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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA No. 36/91

.. Date of decision: 25.09.92

Sh. Bharat Singh & Ors.

.. Applicants

Sh. D.R. Gupta

.. Counsel for the applicants.

Versus

Union of India

.. Respondents

Mrs. Rajkumari Chopra

.. Counsel for the respondents

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Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N.
Dhoundiyal, Member(A))

The 3 applicants in this DA are aggrieved by their reversion from the post of LDC on the ground that the qualifications of Prathma and Madhyama are not the equivalent to matriculation, which is the minimum educational qualification necessary for appointment to the post.

2. The applicant No.1 Shri Bharat Singh is employed as Poddar in Cash Office of Ordinance Factory, Murao Nagar,

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(U.P.). In response to an advertisement by the respondents, he applied for the post of LDC and was selected on the basis of a written test and interview conducted by the Selection Board. He was appointed as an LDC w.e.f. 10.8.79. He also passed the Typewriting Test on 21.10.80. On 16.8.79, his probation period was extended by one year w.e.f. 10.8.81. However, he was reverted to the post of Poddar on 20.3.82 without any show cause notice, on the ground that the qualification possessed by him was not equivalent to Matriculation.

3. The 2nd applicant Shri Deo Dutt, Duftry had passed the Prathma Examination from Prayag University in 1976. He also applied for the post of LDC and was so appointed after passing written and Typewriting test and interview w.e.f. 28.4.80. While, he was still on probation, he was reverted to the post of Duftry, on the ground that he did not fulfil the requisite qualification of matriculation.

4. The 3rd applicant Shri Raj Pal Singh was employed as Poddar in the Ordinance Factory, Murad Nagar, and had passed 'Madhyama' in 1979. He was appointed to the post of L.D.C. w.e.f. 10.8.79 and after working for more than

2 years and 8 months satisfactorily, he was reverted from the post of LDC to that of Orderly w.e.f. 20.3.92.

The applicant expired on 20.2.91 and through the MP 1145/91 his legal representatives were impleaded as applicants.

5. These applicants have prayed that they should be given the benefit of judgement of C.A.T. (Allahabad Bench) and in DA 051/88, B.S. Rajput Vs. U.O.I./ promoted again to the post of LDC from the date of reversion with all consequential benefits.

6. The respondents have admitted that the applicants who have passed Prathma examination from Hindi Sahitya Sammelan, Allahabad were appointed as LDC on 10.8.79 and 28.4.80 based on the recommendations of the Selection Board. At the time of their appointment, the appointing authority was under the impression that the Prathma Examination from Hindi Sahitya Sammelan, Allahabad is equivalent to Matriculation standard. When a clarification was received from the Head Quarters that Prathma qualification is not a fulfilled qualification equivalent to matriculation, they had to be reverted to their Group 'D' posts. The recruitment to the post of LDC is governed by statutory rules framed under the proviso to

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Article-309 of the Constitution of India and the minimum qualification for the post of LDC is matriculation.

7. All the 3 applicants kept on representing against their reversion to the authorities. They were expecting that the benefit of the Judgement of this Tribunal dated 5.4.90 in OA 651/88, B.R. Rajput Vs. UOI would automatically be extended to them also. However, vide impugned orders dated 21.11.90, they were informed that Ordinance Factory Board had rejected their appeals.

8. Two of the applicants, viz. Shri Raj Pal Singh and Deo Dutt had filed an application in Delhi High Court, which held that since the petitioners were not admittedly matriculates, their reversion was not a punishment.

9. We have heard the arguments addressed at the Bar and have perused with due care, the pleadings put forth by the counsel for both parties and the documents placed on record. The learned counsel for the respondents has raised a preliminary objection regarding limitation. All the three applicants were reverted in 1982 while the present OA has been filed after a lapse of 8 years without any

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application for condonation of delay. We over-rule this objection on the ground that after the judgement given by this Tribunal in the case of Babu Ram Rajput, vide OA 651/88 on 5.4.90, the applicants represented to authorities that the benefits of this Judgement may be extended in their cases also. The respondents considered and rejected their representations without raising the question of limitation on 21.11.90.

10. Another question raised by the learned counsel for the respondents relates to res judicata. Two of the applicants namely Shri Raj Pal Singh and Shri Jee Dutt had filed a writ petition on the same issues in the Delhi High Court and in their judgement dated 21.5.85, the Hon'ble High Court observed as under:-

"We have examined annexure 'A' and 'B' filed with the writ petition. Petition is admittedly not Matriculation. Passing of Prathma examination is not equivalent to matriculate as such. It is merely standard of Hindi upto a particular standard by which it can be equated. It is not the qualification equivalent to matriculate recognised by the Government. We do not find that the reversion is by way of punishment. Petition is consequently dismissed."

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11. The Delhi High Court has not taken into account that the applicants had subsequently acquired the requisite qualifications or that the applicants did not mislead the respondents as regards ^{their} ~~the~~ ^{AN} qualification.

The fact that persons having similar qualifications have been allowed to continue as LDC in another factory i.e. ^{AN} Gun Field Factory, Kanpur by the respondents, were not brought to the notice of the High Court. In our opinion, the judgement of the Delhi High Court would not constitute res-judicata as contended by the Respondents.

12. The main question for consideration is whether the respondents should have extended the benefit of aforesaid judgements of Allahabad Bench in the case of B.R. Rajput to the applicants who claim to be similarly situated. It would be noted that in case of applicants also the facts regarding their educational qualifications were not concealed by them and the competent authority allowed them to appear in the examination and that they have subsequently acquired the essential qualification. The only distinguishable factor is that the applicants in the present OA have served for shorter periods and were not confirmed in their posts, unlike the applicants in the afore-mentioned O.A. ^{AN}

13. In the conspectus of the facts and circumstances of the case, we hold that the applicants are entitled to the benefit of the judgement of the Allahabad Bench of this Tribunal.

14. We therefore dispose of the application with the following orders and directions :-

1. The impugned orders of reversion dated 20.3.82 are hereby set aside and quashed.
2. The applicants shall be deemed to have continued to work as LDC. However, their confirmation would take effect only from the date they actually acquired the necessary qualification of matriculation.
3. Though the period during which the applicants stood reverted to the lower post will count for seniority and increments, no arrears or differential in salary will be payable to them.
4. These orders shall be implemented expeditiously and preferably within a period of 3 months from the date of receipt of this order.
5. There will be no order as to cost.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 25/7/82
Member (A)

P.K. Kartha
(P.K. Kartha) 28/8/82
Vice Chairman(C)