

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

Date of decision: 23<sup>rd</sup> March, 2004

OA No.475/2002

1. Lakhan Lal Meena s/o late Shri Pyare Lal Meena, aged about 37 years, Senior Khalasi O/o Senior Section Engineer (Power), North-West Railway, Jaipur Division, Jaipur r/o T/123/O, Loco Colony, Jaipur.
2. Shri Ashok Kumar B S/o Shri Babu Lal, aged about 36 years, Cleaner, O/o Senior Section Engineer (Trains Light), North-West Railway, Jaipur Division, Jaipur r/o T/188, J, Railway Colony, Opposite DRM Office, Jaipur.
3. Pooran Singh s/o Shri Nanhe Ram, aged about 32 years Cleaner O/o Senior Section Engineer (Trains Light), North-West Railway, Jaipur Division, Jaipur r/o House No.58, Jagdish Vihar, Jagatpura, Jaipur.
4. Sahid Ahmed s/o Shri Mohammed Ismail, aged about 36 years, Senior Khalasi, O/o Senior Section Engineer (Power), North-West Railway, Jaipur Division, Jaipur r/o 93, Deepak Marg, Adrash Nagar, Jaipur.

.. Applicants

Versus

1. The Union of India through General Manager, North-West Railway, Opposite Railway Hospital, Jaipur.
2. The Divisional Railway Manager, Jaipur Division, Jaipur
3. The Divisional Electrical Engineer (Establishment), Jaipur Division, Jaipur

.. Respondents

Mr. P.V.Calla, counsel for the applicants  
Mr. T.P.Sharma, counsel for respondents

OA No.503/2002

1. Ashok Kumar s/o Shri Roshan Lal, Sr. Chhaliasi, RAC Jaipur, House No.1323, Balaji Ki Kothi ka Rasta, Malion Ke Mandir Ke pass, Ghat Gate, Jaipur.
2. Sita Ram s/o Dayal Dass, Cleaner, Train Lighting Jaipur, r/o House No.50/285, Paratapnagar, Sanganer, Jaipur.
3. Om Prakash Saini s/o Ramji Lal, Cleaner, RAC Jaipur, r/o Railway Station Road, Bassi, Bassi Distt. Jaipur.
4. Nizamuddin s/o Shri Abdul Rehman, Cleaner RAC Jaipur, r/o Ward No.8, Phani Kari Gran Phulera, Jaipur Rajasthan.

.. Applicants

Versus

1. Union of India through General Manager, North-Western Railway Near Railway Hospital, Jaipur.
2. Divisional Rail Manager, North Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. Nand Kishore, counsel for the applicants

Mr. H.C.Goyal, counsel for the respondents

CORAM:

HON'BLE MR. M.L.C'AUHAN, MEMBER (JUDICIAL).

HON'BLE MR. A.K.BIANDALI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.C'AUHAN.

By this common order, we propose to dispose of OA Nos.475/2002 and 503/2002, as the common question arises for determination in these

cases.

2. The question which arises for determination in these cases is whether the applicants had qualification for appointment to the post of Electrical Fitter Grade-III. It may also be mention here that in both these OAs, the same notification/selection process are under challenge. For the purpose of deciding the matter in controversy, the facts as stated in OA No.475/2002 is being referred.

2.1 The respondents issued a notification dated 10.5.2000 for filling up 43 posts of Electrical Fitter Grade-III scale Rs. 3050-4590 from amongst 25% ranker quota from eligible candidates as per conditions stipulated in the notification. Amongst other things, it was stated in para 3 of the notification that the candidate should have passed Matric with Science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject. The applicants, who at that time, were working as Group-D employee, submitted application form with requisite documents to the respondents. The respondents issued Office Order dated 30.9.2002 (Ann.A1) thereby notifying the date for written test which was going to be held on 26.10.2000 at 10 AM. Alongwith this order, list of eligible and ineligible candidates were also enclosed. The name of the applicants were mentioned in the list of ineligible candidates. The reason for not eligible of the applicants was

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mentioned as they do not possess the essential qualification. Copy of this letter has been annexed in both the OAs as Ann.A1 and A2. Feeling aggrieved by the aforesaid action of the respondents, the applicants have filed these OAs thereby praying that appropriate writ or directions be issued to the respondents inasmuch as the rejection of their candidature for promotion to the post of Apprentice Electrical Fitter Grade-III scale Rs. 3050-4590 is illegal and to this effect the impugned order Ann.A1 may kindly be ordered to be modified to the extent that the names of the applicants may be included in the list of candidates found eligible. It is further prayed that the respondents may be directed to conduct the examination after providing training to the applicants. In the alternative, it has also been prayed that the respondents may be directed to allow the applicants to appear in the examination to be held on 26.10.2002 for promotion to the post of Apprentice Electrical Fitter Gr.III scale Rs. 3050-4590.

2.2 It may be mentioned here that this court vide order dated 24.10.2002 passed in OA No.475/2002 permitted the applicants therein to participate in the selection process. It was further ordered that their participation shall be on provisional basis and the result shall not be declared without the leave of this court. However, in OA No.503/2002 no interim stay was granted, inasmuch as, the same was filed after

26.10.2002, the date on which the written examination was conducted.

3. Notice of these applications were given to the respondents. The respondents have filed reply. In the reply it has been stated that as per the Railway rules para 159 of the IREM, in the Artisans Grade-III, 25% of the post are to be filled up from different categories, and 20 posts are reserved for serving Khalasis and Khalasi Helpers (formerly known as unskilled and semi-skilled respectively) with educational qualification as laid down in Apprentice Act having regular service for three years and for SC and ST candidates one year's experience as per the Apprentices Act 1961 <sup>ATS per</sup> Apprenticeship Rules 1991 for Electrician, the educational qualification as laid down, is in the following terms:-

"should have passed matriculation with science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subjects."

Since the applicants were not having the requisite educational qualification, therefore, they are not entitled to get the relief as sought in this OA. Copy of the Apprenticeship Rules, 1991 has also been annexed with the reply as Ann.P2. The respondents have also reproduced in para 3.1 of the notification

dated 10.5.2002 whereby the applications were invited from eligible Group-D employees for promotion to the post of Electrical Fitter Grade-III which also prescribe same qualification as prescribed in the Apprentice rules. It is further stated that since the candidates as per Sl.No.12, 14, 15 and 16 of the letter dated 30.9.2002 have not passed the 10th with science subject (Physics and Chemistry) nor they have passed 10th class under 10+2, as such they were rightly excluded for appearing in the written test for the post of Electrical Fitter Grade-III.

4. When the matter was listed on 4.9.2003, the matter was heard partly. On that date the learned counsel for the applicants brought to our notice a copy of the order dated 19.1.99 pertaining to the selection to the post of Electrical Fitter Grade-III issued by the DRM, Western Railway, Kota whereby educational qualification for the said post has been prescribed as Matric pass only. Whereas the case of the respondents in the present OA is that minimum qualification for the said post is Matriculation with science (Physics and Chemistry) or its equivalent or 10th Class under 10+2 system with science as one of the subject. In Piner Division of the Western Railway, the qualification prescribed for the said post is also Matric or equivalent. On that date this Tribunal directed the respondents to clarify the position as to why the railway authorities are

prescribing different qualification for the same post and they were directed to file additional affidavit. In compliance to this order, the respondents have filed additional affidavit. In the additional affidavit, it has been stated that the qualification for the post of Apprentice Electrical Fitter Grade-III in the notification dated 24.12.2003 where the word 'science as one of the subject has not been mentioned, has now been mentioned by issuing corregendum dated 13.1.2004 and the qualification now has been prescribed by the DRM Ajmer is as under:-

"Passed Matriculation with science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject."

Copy of this notification and corrigendum have also been annexed with the additional affidavit. Thus, the respondents have contended that the qualification for the said post is same and equal in both the railway divisions. There is no difference so far as the qualification for the said post are concerned.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 It is admitted between the parties that promotion to the post of Apprentice Electrical Fitter Grade-III against 25% ranker quota meant for Group-D employees have to be made in terms of

para 159 of IREN Vol.I 1989 Edition, which is in the following terms :-

"i).....

ii) 25% from serving Khalasis and Khalasi Helpers (formerly known as unskilled and semi-skilled respectively) with educational qualification as laid down in Apprentices Act.

iii)....."

Thus from the portion as quoted above, it is clear that against 25% quota meant for in service Group-D employees, the educational qualification laid down in the Apprentices Act shall be made applicable. The respondents have also placed on record Schedule-I issued under Rule 3(i) of the Apprentices Act, 1962. Against column 11 under the heading 'Electrician' trade, the following educational qualification has been mentioned"-

"Passed Matriculation with Science (Physics and Chemistry) or its equivalent or 10th Class under 10+2 system with Science as one of the subjects."

5.2 To the similar effect in para 3(1) of the notification dated 10.5.2002 (Ann.A2) whereby 43 posts of Electrical Fitter Grade-III in the scale Rs. 3050-4950 was required to be filled in, following educational qualification has been mentioned.

Should passed Matriculation with

science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject."

5.3 Thus from the material placed on record, it is evident that persons who have passed the matriculation with science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject have been made eligible for the post of skilled artisan under 25% quota which post also includes the post of Electrician. Admittedly, the applicants are not the persons who had passed matriculation with science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject. They are simply matric without science subject, therefore, they do not possess the educational qualification for the said post. In case, if their names have been shown under the category of not eligible for promotion in the notification dated 30.9.2002 (Ann. Al), no infirmity can be found in such order. Accordingly, the applicants have no case whatsoever.

5.4 During the course of arguments, the learned counsel for the applicants submit that the respondents have wrongly made educational qualification meant for electrician applicable to the post of Electrical Fitter Grade-III. According to them, the post is required to be filled is Fitter Grade-III for which educational qualification prescribed in Schedule-I is

Matriculation or its equivalent or 10th class under 10+2 system and the qualification of Electrician cannot be made applicable for the said post. According to us, the contention raised by the learned counsel for the applicants deserves outright rejection.

5.5 We have gone through the schedule-I. In this schedule different qualifications have been prescribed for different categories. This is no doubt true that for 'Fitter', science as one of the subject has not been made essential educational qualification whereas in the case of 'Electrician', Matriculation with science (Physics and Chemistry) or its equivalent or 10th Class under 10+2 system with Science as one of the subject has been made essential educational qualification. From perusal of this schedule, it is also clear that there is no post of Electrical Fitter Grade-III mentioned in this schedule. In case the respondents have applied the qualification made for Electrician applicable to the post of Electrical Fitter Grade-III, no exception can be made as it is settled law that prescribing minimum educational qualification is within the realm of policy decision to be made by the State authorities and court cannot interfere in such matters. The respondents have categorically stated that in fact the post of Electrical Fitter Grade-III falls under the category of Electrician, as such the qualification prescribed for Electrician shall also be applicable in this case. Even for the

arguments sake, it is admitted that the post of Electrical Fitter Grade-III is a different post than one mentioned in schedule-I, in that eventuality, the respondents in the advertisement have prescribed such educational qualification as Matric with science (Physics and Chemistry) or its equivalent or 10th class under 10+2 system with science as one of the subject. Thus, even if it is assumed that this post is not covered under schedule-I then admittedly it was permissible for the respondents by way of policy decision to prescribe essential qualification for the said post which they have done. Thus, viewing the matter from any angle, it can be safely concluded that the person possessing matriculation with science (Physics and Chemistry) or equivalent or 10th class under 10+2 system with science as one of the subject were made eligible for the post of Electrical Fitter Grade-III, which qualification admittedly, the applicants do not possess and as such they do not fulfil the educational qualification. In this regard reference may be made to the case of State of Rajasthan and ors. vs. Lata Arun, 2002 SCC (LAS 859 whereby the Apex Court has held that it is not for the court to interfere in the eligibility qualification and where by way of policy decision the educational qualification has been prescribed by the authority vested with the power under any statute, the court should not interfere in such matters.

5.8 The learned counsel for the applicants,

further argued that the persons with matic qualification were also made eligible for the post of Electrical Fitter Grade-III in different division, has also been categorically denied by the respondents in the additional affidavit in which it has been stated that the notification which was issued thereby science as one the subject, has not been mentioned, has been modified by issuing a corrigendum and as such, it is only the persons who are matic with science (Physics and Chemistry) or equivalent or 10th pass with science as one of the subject, have been made eligible for promotion to the post of Artisan Grade-III. Thus, the ground of challenge made by the applicants in this behalf also does not survive.

5.7. Further, it has been held by the Apex Court in the case of Yogesh Kumar & ors. vs. Govt. of N.C Delhi and ors. 2003 (1) SCSLJ 275, that selection has to be made on the basis of educational qualification shown in the advertisement. Further merely because in the past some deviation and departure is made in making appointment cannot be a ground to allow a patent illegality to continue. In the instant case as stated above, the respondents have placed on record material by way of affidavit that the notification dated 24.10.2002 has been modified by issuing corrigendum dated 13.1.2004, as such the mistake committed earlier has been rectified and persons possessing matic with science subject (Physics and Chemistry) or equivalent or

matric under the 10+2 system with science as one of the subject are only made eligible for the post of Electrical Fitter Grade-III.

5.8 At this stage it may also be mentioned that the learned counsel for the applicants took objection to the affidavit filed by the respondents to the effect that it has not been verified and as such the averment made in this affidavit cannot be taken into consideration. We have given due consideration to the submissions made by the learned counsel for the applicants and we do not find any force in such contention. Even if, the affidavit as filed by the respondents is ignored, alongwith this affidavit the respondents have placed on record notification dated 24.12.2003 and further corrigendum dated 13.1.2004 issued subsequently<sup>u</sup> correcting the mistake. Perusal of these documents reveal that vide corrigendum dated 13.1.04 the persons who have passed the matriculation with science (Physics and Chemistry) or equivalent or 10th class under 10+2 system with science as one of the subject have been made eligible for the post of Electrical Fitter Grade-III. Thus, on the basis of these documents, even if the affidavit is ignored it can safely be concluded that the notification earlier issued has been modified and now the persons who have passed the matriculation with science (Physics and Chemistry) or its equivalent or 10th Class with science as one of the subject have only been made eligible for promotion to the

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post of Electrical Filter Grade-III.

6. In view of what has been stated above, there is no force in both these applications which are accordingly dismissed. The interim order granted on 24.10.2002 in OA No. 475/2002 shall stand vacated. No order as to costs.

(A.K.BHANDARI)

Member (A)

(M.L.CHAUHAN)

Member (J)