

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

16

OA No.2771/2001

New Delhi, dated 17th day of March, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V.K. Majotra, Member(A)

Cycle Mistry Gulshan Rai, No.3/C.M.
210/3, Mohalla Duggar, Pandav Road
Biswas Nagar, Shahdara

.. Applicant

(Shri Sachin Chauhan, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Addl. Commissioner of Police
Establishment, Police Hqrs.
IP Estate, MSO Building, New Delhi
3. Dy. Commissioner of Police
Prov & Lines
5, Raj Pura Road, Delhi

.. Respondents

(Ms. Rashmi Chopra, Advocate)

ORDER(oral)

Shri Justice V.S. Aggarwal

By virtue of the present application, applicant Shri Gulshan Rai seeks a direction that he should be treated as Constable (Motor Transport - MT, for short) Helper by changing his cadre and to pay him difference of pay and allowances with effect from 24.5.1996 with arrears.

2. Some of the facts which are not in dispute can conveniently be delineated.

3. In the year 1995, recruitment was made for filling up certain posts including Constable (MT Helper/Mechanical) in Delhi Police. Employment Exchanges were requested to sponsor names of suitable candidates. The Sub-Regional Employment Officer, Employment Exchange, Pusa, Delhi sponsored the name of applicant alongwith other

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candidates. Applicant was selected for the post of Constable (MT Helper/Mechanical) in Delhi Police provisionally subject to medical fitness, verification of character antecedents and testimonials of age, date of birth, caste etc. Applicant was medically examined for the post of Constable(MT Helper/Mechanical) and was declared physically handicapped by the Medical Superintendent, Civil Hospital, Rajpur Road, Delhi. Necessarily the candidature of the applicant had to be rejected. Later on, applicant is alleged to have made a request that he may be considered for appointment as Class IV employee. His request was considered sympathetically and it was decided to appoint him as Cycle Mistry (Class IV) in Delhi Police. Applicant has been so appointed despite physically handicapped and he joined the post of Cycle Mistry.

4. The order appointing the applicant as Cycle Mistry reads as under:

"On having been declared medically fit by the Medical Superintendent, Civil Hospital, Rajpur Road, Delhi, Shri Gulshan Rai, s/o Shri Ram Pal Bhargav R/o H.No. 210/3, Mohalla Dounger, Shahdara, Delhi, Roll No. 113 is hereby appointed as Cycle Ministry in Delhi Police (Prov. and Lines Unit) with effect from 24.5.96 (A/N) in the pay scale of Rs.800-15-1010-EB-20-1150 plus usual allowances as admissible to other Cycle Mistries in Delhi Police, under the CCS(Temporary Service) Rules, 1965. His appointment is purely temporary and he is liable to be terminated at any time as per the provisions of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965. he is appointed under the Delhi Police Act, 1978. he will be governed by the provisions of Central Services (Temporary Services) Rule, 1965. he will be deemed to be on probation for a period of 2 years from the date of his appointment. Consequent upon the successful completion of probation, he will be confirmed in his services."

His particulars are given below:-

Date of Birth	:	6-2-71
Education	:	Matric
Caste	:	Brahman Hindu

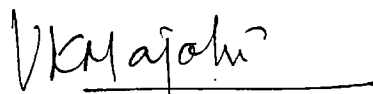
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5. These facts are not in dispute but the respondents' plea in the reply is that the applicant had been declared as physically handicapped for the post of Constable (MT/Helper Mechanical) but he is working in MT section at his own will.
6. So far as first prayer of applicant is concerned that a direction should be issued to change his cadre to Constable (MT Helper/Mechanical) the same has to be ~~treated as~~ ^{stated to be} rejected. Reasons are obvious. Applicant had been appointed as Cycle Mistry and has not been found medically fit for the post of Constable (MT Helper/Mechanical). Once he has not been found medically fit and he was allowed to join as Cycle Mistry, It is too late at this stage for him in this regard to ask for being regularised as Constable (MT Helper/Mechanical).
7. In that event, second prayer of the applicant has been that he has been discharging the duties of Constable (MT Helper/Mechanical) since 24.5.96 and on the principle of equal pay for equal work he should be paid difference of arrears of pay and allowances of the said post. Our attention has been drawn to the copy of attendance register in support of applicant's claim that he has been discharging the duties of Constable (MT Helper/Mechanical) in Delhi Police. Once he has been discharging the duties of the post which carries higher pay scale, we find no reason as to why the applicant cannot be granted difference of pay and allowances. But the applicant can only be entitled to the same for a period of 3 years before filing of the present application.

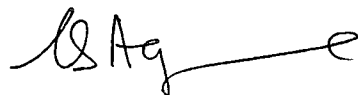
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8. Accordingly, this OA is only partly allowed. It is directed that applicant should be paid difference in the pay and allowances of the post held by him and of the post regarding which he was discharging the duties i.e. of Constable (MT Helper/Mechanical). This should be confined to a period of three years before filing the present application upto date.

9. OA disposed of as aforesaid.



(V.K. Majotra)
Member(A)



(V.S. Aggarwal)
Chairman

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