

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 533/2001  
M.A. NO. 1609/2001

This the 10th day of April, 2002.

(21)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Gulshan Rai S/O Hari Chand,  
R/O B-13, Punjabi Basti,  
Nangloi,  
Delhi-110041.

... Applicant

( By Shri S.K.Gupta, Advocate )

-versus-

1. Union of India through  
Secretary, Ministry of Finance,  
North Block, New Delhi.
2. Directorate of Income Tax (RSP & PR),  
6th Floor, Mayur Bhawan,  
Connaught Circus,  
New Delhi-110001.
3. Chief Commissioner of Income Tax  
(Administration),  
C.R.Building, I.P.Estate,  
New Delhi. ... Respondents

( By Shri V.P.Uppal, Advocate )

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged non-assignment of correct seniority to him rejecting his representation in the matter vide Annexure A-1 dated 4.12.2000 consequent upon which respondents have terminated applicant's ad hoc promotion from the post of Car Driver (Grade II) to the post of Car Driver (Ordinary Grade III) vide Annexure A-2 dated 31.1.2001 while his juniors S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar were still holding the post of Car Drivers (Grade II). Applicant has challenged Annexure A-2 as well.

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2.. Learned counsel of applicant stated that applicant was appointed as Driver (Grade III) on 31.8.1988 (Annexure A-5). He was transferred to respondent No.3 not on his personal request but in public interest w.e.f. 20.5.1992 and as such his seniority was correctly fixed at Sl. No.5 as on 31.3.1998 (Annexure A-6) in which S/Shri Vikram Singh Bisht and Rajender Singh were shown junior to applicant at Sl. Nos. 6 and 7 respectively based on their dates of joining in the said office later than applicant. Thereafter applicant was promoted along with his juniors as Staff Car Driver (Grade II) on ad hoc basis vide Annexure A-7 dated 31.3.1999. In the list of promotees whereas applicant's name appears at Sl. No.5, S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar are arrayed at Sl. Nos.6, 7 and 8 respectively. Annexure A-8 dated 14/18.1.2000 is the final seniority list of Staff Car Drivers (Grades I, II & III) in which applicant has been shown at Sl. No.16 and his juniors S/Shri. Vikram Singh Bisht, Rajender Singh and Mukesh Kumar have been shown at Sl. Nos. 6, 7 and 8. Applicant's representation against the said seniority list has been turned down by the impugned order Annexure A-1 dated 4.12.2000 and applicant has been reverted to the post of Staff Car Driver (Grade III) while the aforestated juniors have been retained in the senior positions.

3. The learned counsel of applicant Shri S.K.Gupta stated that vide Annexure A-4 dated 12.5.1992, applicant was transferred from the office of DGIT (MS) to the office of Chief Commissioner of Income Tax (Central).

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According to the learned counsel, applicant's transfer was in public interest. He was not declared surplus and juniors of applicant such as Ram Pal Singh was retained in applicant's previous office. In this view of the matter, his seniority should have been <sup>16</sup> maintained and S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar who joined applicant's present office later than applicant, should not have been shown as senior vide Annexure A-8 dated 14/18.1.2000 which is the final seniority list of Staff Car Drivers.

4. The learned counsel of respondents Shri V.P.Uppal stated that applicant was appointed to the post of Driver on a temporary basis by Directorate of Income Tax, New Delhi on 31.8.1988 (Annexure A-5) and his services were placed at the disposal of Chief Commissioner of Income Tax, New Delhi vide Annexure A-4 dated 12.5.1992. He was relieved on 20.5.1992 (Annexure A-3) to join the office of Chief Commissioner of Income Tax, New Delhi. In the Office of Chief Commissioner of Income Tax, recruitment to the cadre of Staff Car Drivers (Ordinary Grade) can be made by transfer or direct recruitment from amongst notice servers and Group 'D' employees of the department possessing requisite qualifications. The term 'transfer' was changed to 'absorption' vide O.M. dated 25.5.1998 (foot note of Annexure R-2). As per Annexure R-2 O.M. dated 3.7.1986 issued by DOP&T, an absorbee has to be ranked below all direct recruits selected on the same occasion. Vide para 3.4.1 of the sub-head "Seniority of absorbees", it has been further stated that where the absorbee was already

working on a regular basis in his parent department his seniority shall be counted from the date when he was absorbed.

5. Respondents have given to understand that applicant had been declared surplus and as such was transferred along with his Staff Car No. DBD 4531 to the Chief Commissioner of Income Tax (Central), New Delhi vide Annexure A-4 dated 12.5.1992. In this order it is not indicated that applicant had been declared surplus in his parent office. Learned counsel of respondents filed memo dated 11.1.2002 issued by the Chief Commissioner of Income Tax, New Delhi enclosing seniority list of Staff Car Drivers as on 20.5.1992 in which applicant has been shown at Sl. No.3 indicating his date of appointment in the grade as 31.8.1988. One Ram Pal Singh is shown at Sl. No.4 indicating his date of appointment in the grade as 12.4.1991. Admittedly, if at all anybody had to be declared surplus from the office of DGIT (MS), junior most and not the applicant could have been declared surplus on the principle of last-come-first-go. When junior Shri Ram Pal Singh was retained in applicant's previous office transferring applicant to his present office, applicant's transfer has to be taken to be in public interest and not on his request and as such his seniority could not have been disturbed. In this background Annexure A-6 indicating seniority of Staff Car Drivers as on 31.3.1998 showing applicant's name at Sl. No.5 is held to be correct when he joined DOPG. In this list S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar have been shown at Sl. Nos.6, 7 and 8 having

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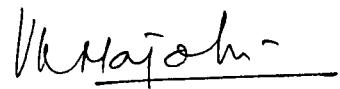
joined DOPG at later dates than applicant. Considering applicant as senior to S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar, the question of applicant's reversion from the cadre of Staff Car Drivers (Grade II) even though he had been promoted on ad hoc basis while retaining his juniors S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar, cannot be held to be correct and proper.

6. Having regard to the reasons recorded and discussion made above, Annexure A-1 dated 4.12.2000 is quashed and set aside. Annexure A-2 dated 31.1.2001 is quashed and set aside to the extent it is applicable to applicant. Respondents are further directed to place applicant in the seniority list as per the seniority list at Annexure A-6 and not to disturb applicant's promotion as Staff Car Driver (Grade II) till his juniors, namely, S/Shri Vikram Singh Bisht, Rajender Singh and Mukesh Kumar, are working as such.

7. The OA is disposed of in the above terms. No costs.

8. MA No.1609/2001 also stands disposed of.

  
( Kuldip Singh )  
Member (J)

  
( V. K. Majotra )  
Member (A)

/as/