

No

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2226/2002

New Delhi this the 27th day of August, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMNV)

Shri Raj Kumar,
S/o late Sh. Chanderam,
R/o Road No.7, Quarter No.51,
Andrews Ganj,
New Delhi-110049.

-Applicant

(By Advocate Shri R.N. Singh)

-Versus-

1. Indian Council of Medical Research (ICMR),
Ansari Nagar,
New Delhi through Director General.

2. Union of India,
through The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

-Respondents

(By Advocate Shri V.K. Rao)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant through this OA has sought consideration for the post of Despatch Rider as well as difference of pay and allowances since appointment as Despatch Rider in 1994 with interest.

2. Applicant was appointed as Watchman on 15.1.1982 and was lastly prompted as Daftry on 20.4.1993. The post of Daftry was re-designated as Record Sorter on 11.4.1985. In terms of circular dated 19.8.1994 filling up the posts of Despatch Rider on temporary basis amongst the willing Group 'D' staff possessing valid driving licence apart from discharging their duties of the post held on an honorarium of Rs.4/- per day, applicant was appointed on temporary post of Despatch Rider on an honorarium of Rs.4/-

22

(2)

per day to drive three wheeler scooter in addition to his ordinary duties as and when required.

3. On 18.7.1996 applicant was reverted back to the post of Daftry. Though applicant was subjected to a trade test for the post of Despatch Rider but he could not qualify.

4. By an order dated 18.10.96 on a honorarium of Rs.4/- per day applicant was appointed on temporary basis as Despatch Rider apart from doing his duties as Record Sorter.

5. In response to the representation for consideration for the post of Despatch Rider by an office memorandum dated 23.2.2000 it has been communicated that if applicant fulfils the conditions and applied for the post when circulated he would be considered.

6. Applicant preferred the above OA and by an order dated 26.8.2000 status quo has been maintained till the vacancy of Despatch Rider is filled on regular basis.

7. Learned counsel for applicant contends that despite having four posts of Despatch Rider respondents are considering only an OBC candidate whereas applicant who belongs to SC community has not been considered for the same.

8. It is further stated that applicant is eligible and those who are ~~non~~^u-experienced ^u ^u have been considered and appointed as Despatch Rider.



9. It is one of the conditions that despite working for more than 8 years on regular basis and appointed against a regular post applicant is still to be appointed on regular basis as Despatch Rider.

10. Taking resort to the decision of the Apex Court in Dhirender Chamoli v. State of U.P., 1986 (1) SCC 637 it is contended that on the cardinal principle of 'equal pay for equal work' applicant is entitled to the difference of salary and salary of the post of Despatch Rider for the work he has rendered.

11. On the other hand, respondents' counsel Sh. V.K. Rao, vehemently opposed the contentions and stated that applicant was not eligible to be appointed as Despatch Rider as he appeared in the trade test on 31.12.1996 but could not qualify. As such, he has no right to be appointed as Despatch Rider.

12. By referring to DP&T OM dated 25.2.1988 it is stated that Group 'D' staff who work for short periods in absence of regular Staff Car Driver as Despatch Rider are entitled for an honorarium at the rate of Rs.4/- per day. Referring to FR 49 it is stated that as applicant has not been formally appointed and was not performing the work of Despatch Rider on regular basis and was assigned work as and when required he is not entitled for the salary of Despatch Rider.

101

13. In so far as vacancies are concerned, it is stated that though there is a ban on filling up the posts, the vacant posts would be filled up as per the roster meant for OBC. Being a SC candidate applicant has already been considered but failed in the trade test. In the event if selection is undertaken for the post of Despatch Rider applicant will be considered as per the roster in his category in accordance with rules and instructions.

14. In the rejoinder applicant has re-iterated his pleas taken in the OA. *We have considered the rival contentions.* 4

15. In so far as pay and allowances for the post of Despatch Rider are concerned, in view of DP&T OM dated 25.2.1988 as applicant has been appointed on temporary post not performing on regular basis work of Despatch Rider he has not been asked to shoulder additional responsibilities without being formally appointed is entitled only for an honorarium.

16. As per FR 49 where no additional pay is admissible to a government servant who is appointed to hold current charge of routine duties and only when he is formally appointed to hold the charge of another post not in the line of promotion the higher pay is admissible. In the present case applicant who has been appointed to perform in addition to his own duties as Record Sorter is not legally entitled to be paid the pay and allowances for the post of Despatch Rider and was paid as and when work is assigned an honorarium at the rate of Rs.4/- per day.

17. In so far as consideration for appointment is concerned, it is a settled principle of law that one has no right for appointment but of consideration only. In 1996 when an opportunity was given to applicant to qualify in the trade test for appointment to the post of Despatch Rider he has failed in the trade test.

18. As regards contention of applicant that respondents have four vacant posts of Despatch Rider the same would be filled up as per the roster. As the next post falls for OBC in the roster is to be filled by the incumbent from OBC categories. However, we observe that as and when selection process is undertaken by respondents for the post of Despatch Rider applicant would be considered in his category and otherwise on general merit in accordance with rules and instructions on the subject.

19. With these observations OA is disposed of.
No costs.

U. R. Upadhyaya

(R.K. Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

'San.'