

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00642/2016**

Reserved on : 27.01.2020  
Pronounced on:30.01.2020

**C O R A M**

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**



1. Vinay Kumar, Son of Raj Kumar Mahto
2. Subodh Kumar Choudhary, Son of Satya Narayan Choudhary

Both are Driver Grade-II, Office of the Chief Commissioner, Central Excise & Service Tax, Ranchi Zone, Central Revenue Building, Patna- 800001 (Bihar).

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Government of India, North Block, New Delhi.
3. The Chief Commissioner, Central Excise & Service Tax, Central Revenue Building, Birchand Patel Path, Patna-800001 (Bihar).
4. The Chief Commissioner, Central Excise & Service Tax, Ranchi Zone, Central Revenue Building, Birchand Patel Path, Patna- 800001(Bihar).
5. The Joint Commissioner (CCO), Central Excise & Service Tax, Central Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).
6. The Commissioner, Central Excise & Service Tax, HQ, Central Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).
7. The Chief Personnel Officer, South East Central Railway, Bilaspur Division- 495004.
8. The Sr. Divisional Personnel Officer, South East Central Railway, Bilaspur Division- 495004.
9. The Asst. Personnel Officer, South East Central Railway, Bilaspur Division- 495004.

.... Respondents.

By Advocate: - Mr. A.K. Mantu

**ORDER**

**Per Dinesh Sharma, A.M:-** In the instant OA, the applicants have prayed for quashing the orders dated 22.01.2016 and 16.08.2016 (Annexure A/3 and A/5) by which their representations regarding rectification of promotion orders dated 24.07.2014 have been rejected. The applicants have claimed that they should have been promoted from 01.04.2013, the date on which they fulfilled the criteria of completion of 8 years of regular service as per the recruitment rules. The promotion given to them in the grade of Driver Gr. II vide Establishment order dated 23/2014 dated 24.07.2014 is with effect from the date of joining and not from the date of their eligibility, i.e. 01.04.2013. The applicants have sought correction of this order for having their promotion made effective from 01.04.2013. Their request has been rejected stating that the promotion was subject to passing of the trade test. The applicants have alleged that it was the Department's responsibility to have the trade test conducted before 01.04.2013. Since they held it only on 19.05.2014, it was not the applicants' fault that they could not clear the test before the date on which they became eligible for promotion. The applicants have cited cases of two other drivers who were promoted in the year 2002 but were given effect of that promotion from a back date (of year 1999) and have prayed that they should also be granted the same benefit.



2. A written statement has been filed by the respondents in which they have denied the claim of the applicants. It is stated that as



per the new Central Board of Excise and Customs (Staff Car Drivers) Recruitment Rules, 2013, a qualifying service of 8 years is prescribed for promotion of drivers from ordinary grade to Driver Grade-II. As per these recruitment rules, the applicants became eligible for promotion on 01.04.2013. However, as per the old rules (Rules of 2003), the qualifying service was 9 years. The new rules came into effect from 15.06.2013 only. On 01.04.2013 the old recruitment rules, 2003 were in force, according to which, the qualifying service was 9 years and, following these rules, the applicants would have become eligible for promotion only on 01.04.2014. The new rules, 2013, nowhere provide for retrospective application and thus the applicants could not have been promoted w.e.f. 01.04.2013. Following the new rules, trade test was organized for eligible candidates and after these tests and holding of DPC on 24.07.2014, promotion orders were issued on 24.07.2014. Regarding the cases cited by the applicants (of two other drivers having been promoted in the year 2002 with retrospective effect) it is stated that these drivers were promoted in their parent department and not while they were working in the respondents Department, and therefore the current respondents cannot offer any comments in that regard.

3. A rejoinder has been filed by the applicants reiterating his earlier averments and denying the statements made by the respondents in their written statement.

4. We have gone through the pleadings and heard the arguments of the learned counsels of the parties. The case of the applicant is based on the logic that conduct of test was not in the hands of the applicants and therefore the applicants should not be denied promotion because of any delay in the conduct of the trade test. The respondents have pointed out why the trade test could not be conducted before 01.04.2013 since, according to them, as per the old recruitment rules, there was a requirement of 9 years' service which was not fulfilled by the applicants on that date (01.04.2013). This is a prima facie reasonable explanation. The applicants have not shown any rules under which they became entitled (as different from eligible), to get promotion on the date of completion of their required period of regular service. Since, in this case, the trade test has been conducted within a reasonable period of their completing the eligibility criteria, the claim for promotion from retrospective date is without any basis under the rules. Though the applicants have stated that not giving such retrospective promotion is contrary to various judicial pronouncements of the Hon'ble Supreme Court of India, High Courts and CAT, no specific decision to this effect was cited by the applicants either in the pleadings or during the course of the arguments. The only argument which the learned counsel for the applicant mentioned at the time of hearing was regarding two other persons having been given retrospective promotion in the past. The respondents have denied any role in those past decisions which relate to something which happened about 20 years back and cannot be said to



carry the force of law or to entertain claim of equality of treatment. In the light of the above, there is no merit in this OA and it is dismissed accordingly. No costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**

