scales and method of recruitment of the President's household establishment. Annex.R1 is a copy of page 32 of this book. Page-33 shows that Senior Malis can be appointed by promotion from Malis with a minimum of 5 years satisfactory service, on the basis of seniority-cum-fitness. The question is whether the qualification prescribed in column.6 would apply only to direct recruits, which is the normal practice followed in such Schedules. In this particular case, column-5 in Annexure R-1 which has to specify the age limit for direct recruits is shown as blank. This signifies that there is no direct recruitment and all posts are to be filled by promotion. Yet, qualifications have been prescribed in column-6 which suggests that they are needed by promotees.

7. The applicants have long years of service as Mali. Their next promotion is to the post of Senior Mali. If that is also denied, they have to retire only as

Mali. Considering the fact that the applicants have been appointed as Malis long back when there was no requirement that a Mali should be educated upto VIII class, which is the present requirement under Annexure R-1, it is unfair to insist at this belated stage, that to get promoted as Senior Malis, these persons should now pass the High School examination. This would be impossible, even if this is only a preferred qualification. However, we are also of the view that considering the duties and responsibilities attached to the Senior Malis, totally illiterate persons who can only sign their names cannot be promoted as Senior Malis. Even in the recruitment rules, relied by the applicant, they were required to pass a departmental test (Annexure A-4).

8. In the circumstances, a direction will have to be issued to the first respondent, to fix a more relaxed standard than in Annexure R-1, for persons who have been recruited before the new recruitment rule of 1980 came into force, which requires that even a Mali should have passed VIII class. The first respondent is, therefore, directed to fix such ~~relaxation~~^{ed} qualification which, if attained by the applicants, would entitle them for promotion as Senior Mali. They may be given atleast 3 chances at yearly intervals to pass the test. We note that the existing qualification itself states that ability to maintain a diary, elementary accounts and roster of duties would be sufficient for being considered for promotion. Perhaps, even this requirement would require relaxation. To what extent this should be relaxed, is a matter we leave it to the decision of the respondents. It would also be in the interest of justice, if the first respondent takes some initiative

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to help the applicants acquire the modified relaxed qualification. There is considerable emphasis on eradication of illiteracy in the development plans. Perhaps, advantage of some of these schemes may be taken by the first respondent and the applicants.

9. With this observation, the OA is disposed of. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER(J)

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N.V. Krishnan
22.10.94
(N.V. KRISHNAN)
VICE CHAIRMAN(A)