

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 531 of 1998New Delhi, this the 18th day of December, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Suresh Kumar S/o Shri Ram Gopal
 R/o 163, Harsaroop Colony, Fatehpur Beri,
 New Delhi-30. -APPLICANT

(By Advocate: Shri Shyam Babu)

Versus

Director General of Works,
 C.P.W.D.,
 Nirman Bhawan, New Delhi.

-RESPONDENTS

(By Advocate: None)

ORDERBy Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant in this OA is seeking the following
 reliefs:-

(a) To direct the respondent authorities to regularise the services of the applicant and promote him as a Motor Lorry Driver (herein after referred to as MLD) w.e.f. 9.5.94 or the date when he completed 240 days of service for the first time.

(b) To direct the respondent authorities to give promotion to the applicant as MLD as a regular incumbent w.e.f. 9.5.94 though he was already a regular incumbent at the post of Beldar.

(c) To direct the respondent authorities to pay the regular pay scale of MLD to the applicant w.e.f. 9.5.94, i.e., the date since when the applicant is working at the post of MLD continuously without any break, i.e., the difference between the pay scale of MLD

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and the pay scale of Beldar.

(d) To direct the respondent authorities to pay interest on the amount of difference between the regular pay scale of a Beldar and regular pay scale of a MLD w.e.f. 9.5.94 since when the applicant is entitled to be granted the regular pay scale of a MLD.

(e) To restrain the respondent authorities from replacing the applicant at the post of MLD by any temporary/adhoc/daily wager appointee.

(f) To grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

(g) To award costs to the applicant against the respondents.

2. The facts in brief are that the applicant had been employed as Beldar with the respondents and according to the allegations of the applicant he had been performing the duties of MLD from 9.5.94 and he has been continuously working as MLD with the respondents.

3. He also claims to have passed the trade test of MLD and has been continuously performing the duties from the date he was assigned the duties of MLD, so he claims that he has to be regularised/promoted as MLD and is also entitled for the grant of regular pay scale of

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the said post.

4. I have heard the learned counsel for the applicant. No one has turned up to argue the case on behalf of the respondents.

5. Shri Shyam Babu, learned counsel for the applicant submitted that this OA had come for hearing earlier also and was disposed of vide order dated 14.9.98 and states that the said OA was dismissed because the applicant had not impleaded the Executive Engineer of the Government of NCT of Delhi under whom the applicant was working at the time of filing of the OA, so the OA was dismissed on technical grounds though the court had observed that if there is an additional payment of at least payment of difference of wages, the same had to be paid by the respondents under whom applicant was working and the court had also observed that in view of the judgment in the case of Salvaraj Vs. L.G. Port Blair & Others (JT 1998 (4) SC 51) and Secretary-cum-Chief Engineer Chandigarh Vs. Hariom Sharma & Others, 1998 (5) SCC 8, the applicant is entitled to the pay and privileges pertaining to the post on which he was performing duty.

6. Shri Shyam Babu also seeks support from the earlier order and submitted that the applicant is also entitled to be regularised on the post of MLD.

7. During the course of arguments, I had called

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upon the applicant's counsel to produce the Recruitment Rules for the post of MLD and the learned counsel for the applicant has submitted across the Bar the relevant rules for the post of MLD.

8. As stated in the earlier order on this very OA by a Single Member in this Tribunal while passing that order, the Tribunal had stated that there were only two issues: (i) whether the applicant is eligible for regularisation against the regular post of a driver and (ii) whether the applicant is eligible for the pay and allowances for having worked as MLD.

9. As regards the pay and allowances for having worked as MLD are concerned, since it is an admitted case of the parties that the applicant has worked against the higher post of MLD and he had been performing duties of the said post so on that account the applicant cannot be denied the pay and allowances as he has been continuously working on the post and in view of the rulings quoted above, I am of the considered opinion that the applicant is entitled for the difference in salary/wages which has been paid to him and for which he is entitled, as he is working against the post of MLD.

10. As regards the regularisation/promotion is concerned, it is an admitted case of the applicant himself that as per the Recruitment Rules, the post of MLD can be filled up from Group 'D' employees having driving licence of Light Motor Vehicle in which the vacancy arises

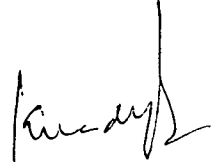
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subject to passing of a skill test to be conducted by the Transport Department. The Recruitment Rules do show that the applicant is entitled to be considered for appointment as MLD only by way of promotion from Group 'D' staff since the applicant claims that he had been performing the duty of MLD and he is a regular Group 'D' employee so at best he can be considered for promotion as MLD in accordance with Rules and no otherwise. Hence the OA is allowed with the following directions:-

(i) The respondents shall pay the difference in arrears of salary for the period for which the applicant has worked as MLD within a period of 3 months from the date of receipt of a copy of this order.

(ii) The applicant may be considered for promotion to the post of MLD strictly in accordance with the Recruitment Rules applicable to the applicant.

(iii) No costs.


(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh