

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

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Expedite Application No. 2477 of 1993

In

Original Application No: 221 of 1988

Arun Kumar Srivastava ... ... ... Applicants.

Versus

Union of India & Ors. ... ... ... Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-B

(By Hon'ble Mr. T.L.Verma, J.M.)

This application has been filed for quashing the oral order dated 20.2.1988 whereby the petitioner has been directed to work as Mason instead of Mason Mistry and for issuing a direction to the respondents to promote the applicant to the of Sub Over~~Over~~er Mistry Grade-I with consequential benefits including arrears of salary and seniority w.e.f. 13.5.1987.

2. Shri Arun Kumar Srivastava, applicant, it is said, was appointed as Mason Mistry w.e.f. 4.6.1979. The work of Mason Mistry according to the applicant is supervisory in nature and that he has been functioning as such under different persons to their satisfaction. The Inspector of works on being satisfied with the suitability of the applicant recommended his name for promotion to the post of S.O.M. Grade-I vide letter dated 19.3.1985, Annexure-14. It is alleged that despite the recommendation he has not been promoted as yet and that one Shri S.M.Singh who is junior to the applicant has been promoted as SOM and has been working as such. This fact came to the knowledge of the applicant when he saw letter dated 13.5.1987 (Annexure-15, page-29) in which Shri S.M.Singh has been shown as S.O.M. and the applicant has been described as Mason Mistry. The

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applicant thereafter made several representations to the Inspector of Works and also to the Assistant Engineer against appointment of Shri S.M.Singh bypassing his legitimate claim and to promote him with retrospective effect with other consequential reliefs. When the oral representations did not yield any result, the applicant filed written representation on 26.12.1987 (Annexure-13) to the Divisional Engineer Northern Railway to promote him as S.O.M. Grade-I. The written representation of the applicant is still pending for consideration. He has, however, in the meantime been orally directed by the Assistant Engineer, respondent No. 3 to work as a Mason. It is said that the scale of pay both of Mason Mistry and Mason although is the same but the nature of the two posts of work is altogether different inasmuch as the Mason Mistry is required to supervise the work of the Mason and other employees and that the nature of the work of Mason is purely manual. It is stated that the impugned direction amounts to rever<sup>A</sup>tion. Further, it is said before reverting the applicant to a lower job no opportunity was given to the applicant to defend himself against rever<sup>A</sup>ion.

3. The respondents have denied the assertions of the applicant and have stated that there is no post of Mason Mistry in the office of the respondent and that the applicant has been working as Mason and drawing pay in the grade of Mason. The lowest supervisory post in engineering branch is S.O.M. (Sub Overseer Mistry Grade-I) The revised pay scale of the said post is 1400-2300/- and that the applicant is not entitled to promotion to the said post. According to the respondents, the

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applicant was initially appointed as daily rated casual Khalasi as stop-gap arrangement w.e.f. 4.7.1979 and that he worked in that capacity up to 16.2.1981. Thereafter, he, on completion of 120 days of service as Daily rated casual labour, acquired temporary status and was appointed as Khalasi. He was thereafter promoted as Morter Mate w.e.f. 18.8.1982 on adhoc basis as stop gap arrangement without any trade test. He was then appointed as Mason w.e.f. 1.12.1982 and has been working as such till date. It has been admitted by the respondents that the applicant by mistake has been wrongly described as Mason Mistry in promotional order.

5. The respondents, while admitting that Shri S.M.Singh has been appointed as S.O.M. Grade-I on adhoc basis have denied that the applicant was senior to Shri Singh. The respondents allege that Shri S.M.Singh was appointed as Casual Mason and thereafter he was appointed as Casual S.O.M. Grade-I and was regularised as such after completion of 120 days and promoted as S.O.M. Grade-I on adhoc basis.

6. On the pleadings of the parties and arguments of the learned counsels, following questions have been formulated for consideration;

1. Whether the applicant was appointed as a Mason Mistry and was working as such till he was directed to work as Mason by impugned verbal order.

2. Whether the post of Mason and Mason Mistry are one and the same and, or Mason Mistry is the promotional post of Mason.

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3. Whether the applicant is senior to  
Shri S.M.Singh since promoted as S.O.M. Grade-I.

4. Whether the applicant is entitled to be  
promoted as S.O.M. Grade-I.

7. The learned counsel for the applicant has  
referred to Annexures 1 to 11 at pages 15-25 in  
support of his contention that the applicant was  
appointed as Mason Mistry. Before we refer to the  
documents referred to above, it may be mentioned that  
the original order whereby the applicant was appointed  
has not been filed by either party. That being so,  
the conclusion as to whether the applicant was  
appointed as Mason Mistry or not has to be drawn  
on the basis of the pleadings and the documents only.

Coming to the documents filed on behalf of  
the applicant, it may be stated Annexure 1 is the  
certificate given by Assistant Engineer Northern  
Railway, Faithpur wherein it has been stated that the  
applicant had received training of the temporary post  
of S.O.M. Annexures 2,3 & 5 to 11 are experience  
certificates granted by different authorities under  
whom the applicant had worked from 14.10.1981 to  
13.1.1988. In all these certificates Shri Srivastava  
(Applicant) has been described as Mason Mistry. In  
Annexure-4 office order dated 1.3.1984, by which work  
has been allotted to different officers, Shri  
A.K.Srivastava, applicant has been described as Mason  
Mistry. Similarly, in office orders at Annexures  
12,13 & 15 Shri A.K.Srivastava described as Mason  
Mistry. The Inspector of works, Northern Railway,

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Faithpur while recommending the case of the applicant for promotion as S.O.M. Grade-I has described him as Mason Mistry.

8. In addition to above, the respondents have in para 5 of the written statement, admitted that in promotional order and other documents designation of the applicant has been mentioned as Mason Mistry, but the same is mistake for Mason inasmuch as there is no post of Mason Mistry in Northern Railway. The admission of the respondents read with the documents referred to in the preceding paragraph leaves no room for doubt that the applicant had been designated as Mason Mistry. This however, does not conclude the matter.

9. From the averments made in para 10 of the reply to the counter affidavit, it would appear that different post in Engineering Branch up to the level of S.O.M. (Sub Overseer Grade-I) are Khalasi, Morter Mate, Mason Mistry and S.O.M. Grade-I. It is not in dispute that the applicant was appointed on 4.6.1979 on daily wages. According to the contention of the respondents, the first appointment of the applicant was on the post of daily rated Khalasi. Thereafter, he was appointed as Morter Mate and then was given ad hoc promotion as Mason. In this connection, it may be relevant to mention that the applicant has in para 7 of his Reply to the Counter Affidavit very clearly admitted that though he was granted scale of Khalasi he worked in the capacity of Mason Mistry. He has also admitted that on 17.2.1981, he was granted revised

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scale of Khalasi but he was doing supervisory work and was always designated as Mason Mistry. From the admission of the applicant, it is thus clear that he was appointed in the grade of Khalasi and that he was drawing the pay of that grade. That being so, in our opinion, the nature of the initial appointment of the applicant will be determined by the grade, he was given and not the designation used in the experience certificates and the office orders referred to above by the learned counsel for the applicant.

We, therefore hold that the applicant was initially appointed as Khalasi and in course of time was promoted and was appointed as Mason which is the next higher grade of Morter Mate.

10. In view of the foregoing conclusion, the next question that arises for consideration is whether the post of Mason and Mason Mistry are one and the same and or Mason Mistry is the promotional post of Mason. According to the averments made in para 10 of the Reply to the Counter Affidavit, the next higher post to the post of Morter Mate is Mason Mistry and that the post of S.O.M. Grade-I is promotional post of Mason Mistry. This stand however, does not appear to be consistent with the letter of the Railway Board (Annexure-1) to supplementary affidavit filed on behalf of the applicant. This letter has been sent to All Field Dy. CE/Cs & All SENs under CT/C/K.Gate, Delhi. Communicating the decision regarding scale of pay to diploma holder, Casual Labour, Mason Mistry/

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S.O.M. on attaining scale rate/temporary status.

From the letter, it is clear that Mason Mistry/S.O.M. were being differently treated by different Field Officers inasmuch as some field officers were giving scale of pay Rs. 950-1500 and others were giving Rs. 1320-2040. This matter was examined with the reference to instructions contained in printed S.No. 9166 and it was decided that all diploma holders engaged as Casual Labour, Mason Mistry/S.O.M. should be fixed in the scale of Rs. 1320-2040 uniformly. The respondents have not filed any reply to the Rejoinder Affidavit or a Supplementary Affidavit denying the authenticity of the letter of the Board referred to above. It is evident from the letter that Mason Mistry and S.O.M. Grade-I are equivalent post. From the material on the record, it is also clear that the next higher post to Morter Mate is Mason Mistry/S.O.M. Grade-I. We are therefore of the view that neither Mason Mistry nor S.O.M. Grade-I is the promotional post of Mason rather all the three are equivalent posts.

11. Coming to the question of seniority, it may be stated that the dates of initial appointments of the applicant and respondent No. 5, S.M.Singh have been given in para 10 of the Reply to the Counter Affidavit as 4.6.1979 and 17.1.1980 respectively as daily rated Casual Labour. The respondents have not disputed the respective dates of appointment of the applicant and respondent No. 5- This, therefore leads us to the conclusion that the applicant, who was appointed earlier in point of time, shall rank senior to respondent No. 5 provided that there was no break in his services in between the date of his first appointment and promotion of respondent No. 5 from the post of first appointment

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to next higher post. It is not in dispute that the applicant is in service continuously right from the date of his first appointment. There is nothing on the record to show that his performance has not been satisfactory or that he has been adversely commented upon regarding his work and conduct. The experience certificates referred to above rather suggest that the performance of the applicant has been very satisfactory. In absence of material to the contrary and having regard to the fact that he was appointed prior to respondent No. 5, we hold that the applicant is senior to respondent No. 5 and in the normal course his claim for promotion to higher rank or regularisation of service should have been considered first.

12. We now come to the consideration of the question whether the applicant is entitled to promotion/regularisation as Mason Mistry/S.O.M. Grade-I. *LH* It has been admitted by the respondents in para 5 of the written statement that the applicant having worked as daily rated Casual Labour for 120 days acquired temporary status. The learned counsel for the respondents has argued that as the applicant was appointed as Mason on adhoc basis without any trade test he was not eligible for being regularised without passing of trade test on the basis of seniority. We asked the learned counsel for the respondent to file relevant Rule/Instructions requiring passing of trade test as conditioned precedent for being promoted on the basis of seniority. Although enough time was given to enable the learned counsel to file relevant Rules, but no such Rule has been shown to us. In absence of the Rules we are unable to accept the contention of

the learned counsel that the applicant was not eligible for regularisation/promotion because he has not passed the required trade test.

13. It may also be pertinent to mention that applicant claims that he is a diploma holder in Civil Engineering and as such was entitled to the benefit of the Railway Board's letter annexed to the reply to the Counter Affidavit. That the applicant is a diploma holder has not been denied. We therefore, hold that the applicant is a diploma holder in Civil Engineering and is entitled to the benefit of the decision of the Railway Board communicated vide letter (Annexure-1) referred to above. According to the direction issued in the said letter, the diploma holders engaged as Casual Labour, Mason Mistry/S.O.M. should be fixed in the scale of Rs. 1320-2040 uniformly. This letter has been issued as far back as on 13.5.1988 and that the representation filed by the applicant on 26.12.1987 (Annexure-13) is still pending.

14. Regard being had to the fact that Shri S.M.Singh, who is junior to the applicant, has already been promoted to the post of S.O.M. Grade-I the applicant whose record of service is otherwise satisfactory ~~is~~ <sup>is</sup> entitled to similar benefits which, in our opinion has been wrongly denied to him.

15. In the facts and the circumstances of the case, discussed above, we allow this application and direct the respondents to fix the applicant, who is working

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as Mason Mistry, in the scale of Rs. 1320-2040 with consequential benefits including arrears of salary and seniority w.e.f. 13.5.1987, the date on which Shri S.M.Singh was shown as S.O.M. In the circumstances, no order as to costs.

*Joflu*

Member-J

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Member-A

Allahabad Dated: February 04, 1994

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