

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 2510/91

DATE OF DECISION : 03.04.92

SHRI VIKRAM SINGH

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENT

CORAM

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN (A)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SHRI K.L. BHATIA

FOR THE RESPONDENT

...SHRI JOG SINGH

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes.*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is a Scooter Driver in the Directorate General of Health Service and has assailed his non-appointment to the post of Staff Car Driver, though he was empanelled in 1988 *yet* ^{he} *for approval* and still is not being considered.

The applicant has claimed the relief that he may be regularised in the post of Driver under the respondents for which he has already qualified in the test held for the purpose and may be adjusted in a vacancy which has fallen vacant on the retirement of an incumbent on 31.10.1991. A further direction is desired that no test of the applicant

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be held since he ~~is~~ ^{has} already qualified in the earlier tests and lastly payment of salary and allowances for the entire period of promotion as Driver be made.

2. The brief facts of the case are that the applicant possesses a licence of heavy vehicle driver and in 1988, the respondents issued a circular calling for applications from the eligible candidates belonging to Group 'D' employees to the post of Driver in the scale of Rs.950-1500. The applicant possesses all the requisite qualifications. The applicant appeared in the selection and interview and was placed in the panel and also underwent medical examination, but he has not been appointed. Subsequently another selection was held ^{vide circular dt.} on 18.7.1990 for filling up the post of the Driver. The applicant submitted representation that he had already appeared in the earlier selection and was also medically examined, but the applicant was made to appear in the selection also. He was told that his taking the selection will not forego claims for appointment on the basis of earlier tests held in August, 1988. However, the applicant has not been appointed in spite of the representations, hence this application.

3. The respondents contested the application and denied any arbitrary action by the respondents against the applicant.

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It is stated that the applicant has been working as a Peon in the Directorate General of Health Services since 1984. It is also stated that the applicant was sanctioned an honorarium of Re.1/- per day for performing the duties of Three Wheeler Scooter Driver w.e.f. 15.11.1988. The applicant was never appointed to the post of Staff Car Driver. However, the applicant appeared in the selection for Driver test in 1988 and he was empanelled as number 2. But since there was only one vacancy, so Shri Zile Singh, who was number 1 in the panel, was appointed. In the selection in 1990, the applicant also appeared, but he did not pass the test. The earlier panel of 1988 was operative for one year only and since there was no other vacancy, so the applicant was not given any posting. In the driving test of 1991 for which a circular was issued in July, 1990 and three persons qualified named S/ Shri Rajinder Singh, Manjit Singh and Veer Singh. Shri Rajinder Singh has already been appointed in a vacancy caused in April, 1991 and the second vacancy which has fallen in November, 1991 is to be given to the second candidate Manjit Singh. Thus there is no prejudice or bias against the applicant and the applicant could not be given any posting because of the above circumstances. The applicant has obtained a stay order on 30.10.1991 on showing wrong facts and that too has been vacated.

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4. We have heard the learned counsel for the parties at length and have gone through the records of the case. OM No.22011/5/86-Estt.(D) dt.10.4.1989 of the DOPT in para-17.13.1 clearly lays down that panel for promotion drawn up by DPC for selection post would normally be valid for one year. It should cease to be in force on the expiry of the period of one year and six months or when a fresh panel is prepared, whichever is earlier. Thus the qualifying ^{in the} test by the applicant in 1988 and his ultimate empanelment at No.2 would not give him a right to be appointed in a vacancy which has not occurred during one and a half years from the date of the panel. There was only one vacancy and that vacancy has gone to Zile Singh, who was number ^{one} ~~2~~ in the panel. The applicant could not have been given appointment superseding Zile Singh.

5. The contention of the applicant that since he has passed the selection in 1988, so he should have been exempted from taking subsequent examination for which circular was issued in 1990 and the selection actually held in February, has no force. The applicant has appeared in the selection and now he cannot agitate the matter again. Also when once the panel in which the applicant ^{had} ~~was~~ figured at No.2 could not be given effect to as regards the applicant, so for

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all purposes the passing of the test for a subsequent selection becomes meaningless. The applicant did take the selection in 1991, but he did not pass the selection and so he could not be considered for giving a posting in the vacancy which has occurred during the currency of the panel.

6: The applicant is a Class-IV employee and is working as a Peon. He has never been appointed as a Driver, though he has been working as a Three Wheeler Driver and for which he is paid an honorarium. Therefore, there is no question of his regularisation on the post of Staff Car Driver. There is no promotion from the post of Peon to the post of Driver. That is a separate cadre by itself. The applicant has to come by way of a selection and since he ~~has~~ failed in ^{the} 1991 selection, ~~so~~ he cannot be considered to the post of Staff Car Driver. The learned counsel for the applicant could not show any law or rule under which the applicant has acquired a right of promotion to the post of Staff Car Driver.

7. In view of the above facts, the application is devoid of merits and is dismissed leaving the parties to bear their own costs.

AKS

J. P. SHARMA
MEMBER (J)

3.4.92

S. P. MUKERJI
VICE CHAIRMAN
3.4.92