

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH**

**ORIGINAL APPLICATION NO.60/1018/2017**

ORDER RESERVED ON 27.01.2021

DATE OF ORDER: 09.02.2021

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Sarup Singh

Aged 58 years

Son of Sh. Uttam Singh

Motor Lorry Driver

Central Public Works Department

Chandigarh Central Division

No.3, Kendriya Sadan

Sector-9, Chandigarh.

Resident of House No.3413

Sector 27-D, Chandigarh.

(Group C)

....Applicant

(By Advocates Shri G.S.Bal a/w M.S.Madhar – through video conference)

Vs.

1. Union of India

Through the Secretary to Govt. of India

Ministry of Urban Development

Nirman Bhawan, New Delhi.

2. Director General of Works

Central Public Works Department

Nirman Bhawan, New Delhi.

3. Chief Engineer, North Zone-I  
Central Public Works Department  
Kendriya Sadan  
Sector-9, Chandigarh. ....Respondents

(By Advocate Shri K.K.Thakur – through video conference)

**O R D E R**

**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

- a. To call for entire records of the case and to set aside the impugned order dated 23.06.2017 declining to grant retrospective date of regularization of 11.12.2006 to the applicant.
- b. A direction be issued to the respondents to regularize the services of the applicant as Motor Lorry Driver(MLD) w.e.f. 11.12.2006 at par with his juniors and grant him all consequential benefits.
- c. In view of the judgment dated 26.05.2015(Annexure-A16), the applicant be put under the GPF Scheme instead of New Pension Scheme.

2. The facts of the case, as pleaded by the learned Counsels for the applicant, Shri G.S.Bal along with Shri M.S.Madhar are as follows:

- a. The applicant was initially appointed as Motor Lorry Driver in Central Public Works Department on 01.04.1993 on hand-receipt basis. He continued in service almost continuously till his services were regularized w.e.f. 03.10.2016 in pursuance of a direction issued by the Hon'ble Punjab and Haryana High Court dated 21.01.2016.

b. Earlier the applicant had approached the Tribunal in OA.No.514-CH of 2008 seeking regularization, but the same was dismissed on 25.01.2010. The Review Application filed against the said judgment was also rejected on 10.06.2010, with directions to the respondents to reconsider the claim of the applicant. In pursuance of directions issued by the Tribunal, the claim of the applicant was reconsidered and it was rejected vide orders dated 06.11.2012. The applicant again approached this Tribunal vide OA.No.63-CH of 2013 inter-alia relying upon the judgment of the Hon'ble Himachal Pradesh High Court dated 14.08.2007. However, the said OA was again rejected vide order dated 26.09.2014. The applicant approached the Hon'ble Punjab and Haryana High Court in CWP No.24963 of 2014. During the hearing of the case, the Hon'ble Division Bench of the High Court passed an interim order dated 21.01.2016 directing the respondents to consider his claim for regularization in view of a similar directions issued in another case i.e. CWP No.27795/2013 (Devi Dass vs. Union of India and others) passed on 15.12.2015. Against this interim order of the High Court, the respondents preferred Special Leave Petition (Civil) No.25483/2016 which was dismissed on 29.08.2016 by the Hon'ble Supreme Court.

c. After dismissal of the SLP, the regularization order dated 03.10.2016 was issued, keeping in view the orders of the Hon. High Court, regularizing the services of the applicant but from prospective effect. The CWP of the High Court requiring the respondents to consider the claim of the applicant for retrospective regularization, was disposed of by the Division Bench of the High Court on 23.02.2017 granting liberty to the applicant to represent to

competent authority for this purpose and it was observed that the case of the applicant be considered sympathetically within three months from the receipt of such representation. The applicant, accordingly, submitted a representation dated 27.03.2017 to respondent No.4 and also appended therewith a number of documents including the inter-se seniority list of Motor Lorry Drivers (MLD), orders of regularization of juniors etc. However, respondent No.3 after considering the claim of the applicant, rejected the same vide impugned order dated 23.06.2017.

- d. The applicant had also earlier approached the Hon'ble Principal Bench of this Tribunal amongst others vide OA.No.845/2000 which was decided on 06.02.2001 and a direction was issued to the respondents that the claim of the applicant shall be considered for regularization in their turn from the date vacancy becomes available and in accordance with the Rules and instructions on the subject. However, after consideration, an order dated 07.05.2002 was passed stating that since there was a ban on recruitment and no vacancy of MLD was available, his case would be considered for regularization in turn from the date vacancy becomes available in accordance with the Recruitment Rules and instructions. The applicant has submitted that thereafter a number of vacancies became available and the persons junior to the applicant were regularized. Now subsequent to the High Court's orders, his services have been regularized vide order dated 03.10.2016 but from prospective date.

- e. The applicant has enclosed a copy of the letter dated 20.08.2010 issued by the Executive Engineer, Chandigarh Central Circle-II to show that as per

vacancy position as on 7/2010, one post of MLD was available, but claim of applicant was not considered against that post.

f. The applicant has claimed that it has been duly proved on record by way of documentary evidence, by way of inter-se seniority list and regularization orders of juniors that even though applicant was much higher in the seniority list, his claim had always been illegally and arbitrarily overlooked, whereas the services of persons junior to the applicant had been regularized either by the department itself or in pursuance of the orders passed by this Tribunal/High Court. It was, thus, a case where the provisions of Articles 14 and 16 stand clearly violated, since persons junior to the applicant stand regularized from retrospective date and same benefit has illegally been declined to the applicant.

g. The respondents have been refuting the claim of the applicant, sometimes stating that he is not working on hand-receipt but is working on work-order basis, and at other times claiming that he is working under a contractor. These frivolous pleas were raised just to decline the relief to applicant, whereas it had already been highlighted in the correspondence of the Department itself that there is no difference in a MLD, engaged either on hand-receipt or on work-order basis. It was only a fact to be taken note of while making payment to such MLD as to from which Head payment is to be made to the MLD concerned. Had there been any difference either in the nature of the post or nature of duties performed by the MLD, under these two circumstances, the respondents would not and in fact could not have issued a common seniority list of all MLDs, where name of the applicant

was also shown at a higher place as compared to his juniors, who stood regularized. The respondents while regularizing the applicant vide order dated 03.10.2016 have rejected his representation to grant him retrospective date of regularisation with effect from 11.12.2006 the date when his juniors have been regularised and to further grant consequential benefits including seniority and place him for GPF establishment instead of CPF establishment with effect from the date of his initial appointment. His representation has been rejected illegally vide impugned order dated 23.06.2017. In view of the earlier judgment of Hon'ble Principal Bench at Annexure-A17, the applicant had a preferential right to be considered and regularized, but the respondents indulged in pick and choose mode and by totally overlooking the claim of applicant, regularized the services of his juniors. Rejection has been made on the ground that the regularization of other persons was on the basis of one time measure policy having the criteria of minimum 10 years' service on duly sanctioned posts and not against any of the orders of the Court/Tribunal.

3. Shri K.K.Thakur, learned counsel for the respondents in his reply has averred as follows:

a. The applicant was not an employee of the respondents and he had been engaged to drive the Govt. Vehicle with effect from 01.04.1993 to 30.04.1993 on hand receipts basis, from 01.05.1993 to 31.03.1997 on work order basis, from 01.04.1997 to 30.06.1997 on hand receipt basis and from 01.07.1997 to 02.10.2016 on work order basis subject to terms and conditions of the work order between the parties. The work orders

were issued in the name of Sh. Sarup Singh(applicant)only. The applicant had already been paid bills as per work order from time to time and he was a contractor and there was no relationship of employee and employer between the applicant and respondents. The applicant has no right for regular appointment from the retrospective date. As per the Hon'ble Supreme Court's directions in Engineer Officers Association vs. State of Maharashtra & others (1990(2)SCC715), if the initial appointment is not according to Rules, and is made as a stop gap arrangement, the officiation on such posts cannot be taken for considering seniority. The other Motor Lorry Drivers(MLD) shown in Annexure-16 were working on Muster Roll/ Hand Receipt basis and regularized w.e.f. 11.12.2006 on the basis of one time measure policy having criteria of minimum 10 year service in duly sanctioned posts. The applicant, on the other hand, was working on work order basis and has been regularized on the directions of Hon'ble High Court.

- b. The appended document concerning the seniority list of MLD does not exist and this fact has been clarified by the office of the Superintending Engineer Co-ord (NR) on 18.04.2017 returning letter in original of Supdt. Engineer, Chandigarh Central Circle, CPWD, Chandigarh.
- c. The New Pension Scheme has come into force with effect from 01.01.2004 and the applicant has been regularized with effect from 03.10.2016, therefore, the benefit of GPF cannot be given to him.

4. After going through the pleadings of the respective counsels, and hearing the arguments put forth by them, during the course of hearing of the case, the following points are observed:

- a) The applicant, as per the available record indicated in letter dated 06.11.2012 (Annexure A4), has worked in the office of the Chandigarh Central Division-III as Motor Lorry Driver(MLD) for the period from 01.04.1993 to 30.04.1993 on hand receipt basis, from 01.05.1993 to 31.03.1997 on work order basis, from 01.04.1997 to 30.06.1997 on hand receipt basis, from 01.07.1997 to 31.05.2007 on work order basis and from 01.06.2007 onwards on work order basis. His services were regularised on 3.10.2016 vide orders dated 3.10.2016 in compliance to Hon. Punjab & Haryana High Court judgement dated 21.01.2016.
- b) The applicant has produced a letter signed by the then Superintending Engineer, Coordination Circle (Electrical), CPWD, R.K.Puram, New Delhi dated 28.09.2006 addressed to the Superintending Engineer, Chandigarh Central Circle, CPWD, Chandigarh where the seniority list of work-charge workers out of Delhi on Kacha Chitha (Muster Roll) has been enclosed. In this list, there are names of 58 persons who are working as Motor Lorry Drivers with the name of the applicant at S1.No.43. This list also indicates clearly that the applicant has been appointed from 01.04.1993. Names of Sh.Tarsem Singh (date of appointment 11.05.1993), Balwinder Singh (date of appointment 19.09.1994), Deshraj Sharma (date of appointment

29.07.1995) and Pardeep Kumar (date of appointment 24.10.1995) are indicated at Sl.Nos.44, 54, 56 & 57 respectively in this list, making it very clear that these persons have been appointed after the applicant and are placed below him in this list. Existence of this letter has not been disputed by the respondents although they have stated in their arguments that the said seniority list does not exist. This list may not be a seniority list, since all these employees were not on the rolls of CPWD as regular employees at that point of time. However, the data contained in this list clearly indicates that the applicant was appointed on hand receipt basis on 1.04.1993, earlier to some of the other employees who have been subsequently regularised w.e.f. 11.12.2006.

5. The respondents have averred that the other Motor Lorry Drivers who had been regularised with effect from 11.12.2006 had been employed on hand receipt basis but the applicant was employed on contract basis and hence cannot be treated as employee. However, a perusal of the orders of the Hon'ble High Court of Punjab and Haryana passed with respect to Shri Devi Dass vs. Union of India & others in CWP No: 27795/2013 dated 15.12.2015, clearly indicates that the Court has ruled that the respondents had adopted an unfair labour practice like a private institution employing the petitioner on a contract basis and not regularizing him for the past 26 years. Based on this observation, the Court had directed regularisation of the petitioner in that case.

6. The present applicant has also been granted relief on similar grounds, by the High Court of Punjab & Haryana, in CWP 24963/2014 vide directions dated 21.01.2016. The Hon. High Court had observed in this case *that the petitioner (applicant in the*

*present case) had put in 22 years of service as a driver and has not been regularized. This case be also considered in light of the directions issued by this Court in CWP No: 27795 of 2013 dated 15.12.2015.* These directions of the Hon. High Court, were subsequently upheld by the Supreme Court on 29.08.2016 by dismissing the SLP filed by the respondents challenging the orders dated 21.01.2016 in CWP No: 24963/2014 passed by the High Court of Punjab & Haryana. The applicant has been regularized by the respondents vide order dated 3.10.2016, subsequent to these directions of the Hon. Supreme Court.

7. Keeping the above directions of the High Court and Supreme Court in view, the contention of the respondents that, since the applicant was working on contract basis, whereas the other workers were on hand receipt basis, this can be a ground for differentiation between him and the other Motor Lorry Drivers appears to be arbitrary and cannot be accepted.
8. A perusal of the order dated 23.06.2017 issued by Chief Engineer, while rejecting the representation of the applicant for grant of retrospective regularisation w.e.f. 11.12.2006 has observed as follows:

*“That the applicant was on work order basis since 01.07.1997 and was regularized on 03.10.2016. That the MLDs regularized on 11.12.2006 were on the basis of one-time measure policy having criteria of minimum 10 years’ service in duly sanctioned post and not against any of the order of Courts/Tribunals. While here, the applicant was regularized on the directions of Hon’ble High Court.”*

9. The reasons given by the department are not in order and appear to be incorrect. It is quite clear from the record, that the applicant was working with CPWD with effect from 01.04.1993 and not from 01.07.1997 (as mentioned in the order by the

Chief Engineer) and would be having more than ten years of service on 11.12.2006.

10. Keeping the above in view, it is apparent that the claim of the applicant for being treated at par with other MLDs who had started working from a date later than the applicant, has merits.

11. Accordingly, the OA is allowed. The order dated 23.06.2017 is set aside with a direction to the respondents to issue a revised order considering the case of the applicant and granting him retrospective regularisation with effect from 11.12.2006, the date when his juniors were regularised and to grant all consequential benefits to the applicant at par with his juniors.

12. There shall be no orders so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ps/