

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2998/2003  
MA No.2604/2003

New Delhi this the 5th day of March, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)  
HON'BLE MR. S.K. NAIK, MEMBER (ADMNV)

1. Brijender Singh  
S/o Sh. Prithvi Singh,  
R/o H.No.60, Vill. Amberhai,  
P.O. Palam (Sec.101),  
Dwarka, New Delhi-110 045
2. Narender,  
S/o Sh. Jagphool Singh,  
V.P.O. Amberhai, Sector-19,  
Dwarka, New Delhi-110 045.

(By Advocate Sh. S.C. Saxena, proxy for Sh. Surinder Singh, Counsel)

## - Versus -

1. Union of India, through:  
The Defence Secretary,  
Ministry of Defence,  
South Block, D.H.Q.,  
New Delhi-110 011.
2. Headquarters,  
Commander Works Engineer,  
(Utilities),  
Delhi Cantt-110 010.

(By Advocate Sh. Ravinder Sharma, proxy for Sh. R.P. Aggarwal, Advocate)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Applicants impugn respondents action of according marks for 10th passed and 10+2 passed candidates appearing for the post of Mazdoor in Group 'D'.

2. Applicants in pursuance of a notification by the Military Engineering Services for recruitment of Mazdoor where the minimum educational qualification is 8th passed applied and appeared in the test but could not be selected as respondents awarded 5 marks for 10th passed candidates and 10 marks for 10+2 passed candidates.

7

3. Recruitment rules for the posts of Mazdoor prescribe educational qualification of 8th passed with a good physique. No other additional qualifications are prescribed.

4. Learned counsel for applicant relying upon the decision in *Baljeet Singh v. Secretary, Ministry of Defence*, OA No.87/2004 decided by the Principal Bench on 21.1.2004 as well as decision of the Ahmedabad Bench of the Tribunal in *N.S. Goswami v. Union of India*, 2000 (3) SLJ CAT 281 to contend that no extra marks can be given for educational qualification and the criteria does not pass the test of reasonableness under Article 14 of the Constitution. On all fours the case of applicants is covered by the aforesaid ratios.

5. On the other hand, respondents in their reply vehemently opposed the contentions and the learned counsel for respondents states that higher qualification and the due weightage of marks is keeping in view the prospects of advancement in the industrial trade.

6. We have carefully considered the rival contentions of the parties and perused the material on record.

7. Once the qualification as per the functional requirements for the post of Mazdoor have been laid down in the recruitment rules, i.e., candidates with 8th standard passed without any further qualification then by virtue of an executive order the rules cannot be supplanted. We do not see any object sought to be achieved by awarding of grace marks to the persons having higher qualifications.

8

The qualification in the recruitment rules are laid down by the authorities under Article 309 of the Constitution of India after having fully satisfied with the functional requirements of the post. If the higher qualifications are to be assigned then accordingly rules are to be amended. By awarding extra marks the situation is that no 8th standard passed candidate would ever qualify for the post. Respondents have created a class within the class which violates the enshrined principles of equality laid down under Article 14 of the Constitution.

8. Though the higher qualification is an added advantage but cannot bestow upon respondents to accord additional marks to facilitate entry of candidates having those qualifications.

9. The invidious discrimination and reasonableness of Government action is to qualify the twin test of equality laid down under Article 14. The restriction should be reasonable and have some nexus with the object sought to be achieved. Having failed to satisfy the test the aforesaid action of the respondents is not in conformity with the decision of the Constitutional Bench of the Apex Court in D.S. Nakara v. Union of India, 1983 SCC (L&S) 145.

10. For the foregoing reasons OA is allowed. The Scheme of awarding marks in the selection for the post of Mazdoor in MES is set aside. Respondents are directed to reconsider applicants for the posts of Mazdoor in accordance with rules, subject to their eligibility. No costs.

Naik  
(S.K. Naik)  
Member (A)

S. Raju  
(Shanker Raju)  
Member (J)