

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
OA 2529/2001

(V)

New Delhi, this the 9th day of August, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Yogendra Prasad
S/O Sh. Ram Singh Sharma
Rao House No.584/2, Vijay Park
Gali No.1, Mojpur, Delhi - 110 053.
and employed as Driver
in Meerabai Polytechnic
Maharani Bagh, New Delhi - 65.

...Applicant

(By Adv. Sh. B.B.Raval)

Vs.

1. Govt of NCT of Delhi
through the Chief Secretary
Old Secretariat
Delhi.
2. The Director
Directorate of Training and Technical Education
Muni Maya Ram Marg
Pitampura, Delhi - 110 089.
3. The Principal
Meerabhai Polytechnic
Maharani Bagh, New Delhi - 65.

...Respondents

(By Adv. Mrs. Jasmine Ahmed)

ORDER (ORAL)

By Hon'ble Sh. Govindan S.Tampi,

Reliefs sought by the applicant in this OA is the consideration of his case for regularisation as Driver with consequential benefits as permissible to a regular Driver as well as costs.

2. During the hearing the applicant was represented by Sh. B.B.Raval and the respondents by Smt. Jasmine Ahmed.

3. Sh. Yogendra Prasad, the applicant who holds a valid driving licence for both light and heavy vehicles, was, on being sponsored by the Employment Exchange, appeared for the interview for the post of Driver in Community Polytechnic Centre, under the Dte. of Training and Technical Education on 27-3-98, was selected and appointed by the office order No. F.3(40)/MBP/CP/98/2049 dt. 6-5-98. On 19-5-98, orders were issued showing his deployment on three days a week in Meerabai Polytechnic and three days in the Directorate Office. On 26-11-99, Delhi Subordinate Services Selection Board (DSSSB) invited applications for various posts,

(16)

including Driver in the College of Pharmacy, GNCTD, to which the applicant responded, as he was qualified for the purpose. He appeared for the test and did well but the advertisement was withdrawn as far as Driver's post was concerned. The applicant's case was favourably recommended by Principal, Meerabai College on 6-1-2000 for regularisation against the vacant post of Driver. Subsequently on 12-3-2000, ^{when} Dte. of Training and Technical Education circulated a letter in connection with filling up the post of Driver in the scale of Rs. 3050-4590/-, the applicant filed his request, which was endorsed by the Principal. Still when the call notices for interview were issued on 13-8-2000 to four persons, the applicant was not called. This was patently illegal as he has been working intermittently for three and half years as Driver in the Polytechnic, at times, in addition operating the minibus also. Hence this OA.

4. Grounds raised in this OA are :-

- i) the violation of his fundamental rights ;
- ii) his eligibility for the selection to the post of Driver ;
- iii) his due selection as driver by the Directorate of Training and Technical Education, to Meerabai Polytechnic followed by his deployment both in the Polytechnic and the Dte. and his unblemished record of service, for three and half years;
- iv) the advertisement by DSSB for filling the post of Driver, to which he applied for on account of his qualification and was interviewed, followed by the withdrawal of the post; ^{from selection}
- v) Principal's favourable endorsement of his case for regularisation ;
- vi) failure of the respondents to call him for interview in August, 2001, inspite of his long service, with only artificial breaks, when also he was asked to work;
- vii) his fundamental right for regularisation in terms of DOPT's Scheme of 10-9-93.

5. All the above points established his right for regularisation which should be granted with full consequential benefits, urged Sh. Raval.

(17)

6. In the reply filed on behalf of the respondents, facts are not disputed by the respondents, though they say that the applicant was not regularly engaged but was given engagement on a purely temporary, ad-hoc and emergent basis, for 89 days at a time, liable to be terminated without any notice. He was driving the vehicle attached to the community Polytechnic Scheme of Ministry of Human Resources Development and was not part of Delhi Adminn. As he was not attached to GNCTD, he could not be considered for regularisation as Driver which posts had to be filled by Promotion from Group D. The Scheme itself was not regular and is run from year to year, as per the grants released from the Central Govt. There was no provision for other benefits like E.L., M.L. LTC etc. in the project related job. The applicant's case has no basis and should merit dismissal, according to the respondents, a view stoutly endorsed by their ld. counsel Smt. Jasmine Ahmed.

7. I have carefully considered the case. The applicant who has been working since May 98 as driver in Meerabai Polytechnic under the Dte. of Training and Technical Education, in Community Polytechnic Project, is seeking regularisation as Driver, which is contested by the respondents on the ground that he has been engaged only on project related work and that he is paid by the project and not by the Govt. Respondents do not deny that the applicant has been performing the duties as Driver in Meerabai Polytechnic and the Dte. Headoffice since May 98, though with technical breaks after 89 days but according to them, the post of driver cannot be given to him but is meant to be given only for their own group IV staff on promotion. This action is clearly invidious. Obviously, the respondents had gone for engaging the services of the applicant through the Employment Exchange, as they did not have men in their group 'D' staff, who could have been so engaged. That being the case, after utilising the services of the applicant who was selected on screening after being sponsored by the Employment Exchange, the respondents cannot take a view that his case will not be considered. It is true that the Scheme for grant of temporary status & regularisation of ^{casual} workers, issued on 10-9-93 by the DUPT, would cover only group

18

'D' posts and not of driver (which is admittedly a group 'C' post) but the applicant's case cannot be overlooked when the vacancies in the grade of driver arose. To deny the same is unjust and it cannot be permitted.

7. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to consider the case of regularisation of the applicant as Driver in the first ⁱⁿ vacancy of driver arising/the Department in preference to the claims of anyone else and if found fit, to extend to him all consequential benefits. Till such time, ~~his~~ case is considered and decided, his services shall not be dispensed with. Interim relief in this OA on 16-10-2001 is made absolute. No costs.

(GOVINDARAJ S. TAMPI)
MEMBER (A)

/vksn/