

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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J.A. No. 1301/1995

Date of decision 14.11.1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Sh. R. K. Ahooja, Member (A)

Shri Nand Kishore,
r/o H.No. 8-44, Bawana, Delhi
working presently as Driver with
Joint Secretary (Medical)
Govt. of N.C.T. of Delhi.

... Applicant

(By Advocate Sh. R. R. Rai)

Vs.

1. The Lt. Governor, Delhi
through the Chief Secretary,
the Govt. of N.C.T. of Delhi,
5-Sham Nath Marg, Delhi-54
2. The Chief Engineer,
Irrigation and Flood
Govt. of N.C.T. of Delhi,
4th Floor, I.S.B.T. Delhi.
3. The Executive Engineer
Minor Irrigation Division,
L.M. Bund, Shastri Nagar,
Delhi.
4. The Under Secretary (Admn.)
Office of the Chief Secretary,
Govt. of N.C.T. of Delhi,
5-Sham Nath Marg, Delhi-54

... Respondents

(By Advocate Shri Rajinder Pandita)

J R D E R (JRAL)

[Hon'ble Shri R. K. Ahooja, Member (A)]

Shri Nand Kishore, applicant in this case, was appointed as Beldar in the office of the Minor Irrigation Department, Govt. of N.C.T. of Delhi w.e.f. 1.1.1987. He had obtained the Motor Driving Licence on 27.6.1983 and on that basis, he was given duties of Driver w.e.f. 1.12.1993 on three months sanction basis with pay and allowances

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as are applicable to a regular Driver. He was initially posted in one of the sub-divisions of the Minor Irrigation Department. His services were thereafter placed at the disposal of the Chief Secretary, N.C.T. of Delhi w.e.f. 25.10.1994. His last three months sanction expired on 27.2.1995. However, the applicant claims that he continued to work as Driver in the Secretariat since he was not relieved and it was only on 20-7-1995 as per order No. F.Misc/R&I/93-94 of the Govt. of N.C.T. of Delhi that he was relieved from the Secretariat duty. The grievance of the applicant is that he has not been given his salary as a Driver from 1.3.1995 till the time he was relieved from N.C.T. of Delhi Secretariat. He further claims that as he had put in service as a Driver for about 20 months and has also passed trade test prescribed by the Department and also because there is need for Drivers on regular basis as such he deserves to be appointed as a regular Driver.

2. The claim of the applicant has been contested by the respondents. They state that the applicant was recruited as Beldar and performed duties as Driver on a sanction basis/ emergent basis only if the situation arose for the additional work in the respondents Department and on that basis regular appointment cannot be made. They have also denied

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that there is any permanent vacancy of Driver. As regards the claim for salary for the period after 27.2.1995, they have contended that as no sanction for his further appointment has been issued and since the applicant did not report back to the office it was not possible to give him the pay of Driver. The Department had however, prepared his bill for Beldar which was received by him under protest.

3. We have heard the learned counsel for both the parties.

4. Learned counsel for the applicant has argued that the applicant had been called for regular trade test which he had undergone successfully. Thereafter he was working in both the Department as well as the N.C.T. Secretariat. The Secretariat of the N.C.T. of Delhi had utilised his services as Driver because there was an urgent requirement for more Drivers. He also contends that there are 7 vacancies of permanent Drivers and 7 more posts have been asked for. Besides there are also a number of posts of Drivers on work charged basis. He also submits that applicant's services were disengaged as Driver while his juniors as well ^{as} outsiders ^{have been appointed} against the post of drivers.

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5. Learned counsel for the respondents counters these arguments and submits that the trade test undertaken by the applicant was only to be considered for emergent employment as Driver and not regular recruitment in such posts.

6. We have given careful consideration to the pleadings and arguments advanced by the learned counsel for both sides.

7. It is admitted by both sides that the applicant had been asked to work as Driver w.e.f. 1.12.1993 to 20.7.1995. It also appears from the letter written by the Secretariat dated 30-3-95 that they had asked for the services of the applicant to be continued since a number of Drivers of the Sectt. were not available for one reason or other. It is also stated that the applicant was deployed with the Joint Secretary (Medical). In this letter it has also been made clear that while the applicant worked with Sectt. Officers he was ^{to} draw his salary to the post of Driver from the concerned Department. There is also a letter on record written by the Executive Engineer (MID) to the Under Secretary (Admn.) on 27-6-1995, wherein, a protest has been made regarding retention of the services of the applicant as Driver even though it had been decided to recall him. The applicant continued to work as Driver with

Secretariat Office after he had been deputed by the M.I.D. itself, for one reasons or other, till 20.7.95. Applicant cannot be made responsible for continuing in the job. Thereafter he was asked to report back to the office which had deputed him. No directions were sent by Respondents 2 and 3 directly to him. In fact, the respondents corresponded only between the Ex.Engineer (MID) and the Under Secretary (Admn.) Govt. of M.C.T. of Delhi. For this reasons the applicant would be entitled to receive his pay and allowances till such time he continued to work as Driver with respondent No.4.

8. The other prayer of the applicant is that since he had worked for 20 months as a Driver and had also passed the concerned trade test and since there is a requirement for Drivers on a regular basis his services as Driver may be regularised.

9. It is clear from the JA itself that the trade test was arranged by the respondent No.2 for the Beldars/Khallasis/Peons/Chowkidars, who had knowledge of driving for deployment on temporary basis. This was not a recruitment for regular appointment as Driver. There is no averment that the Department had called for applications for appointment as Driver on regular basis. Regular appointment has to be made in accordance with the recruitment rules and the applicant could also


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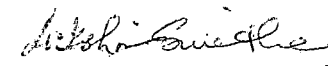
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put forthwith his claim, as and when such recruitment is undertaken if he possesses the essential qualifications as regards age, education, driving licence etc. The claim of the applicant for regular appointment on the basis that he was given short term appointment for 20 months because he was subjected to the trade test, cannot, therefore, be accepted.

10. The applicant, however, states that while he was reverted from the temporary post of Driver, certain other persons, juniors/outsiders have been engaged as Drivers. In this view of the matter, the applicants' claim has to be considered for such appointment as Driver in preference to his juniors and outsiders provided his work is satisfactory, and there is need for such appointments.

11. In the circumstances of the case, we dispose of this application with the direction that the applicant should be paid his salary as Driver upto 20.7.95 on which date the order was issued for relieving him from the post of Driver, within a period of two months from the date of receipt of this order. Respondent No.2 and 3 are also directed to consider the case of the applicant for appointment as Driver on temporary basis in case there is a need for such appointment in preference to his juniors and outsiders. No order as to costs.


(R.K. Ahuja)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)