

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00751/2015

Friday, this the 12th day of February, 2021.

CORAM:

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

M. Rajendran,
S/o. Ramunni Nair (late),
Driver Grade II, Regional Science Centre,
Calicut – 673 006.
Residing at Naduthody House, (P.O) Pulikkal,
Malappuram – 673 637. - Applicant

[By Advocate : Mr. R. Sreeraj]

Versus

1. The Director General,
National Council of Science Museums,
Sector V, Block-CN, Bidhan Nagar,
Calcutta – 700 091.
2. The Secretary,
National Council of Science Museums,
Sector V, Block-CN, Bidhan Nagar,
Calcutta – 700 091.
3. The Director,
Nehru Science Centre,
National Council of Science Museums,
Dr. E. Moses Road, Worli,
Mumbai – 400 018.
4. The Administrative Officer,
Nehru Science Centre,
National Council of Science Museums,
Dr. E. Moses Road, Worli, Mumbai – 400 018. - Respondents

[By Advocate : Mr. Sunil Jacob Jose]

The application having been heard on 04.02.2021, the Tribunal on 12.02.2021 delivered the following:

O R D E R**Per: Mr. K.V. Eapen, Administrative Member**

The applicant in the O.A is aggrieved by the Memorandum No. NSCM/14028/327/2015/2513 dated 18.08.2015 (Annexure A-1) issued by Respondent No. 4 in response to his appeal dated 15.06.2015 to Respondent No.1. The facts of the case are that the applicant joined the service of the National Council of Science Museums (NCSM) at the headquarter at Calcutta, on 20.03.1991, as a Driver in the ordinary grade. At that time, there was no promotional scheme existing for the Drivers of the Council nor for that matter for the Staff Car Drivers of the Government of India. Later, a Scheme was prepared and issued by the Department of Personnel and Training vide its O.M dated 30.11.1993, by which, Staff Car Drivers in the then existing scales of Rs. 950-1500 were to be placed in different scales of Rs. 950-1500, 1200-1800 and Rs. 1320-2040 in the ratio of 55:25:20. The nomenclature of the posts of three scales was stipulated as (i) '*Staff Car Driver Ordinary Grade*' (ii) '*Staff Car Driver Grade II*' and (iii) '*Staff Car Driver Grade I*' respectively. The eligibility criteria for appointment to the post in the Grade II and Grade I was nine years of regular service in the Ordinary Grade and six years of regular service in Grade II of Staff Car Drivers. Pursuant to this DoPT O.M, the Respondent No.1 (Director General, National Council of Science Museums, Calcutta) approved a similar Promotion Scheme for Staff Car Drivers with effect from 01.02.1996. The Scheme was communicated as per Office Order No. 5/96(I-13019/1 dated 31.01.1996) issued by Respondent No. 2 (Secretary, National Council of Science Museums, Calcutta) vide Annexure A-3.

2. As per the Annexure A-3 Promotion Scheme, the applicant submits that he should have been placed in the scale of pay of Driver Grade II with effect

from 20.03.2000 and Driver Grade I with effect from 20.03.1996 (perhaps, this is an error, it should be 20.03.2006). However, as per the NCSM order dated 15.02.2011, he was placed in the scale of pay of Driver Grade II with effect from 25.08.2010 only. At the same time, three other drivers, who had commenced service after him were placed in the scale of pay of Driver Grade II exactly with effect from the date on which they completed nine years in Driver Ordinary Grade.

3. The applicant then submitted a representation to the 3rd respondent, who is the Director, Nehru Science Centre, under the National Council of Science Museums (NCSM) at Mumbai. In response to this representation, the 4th respondent, who is the Administrative Officer under the Nehru Science Centre, Mumbai issued an O.M informing the applicant that the date of his promotion to Driver Grade II with effect from 25.08.2010 is in order and there is no need to review the same as requested by him. In this O.M., it has also been stated that the applicant was considered for promotion to the post of Driver Grade II on completion of the required nine years of service by the DPC which met on 05.02.2002. The recommendations of the DPC was kept in a sealed cover on account of pendency of a disciplinary proceedings against the applicant. It is further stated in the O.M, (which is provided at Annexure A-6) that after the opening of the sealed cover on completion of disciplinary proceedings, it was observed that the applicant was not recommended for promotion to Driver Grade II. Therefore, after the completion of period of penalty on 24.08.2010, he was considered for promotion by the DPC held on 11.02.2011 and, as per the recommendations of the DPC, he was promoted as Driver Grade II in PB-1 with Grade Pay of Rs. 4200/- with effect from 25.08.2010.

4. Aggrieved by these revelations at Annexure A-6 O.M, the applicant submitted another representation to the 3rd respondent on 21.03.2011. He was further informed that a Modified Scheme for Promotion of Staff Car Drivers was introduced in NCSM vide O.M dated 07.09.2001 and that was effective from 21.07.2001. Accordingly, the applicant had been considered for promotion to the post of Driver Grade-II by the DPC which had met on 05.02.2002, but he was not recommended for promotion. This was informed to the applicant by the O.M issued by the NSC, Mumabi at Annexure A-8.

5. The applicant submits that from a perusal of Annexure A-8 O.M, it is clear that the respondents had not considered the applicant for placement in the scale of pay of Driver Grade II with effect from 20.03.2000 in accordance with the stipulations in Annexure A-3 Promotion Scheme, but they considered his case for placement in the scale of Driver Grade II in the DPC held on 05.02.2002 only and that was in accordance with the provisions of Modified Scheme for Promotion of Staff Car Driver introduced in the NCSM in the year 2001. He submits that as on 20.03.2000, the date on which he became eligible for placement in the scale of pay of Driver Grade II, he was not under any cloud and he was suspended only with effect from 09.05.2001. **Therefore, it is evident that non-consideration of his case for placement in the scale of pay of Driver Grade II with effect from 20.03.2000 as per the provisions of Annexure A-3 Scheme had prejudicially affected him.**

6. The applicant submits that the Modified Scheme for Promotion of Staff Car Drivers was introduced in NCSM with effect from 21.07.2001 as per the Office Order dated 07.09.2001 issued by 2nd respondent at Annexure A-10.

Vide this Scheme, the earlier Scheme was modified and a special grade in the scale of pay of Rs. 5000-8000 for the Staff Car Drivers was introduced. To facilitate the introduction of this special grade, the ratio in which the post for Staff Car Drivers were to be placed in different grades was revised from the earlier ratio to 30:30:35:5 for the grades "Ordinary", "Grade II", "Grade-I" and "Special Grade" respectively.

7. The applicant continued preferring representations to the 1st Respondent aggrieved by the Annexure A-8 Office Memorandum by which he claims that his legitimate case for placement in the scale of pay of Driver Grade II with effect from 20.03.2000 with consequential higher grades with effect from respective due dates was rejected. However, all his representations continued to be rejected and he claims that the 2nd respondent failed to appreciate the fact that the applicant has been seeking placement in the scale of pay of Driver Grade II with effect from 20.03.2000 on the basis of stipulations in the Annexure A-3 Scheme. He claims that all the representations including the one at Annexure A-11 was rejected by the 2nd respondent quite mechanically without application of mind to the relevant facts of the case. He submitted another representation to the 3rd respondent seeking reconsideration of the matter vide Annexure A-13. This was also rejected vide Annexure A-14. Thereafter, he submitted an appeal to the 1st respondent placing reliance on Annexure A-2 Government of India Office Memorandum. However, the said appeal was also rejected as per the impugned Annexure A-1 Office Memorandum.

8. His main grounds for relief for filing the O.A include:

- a) The A-1 Office memorandum has not been issued by the Authority to whom the applicant submitted his appeal. In fact he submits that even

A-14 appeal was not even seen by the 1st respondent.

b) The observation that no cases were taken up for consideration for promotion to the post of Driver Grade II apparently due to non availability of posts as per percentage formula prescribed in Annexure A-3 Scheme, is a cooked up story to cover the shortcomings on the part of the 3rd and 4th respondents. The applicant denies that the posts as per percentage formula prescribed were not available. He submits that the respondents never tried to implement the Annexure A-3 Scheme and are only trying to cover their shortfall. He submits that the Cadre strength of the Driver Ordinary Grade prior to the introduction of Annexure A-3 Scheme and how many drivers have completed 15 years and 9 years as on date of introduction of Annexure A-3 Scheme, have not been stated in the Annexure A-1 impugned order.

c) The respondents have not considered the applicant in scale of pay of Driver Grade II with effect from 20.03.2000 in accordance with the stipulation in Annexure A-3 promotion Scheme. They have considered his case for placement in scale of pay of Driver Grade II in DPC held on 05.02.2002 only and that was in accordance with the provisions of the Modified Scheme for Promotion, introduced in the NCSM in the year 2001. As on 20.03.2000, the date on which he was eligible for placement in the scale of pay of Driver Grade II, he was not under any cloud as he was suspended only with effect from 09.05.2001. Thus, non-consideration of placement in scale of pay of Driver Grade-II with effect from 20.03.2000 even though provisions of Annexure A-3 Scheme were in force has prejudicially affected him.

d) The Annexure A-3 Scheme is a time bound scheme for placement

for various grades of Driver. The only change in the Modified Scheme is introduction of one more higher grade and consequential revision of ratio. The date of implementation was chosen by NCSM arbitrarily. Had it not been for that, they could not have argued that no vacancies were available. Hence, this was a case of administrative highhandedness violating Article 14 and 16 of the Constitution of India.

e) Other drivers recruited after him have been promoted before him exactly from the date on which they completed 9 years of service in Driver Ordinary Grade. However, he has been ignored and placed in the scale of pay of Driver Grade II much later and not with effect from 20.03.2000. In addition, he should have been placed in the Driver Grade I with effect from 20.03.1996 (2006).

9. He, therefore, prays to quash Annexure A-1 order and to direct the respondents to consider placing him in the scale of pay of Driver Grade II with effect from 20.03.2000 with consequential placements in the higher grade with effect from respective due dates.

10. Per contra, Respondents have filed a detailed reply statement claiming that the relief claimed by the applicant in the O.A have been raised before the Department on various occasions. The same, after detailed consideration by the Competent Authorities, have been rejected and communicated to the applicant. However, in spite of the refusal, the applicant has continued to file representations. The respondents state that repeated representations on the same subject with the same prayers being repeated will not make any change in the statutory provisions. Hence, all the facts and Rule provisions were brought

to his notice vide the impugned order passed by the 4th respondent which had the approval of the 3rd respondent. The respondents submit that the promotion scheme for Drivers which was introduced with effect from 01.02.1996 through an Office Order No. 5/96 dated 31.01.1996 does not provide for routine promotion on completion of the prescribed number of years in a grade. It is subject to the availability of vacancies in higher grades as worked out by the percentage formula prescribed by the Government in its O.M dated 30.11.1993. The applicant had completed 9 years of service in NCSM on 19.03.2000 while the Office Order of 31.03.1996 was in force. However, no cases were taken for consideration for promotion to Driver Grade II because of non-availability of vacancies in the grade as per the percentage formula prescribed by the Scheme. Hence, the impugned order has been issued in a perfectly legal manner and does not call for any interference.

11. As a background, the respondents have stated that National Council of Science Museums (NCSM) is a society registered under West Bengal Registration of Societies Act, XXVI of 1961. It is an autonomous scientific organization under the Ministry of Culture, Government India. The President of the NCSM is the Minister of Culture, Government of India. It has its own Memorandum of Rules and Regulations and Bye-laws, etc. providing for day-to-day functioning. There are 25 units functioning under NCSM including Nehru Science Centre (NSC), Mumbai. NSC, Mumbai is the Zonal Headquarters of the Regional Science Centre (RSC), Calicut, where the applicant is currently working. The service conditions of employees in the NCSM are governed by the provisions of the Central Civil Service (Classification, Control and Appeal) Rules and the Central Civil Services

(Conduct) Rules, which have been adopted specifically by the NCSM for its employees, as per Clause 62 of the bye-laws. Furthermore, Government of India Rules do not automatically apply to employees of NCSM and these Rules have to be duly adopted with approval of Competent Authority in order to be applicable to NCSM employees.

12. The applicant was appointed as a Driver in Regional Science Centre (RSC), Calicut on 20.03.1991 in the pay scale of 950-1500 (pre-revised). He was placed under suspension with effect from 09.05.2001 and disciplinary proceedings were initiated against him as per Rule 14 of the CCS (CCA) Rules, 1965 as adopted by NCSM. He was then removed from service of NCSM by the Director, NSC, Mumbai in his capacity as Disciplinary Authority vide order dated 20.03.2003 after departmental inquiry under Rule 14 of the CCS (CCA) Rules (as adopted by the NCSM) after finding him guilty on a grave charge of misconduct and misbehaviour. This penalty was first reduced to a compulsory retirement by the Director General, NCSM, the Appellate Authority. Thereafter, the applicant filed a Revision Petition to the Minister of Culture, Government of India and President, NCSM. Although the President, NCSM was convinced that there was grave misconduct and misbehaviour on part of the applicant, he took a sympathetic view of the matter and ordered reinstatement of the applicant in service of NCSM by reducing the penalty of compulsory retirement passed by the Appellate Authority. The pay of the applicant was reduced to the lowest stage of Rs. 3050 to the time scale of Rs. 3050-75-3950-80-4590 for five years with cumulative effect. Further, the President, NCSM and Minister of Culture decided that the applicant upon reinstatement of service in pursuance of the revision order be posted to some

other unit of NCSM. Accordingly, applicant on his posting joined Science City, Calcutta on 24.10.2005. The applicant was then subsequently transferred from Science City, Calcutta to RSC, Calicut with effect from 21.07.2008.

13. The respondents reiterate that the promotion scheme for Drivers, which was implemented in NCSM vide order No. 5/96 dated 31.01.1996 and made effective from 01.02.1996 did not provide for routine promotion on completion of prescribed number of years in the grade but is subject to availability of posts in higher grades as worked out on the percentage formula prescribed by the Government. Though the applicant was eligible with effect from 20.03.2000 for promotion of Driver Grade II on completion of 9 years service in NCSM, no cases were taken up or considered for promotion to the post of Driver Grade II after 26.04.1996 due to non-availability of posts as per the percentage formula prescribed in the Scheme. In the Western Zone, where the applicant was employed at that time there were a total sanctioned strength of 13 posts as on 01.02.1996, of which there were 10 filled up posts and 3 vacant posts. After the DPC was held on 26.04.1996, as against 7 posts in Ordinary Grade, there were 2 vacant posts, for the 3 posts in Grade II there was no vacant post and for the 3 posts in Grade I, there was 1 vacant post. Thus, there was no vacancy in Driver Grade II till the time of implementation of the Modified Promotion Scheme for Drivers i.e., on 21.07.2001. Hence, no DPC was held for promotion for Drivers during the period. As such, the contention of the applicant that he should have been promoted to the Grade of Driver Grade II with effect from 20.03.2000 is incorrect and unsustainable. Further, his contention that he should have been placed in Driver Grade I with effect from 20.03.1996 is baseless as he had completed just 5 years of service as on 20.03.1996 and he was not even eligible for promotion as Driver Grade II on 20.03.1996.

14. After the Modified Scheme was introduced in NCSM and made effective from 21.07.2001 the distribution of posts of Drivers in Western Zone was changed. As on 21.07.2001, there was a total sanctioned strength of 14 posts, of which, 12 were filled up and 2 were vacant. The ordinary Grade Driver (30%) now consisted of 4 posts, Driver Grade II (30%- 4 posts) Driver Grade I (35% - 5posts) and Driver in Special Grade (5%-1 post), totalling to 14 posts. After the DPC held on 05.02.2002, all the posts in Ordinary Grade were filled up leaving no vacant posts, whereas in Grade II there was one vacant post out of four and in Grade I, one vacant post out of 5 and no vacant posts in Special Grade (1 post). However, just before implementation of the Modified Scheme with effect from 21.07.2001 the applicant was placed under suspension on 09.05.2001 and disciplinary proceedings were initiated. Hence, when the DPC was held on 05.02.2002, disciplinary proceedings were pending against him and as such the recommendation of DPC in respect of the applicant was kept in a sealed cover in view of the ongoing proceedings. After completion of the disciplinary proceedings, the sealed cover was opened and it was observed that he was not recommended for promotion as Driver Grade II. As brought out above, he was then removed from service with effect from 20.03.2003. After the revision petition was accepted, he was reinstated in service of the Council as per the order approved by the Culture Minister and President NCSM (the Revision Authority) dated 25.08.2005. It was also ordered by the Revision Authority that his pay be reduced to the lowest pay Rs. 3050/- in the time scale of pay of Rs. 3050-4950 and that he should not earn any increment during increment of pay with cumulative effect. Accordingly, his period of absence from 09.05.2001 to 24.08.2005 was treated as non-duty vide NSC, Mumbai O.M. dated 07.01.2011. On completion of the period of penalty on 24.08.2010, he was once again considered for promotion to the post of Driver

Grade II by the DPC which met on 11.02.2011. As per the recommendations of the DPC, he was promoted to Driver Grade II with effect from 25.08.2010 i.e., the next date after completion of his penalty period as the promotional benefit cannot be accrued during currency of the penalty period. All these were communicated to the applicant vide O.M. dated 14.03.2011. Hence, the averment that A-1 is without jurisdiction is incorrect. The contention of the respondent is that repeated representations on the same subject before different authorities did not and does not merit consideration. They submitted that the applicant was continuously submitting representations in spite of the fact that all the issues raised by him have been reasonably addressed.

15. We have heard Mr. R. Sreeraj, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned counsel for the respondents.

On going through the O.A and reply statement along with the documents which have been provided and after hearing the contentions of the learned counsels, we do not find that the applicant has been illegally denied his legitimate placement in the various scales of Driver in the NCSM. His averments comparing his case with the cases of other Drivers is also not correct as his case was considered along with other eligible Drivers in the DPC held on 05.02.2002 for promotion to Driver Grade II. However, due to pending disciplinary proceedings, the recommendation of the DPC was kept in sealed cover. After completion of disciplinary proceedings, when the sealed cover was opened, it was found that he was not recommended. Hence, he did not fulfill the eligibility criteria as prescribed in the Scheme and was not subject to any discrimination. In the absence of vacancies for promotion to higher grade, there was no way for the respondents to consider his case till the percentage formula for promotion of Drivers was revised after implementation

of the Modified Promotion Scheme for Drivers, which was introduced with effect from 21.07.2001. His penalty was over only on 24.08.2010 and we note he was then considered for promotion in the DPC which met on 11.02.2011. This DPC promoted him to Driver Grade II with effect from 21.08.2010 i.e. the next date after completion of his penalty.

16. We find, therefore, that the action taken by the respondents are in conformity with the CCS (CCA) Rules as applicable and adopted by the NCSM. We do not find that there has been any discrimination shown to the applicant in any way and that the relief sought by him are to be granted. Hence, his request for placement in the scale of Driver Grade II with effect from 20.03.2000 with consequential placements in the higher grade with effect from respective due dates is denied. The O.A is dismissed without costs.

(Dated, 12th February, 2021)

**(K.V. EAPEN)
ADMINISTRATIVE MEMBER**

**(P. MADHAVAN)
JUDICIAL MEMBER**

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Applicant's Annexures

Annexure A-1	-	True copy of the Memorandum No. NSCM/ 14028/327/2015/2513 dated 18.08.2015 issued by the 4 th respondent.
Annexure A-2	-	True copy of the Government of India, Department of Personnel & Training O.M. No. 22036/1/92-Estt. (D) dated 30.11.1993.
Annexure A-3	-	True copy of the Office Order No. 5/96 (1-13019/1 dated 31.01.1996) issued by the 2 nd respondent.
Annexure A-4	-	True copy of the order No. NSCM/14024/96/2015/655 dated 20.05.2015 issued by the 4 th respondent.
Annexure A-5	-	True copy of the representation dated 01.03.2011 submitted by the applicant to the 3 rd respondent.
Annexure A-6	-	True copy of the Memorandum No. NSCB-14028/327/2011/9930 dated 14.03.2011 issued by the 4 th respondent.
Annexure A-7	-	True copy of the representation dated 21.03.2011 submitted by the applicant to the 3 rd respondent.
Annexure A-8	-	True copy of the Office Memorandum No. NSCB-14028/327/2011/155 dated 13.04.2011 issued by the Section Officer (Genl.) NSC, Mumbai.
Annexure A-9	-	True copy of the O.M. F. No. 43019/54/96-Estt(D) dated 15.02.2001.
Annexure A-10	-	True copy of the Office Order No. 22/2001 (I-13019/1) dated 07.09.2001 issued by the 2 nd respondent.
Annexure A-11	-	True copy of the representation dated 23.05.2011 submitted by the applicant to the 1 st respondent.
Annexure A-12	-	True copy of the Office Memorandum I-17012/4/12484 dated 16.7.2011 issued by the 2 nd respondent.
Annexure A-13	-	True copy of the representation dated 16.03.2015 submitted by the applicant to the 3 rd respondent.
Annexure A-14	-	True copy of the Memorandum No. NSCM-14028/327/91/2015/746 dated 27.05.2015 issued by the 4 th respondent.
Annexure A-15	-	True copy of the appeal dated 15.06.2015 submitted by the applicant to the 1 st respondent.

Annexures of Respondents

NIL
