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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.NoQA 1340/89

Date of decision: 4-3-1992

Sh.R.S.Yadav

Applicant

Versus

Commissioner of Sales Tax,
Delhi Administration & Ors.....

Respondents

For the Applicant ...

None.

For the Respondents ...

Mrs.Avnish Ahlawat,
Counsel.

CORAM:

The Hon'ble Mr. Ram. Pat Singh, Vice-Chairman(J)

The Hon'ble Mr. D.K.Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporters or not?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K.Chakravorty, Member)

In this application under Section 19 of the Administrative Tribunal, the applicant has challenged the order dated 29.9.88 appointing him as a Driver on daily wage basis instead of in the regular scale of pay and the order promoting one Shri Desh Raj/^{Respondent No.3} working as Peon to the post of Driver in place of the applicant. He has prayed for the following reliefs:-

- (1) To declare that the applicant is entitled to pay and allowances as allowed to the Drivers of the Department appointed on regular basis with consequential

relief of payment of arrears and overtime wages.

- (ii) To declare that the appointment of the applicant is regular and is not liable to be terminated.
- (iii) To set aside the order appointing respondent No.3 in place of the applicant.

2. While admitting the OA on 10.7.89 an ex-parte interim order directing the respondents to maintain status quo for a period of 14 days was passed. The respondents entered appearance and stated that respondent No.3 was selected for appointment by promotion had joined duty on 6.7.89 before the Tribunal had passed the interim order on 10.7.89. The learned counsel for the respondents further stated that there is no vacancy in which the applicant could be accommodated. After hearing the learned counsel for both sides, the interim order was vacated but in order to avoid hardship to the applicant, it was decided that the application will be heard and disposed of early. The matter came up for final disposal on 2.1.92 when Shri G.R.Matta, the learned counsel for the applicant was not present though he was sent for. After hearing the learned counsel for the respondents and going through the records, the judgement was reserved. However, it was ordered that the learned counsel for the applicant may file written arguments by 6.1.92. No written arguments have been filed so far.

3. The facts of the case in brief are that the respondents requested the Employment Exchange to sponsor the names of suitable candidates for the two posts of Drivers on daily wage basis.

6

The Employment Exchange, under their letter dated 7.9.89, sponsored the names of two candidates including that of the applicant. The applicant was appointed as Driver on daily wage basis @ Rs.25.10 per day or Rs.651 per month with effect from 18.9.88 to 22.10.88 purely on emergent basis against the vacant post of Driver. The appointment of the applicant was continued without break till the filing of this application. However, the applicant came to know that respondent No.2 wanted to fill up the post held by the applicant by promotion on pick and choose basis to accommodate respondent No.3. Respondent No.3 was not serving in the department when the post of Driver held by the applicant fell vacant. Respondent No.3 was appointed as Peon only in the month of January, 1989 when the applicant was already working as Driver. The applicant submitted a representation dated 21.6.89 requesting that he may also be considered for the interview being held on 22.6.89 for selection of Driver on regular basis. He had stated in the representation that his name had been sponsored by the Employment Exchange, Pusa, he was selected after an interview held by the department on 8.9.88; he had completed 287 days of service without any break and that he had worked with utmost satisfaction of his officers. However, he was not called for the interview and he learnt that the department has decided to offer the post of Driver to respondent No.3. The applicant states that he has been performing the same nature of work as other Drivers of the department appointed on regular basis, ^{and} / he has been made to do overtime work without payment of overtime allowance which he could not refuse

including that of the applicant were sent. The applicant was appointed as Driver on daily wages on purely emergent basis. He was not eligible for appointment on regular basis as he was overage.

5. For filling up the second post of Driver on regular basis, the applications were invited from all Class-IV employees possessing the requisite qualifications. 6 applications were received from Class-IV employees of the department and Shri Desh Raj, respondent No.3 was selected for appointment as Driver on regular basis. He joined his duties on 6.7.89. The services of the applicant were discontinued on 1.7.89 when the regular incumbent for the second post was appointed. The applicant cannot be considered for regular promotion as even at the initial stage when he was appointed on daily wage basis, he was not eligible for appointment to the post on regular basis as he was overage. That is why, the Employment Exchange had ~~XXX~~ recommended his name for appointment only on daily wage basis and not on regular basis.

6. We have heard the learned counsel for the respondents and have gone through the records of the case carefully.

7. We see force in the stand taken by the respondents. The applicant was ab initio ineligible for consideration for employment as Driver on the date when the requisition to the Employment Exchange for sending the names of suitable persons for the two posts of Driver on daily wage basis was issued on 29.8.88. On that date, the applicant was more than 25 years old as his date of birth is 5.6.1963. That is why his name could not have been sponsored by the Employment Exchange for

6

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as he has no security of tenure. He contends that by paying daily wages at lesser rates, the respondents have violated the principle of equal pay for equal work. Further, the department is now estopped from filling up the post by promotion as that method had failed at the time the post fell vacant and was filled by appointing the applicant. He submits that having held the post for more than 240 days, he cannot be removed from the post except in accordance with the provisions of CCS(TS) Rules, 1965.

4. The respondents have contested the application. They have stated that according to the recruitment rules, the posts of Driver are to be filled up by promotion from amongst Class-IV employees having driving licence failing which by direct recruitment. The qualification prescribed for direct recruitment is Matriculation or its equivalent with a driving licence and two years of unblemished experience in the line. The age-limit prescribed for the post is 18 to 25 years which is relaxable for Government servants upto 35 years. When two posts were to be filled up, since no departmental candidate was eligible a requisition for the post of one Driver on regular basis was sent to the Employment Exchange. The Employment Exchange sponsored the names of 11 candidates which did not include the name of the applicant and the post was filled up on regular basis. The name of the applicant was not sponsored by the Employment Exchange as he did not fulfil the requisite qualifications. For filling up the second post of Driver, in response to the request to the Employment Exchange for sponsoring suitable candidates for the post of Driver on daily wage basis, the names of two candidate

including that of the applicant were sent. The applicant was appointed as Driver on daily wages on purely emergent basis. He was not eligible for appointment on regular basis as he was overage.

5. For filling up the second post of Driver on regular basis, the applications were invited from all Class-IV employees possessing the requisite qualifications. 6 applications were received from Class-IV employees of the department and Shri Desh Raj, respondent No.3 was selected for appointment as Driver on regular basis. He joined his duties on 6.7.89. The services of the applicant were discontinued on 1.7.89 when the regular incumbent for the second post was appointed. The applicant cannot be considered for regular promotion as even at the initial stage when he was appointed on daily wage basis, he was not eligible for appointment to the post on regular basis as he was overage. That is why, the Employment Exchange had ~~XXX~~ recommended his name for appointment only on daily wage basis and not on regular basis.

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9

the regular post of Driver and was accordingly, sent only against the requisition for Drivers on daily wage basis. Having continuously worked for 287 days, the applicant is no doubt entitled to be considered for employment on daily wages, if the respondents require such services, in preference to the persons with lesser length of service and outsiders. But this period of employment does not give him any right to be considered for any regular post for which he does not fulfill the requirements. The respondent No.3, Shri Desh Raj had been working as Peon for some period of time when the respondents decided to fill up the second regular vacancy of Driver. He was eligible for consideration in terms of the relevant recruitment rules. His selection as regular Driver cannot, therefore, be faulted.

8. In the light of the above discussion, we see no merit in the application and the same is dismissed.

There will be no order as to costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER(A)
4/3/1992

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)
4.3.92