

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 16-09-04

OA No.477/2003

1. Praveen Singh Chauhan s/o Shri Madan Singh Chauhan, aged about 30 years Khallasi in SSE (PRS) Office, Jaipur r/o G.K.Road, Near SC-ST Hostel, Bandikui (Rajasthan).
2. Ashok Kumar s/o Shri Roshan Lal Sr. Khallasi, RAC Jaipur aged about 32 years House No.1323 Balaji Ki Kothi Ka Rasta, Malion Ke Mandir Ke Pass, Ghat Gate, Jaipur.
3. Sita Ram s/o Dayal Clearner Train lighting Jaipur aged about 35 years r/o House No.50/285, Pratap Nagar, Jaipur.
4. Om Prakash Saini s/o Ramji Lal Cleaner RAC Jaipur aged about 34 years r/o Railway Station Road, Bassi Poteh Bassi, Distt. Jaipur.
5. Nizamuddin s/o Abdul Rehman, Cleaner RAC, Jaipur aged about 39 years r/o ward No.8, Dhani Karl Gran Phulera, Jaipur, Rajasthan.

.. Applicants

Versus

1. The 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. Tej Prakash Sharma, counsel for the respondents

CORAM:

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

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

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

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: 2 :

The applicants who were working in semi-skilled category were eligible for consideration for promotion to skilled artisan i.e. Group C post in the pay scale of Rs. 950-1500 (revised Rs. 3050-4590) as against vacancies of the cadre meant for ranker quota. Promotion to this grade has to be made in terms of statutory rules mentioned in Para 159 of Indian Railway Establishment Manual-I, revised edition, 1989. The respondents issued notification dated 11.9.2003 (Ann.A1) for the purpose of preparing a panel for 17 vacancies of Electrical Fitter Grade III from 25% vacancies of rankers quota from eligible candidates as per conditions stipulated in the notification. It is the case of the applicants that necessary condition for eligibility is only matriculation which is being followed in Ajmer and Kota Division. Copy of the said Office order dated 29.5.2000 has been annexed to the OA as Ann.A4. It is further averred that persons appointed on compassionate grounds against direct recruitment quota namely S/Shri Brij Lal Meena, Gheesa Lal, Lokesh Patwa who are working under S.S.E. P.R.S., etc. have only the qualification as matriculation and not with Physics and Chemistry. It is further averred that Ajmer Division has finalised the similar selection wherein the qualification required was matric and equivalent and there is no mention of any subject like Physics and Chemistry as is mentioned in Ann.A1. Thus, the action of the respondents whereby 17 vacancies of Electrical Fitter Grade-III are proposed to be filled from persons having matriculation with Science (Physics and Chemistry) as one of the subject is illegal. It is further averred that they have made representation against imposing condition of matric with Science (Physics and Chemistry) as one of the subject but the same has not been decided by the respondents so far. It is further pleaded that in earlier OA No.503/2002 pleading are complete and fixed for hearing on 16.10.2003 and the Hon'ble

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Tribunal have given directions on 4.9.2003 as to why different standards are being maintained in two divisions of the same zone. The applicants have also prayed for interim relief on the basis of order dated 24.10.2002 passed in OA No.475/2002 filed by Lakhan Lal Meena. It was on the basis of these averments that the applicants have filed this OA thereby praying for quashing the order dated 11.9.2003 (Ann.A1) and in the alternative it is prayed that condition imposing matriculation with Physics and Chemistry may be modified as matric or equivalent only.

2. When the matter was listed for admission on 16.10.2003, this Tribunal granted an interim relief to the effect that the applicants shall be permitted to participate in the selection process on provisional basis and their result shall not be declared without the leave of the Court.

3. The respondents have filed reply. In the reply, it has been stated that as per para 159 of the IREM, the posts of Artisan category Grade 'C' 25% of the posts are to be filled up from serving Khallasi and Khallasi Helper formerly known as skilled and semi skilled with educational qualification as laid down in Apprentice Act having regular service of 3 years and that SC/ST candidate should have one year experience and as per Apprentice Act, 1961 and Apprenticeship Rules, 1991 for Electrician, the following educational qualification has been laid down :-

"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."

Since the applicants are not having such qualification, therefore, they are not entitled to get the relief in the OA.

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So far as contention raised by the applicant that 3 persons namely S/Shri Brij Lal Meena, Ghasi Lal and Lokesh Patwa were given appointment as they were simple matric and were not having matriculation with science as one of the subject, it has been stated by the respondents that they were given appointment on compassionate grounds against direct recruitment quota for which educational qualification is matriculation in view of the circular dated 24.12.79 issued by the Headquarters, Churchgate, Mumbai. So far as the other grievances of the applicants that in Ajmer Division, Educational qualification is matric, the respondents have stated that a corrigendum has been issued and now the prescribed qualification for the said post are same i.e. the candidate should pass Matriculation with Science (Physics and Chemistry).

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

4.1 According to us, the matter is squarely covered by the common judgment dated 23.3.2004 rendered by this Tribunal in OA No.475/2002, Lakha Lal Meena and ors. Vs. Union of India and ors and OA No.503/2002, Ashok Kumar and ors. vs. Union of India and ors. The issue involved in this case and in the OA decided by this Tribunal on 23.3.2004 is identical and this Tribunal has given the following reasons for rejecting the contention of the applicants therein.

"5.1 It is admitted between the parties that promotion to the post of Apprentice Electrical Fitter Grade-III against 25% ranker quota for Group-D employees have to be made in terms of para 159 of IREM 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 Apprentice 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 Apprentice Act shall be made applicable. The respondents have also placed on record Schedule-I issued under Rule 3(i) of the Apprentice 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 subject."

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.A1), 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

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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 (L&S) 859 whereby the Apex

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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 matter.

5.6 The learned counsel for the applicants further argued that the persons with matric 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 of the subject has not been mentioned, has been modified by issuing a corrigendum and as such, it is only the persons who are matric 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.

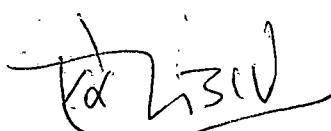
5.7 Further, it has been held by the Apex Court in the case of Yogesh Kumar and ors. vs. Govt. of NTC Delhi and ors. 2003 (1) SCSLJ 275, that selection has to be made on the basis of educational qualification shown in the advertisement. Further merely because in the past some deviation and departure 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 24.12.2002 has been modified by issuing corrigendum dated 13.1.2004, as such the mistake committed earlier has been rectified and persons possessing matric 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."

Thus the finding given by this Tribunal in its common judgment dated 23.3.2004 in OA No.475/2002 and as reproduced above is squarely applicable in the instant case also. As such the applicant is not entitled to any relief.

4.2 So far as additional contention raised by the applicant in this OA that 3 persons who have been given compassionate appointment against direct recruitment quota were also matriculation without science (Physics and Chemistry) as one

of the subject, it may be stated that the applicants cannot base their claim on the basis of appointment given to these 3 persons on compassionate grounds against direct recruitment quota. The applicants belong to ranker quota for which 25% vacancies in Electrical Fitter Grade-III are kept apart and they have to be filled from those persons who fulfil the educational qualification as laid down in Apprentice Act. Admittedly the applicants did not fulfil the requisite qualification. The criteria for making appointment from open market is entirely different where the selection has to be made from course completed Act apprentices, ITI passed candidates and matriculate from open market. In case the respondents have given appointment to these 3 candidates on compassionate grounds against direct recruitment quota which is a separate category in itself dehors the rules, the same cannot form basis for granting relief to the applicants, who admittedly belong to ranker quota and for that purpose, a separate qualification has been prescribed for promotion to Grade-III. That apart, in view of law laid down by the Apex Court in the case of Yogesh Kumar (supra) some deviation and departure made in the past making appointment cannot be a ground to allow patent illegality to continue. On this account also, the additional contention raised by the learned counsel for the applicant cannot be accepted.

5. In view of what has been stated above, there is no force in this OA and accordingly, it is dismissed with no order as to costs. Interim direction issued on 16.10.2003 shall stand vacated.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)