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**Central Administrative Tribunal
Principal Bench**

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OA No. 2255/2004

New Delhi, this 5th day of April, 2006

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)**

Shri Krishan Singh
S/o Sh. Gosai Singh,
R/o 1213, Laxmibai Nagar,
New Delhi – 110 023.

...Applicant

(By Advocate: Shri Sant Lal proxy counsel for Sh. T. C. Aggarwal)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-1.
2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pension,
North Block,
New Delhi.

...Respondents

(By Advocate: Shri S.M. Arif)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant, an erstwhile Staff Car Driver, who had retired on superannuation on 31.08.2002, seeks grant of special grade in the scale of Rs. 5000-8000/- w.e.f. 8.11.1996, with consequential benefits of arrears.

2. Applicant, who was holding the post of Staff Car Driver - Grade-I since 1997, acquired eligibility for Special Grade in 2000 in the wake of an order passed by the DoP&T on 23.08.2001. On 15.2.2001, Promotion Scheme for Staff Car Drivers, which included special grade, was introduced. The said Scheme was to take effect from

8.11.1996 in compliance of the directions issued by the Tribunal on 5.5.2000 in the matter of *Central Government Staff Car Drivers' Association and Bikram Singh vs. Union of India & Ors.* (OA No. 2529/1996). Accordingly, vide OM dated 23.08.2001, it has been clarified that for special grade, no trade test is prescribed and those who had retired before implementation of OM dated 15.2.2001, waiving of the requirement, would be entitled to the special grade and benefit of restructuring retrospectively from 8.11.1996. Another OM issued by DoP&T on 13.2.2002 stipulated that in a case where the strength of special car driver is below 10 and the percentage infraction is below 0.5, there is no requirement for introducing the special grade. However, Ministry of Information & Broadcasting vide its order dated 30.12.2002 adopted the 4 tier structure and in accordance with it applicant was accorded special grade from 28.8.2002 i.e. the date of DPC. The grievance of the applicant is that whereas he has acquired eligibility in 2000 yet he has not been granted the benefit retrospectively and while referring to the recruitment rules promulgated on 21.5.2004 as PIB Staff Car Driver Recruitment Rules, 2004, it is contended that one sanctioned post of special grade was in existence when the rules came into being retrospectively from 8.11.1996. While referring to the Explanatory Memorandum, learned counsel would contend that the special grade newly created to re-rest the ratio of staff car driver is made effective from 8.11.1996 and arrears thereof be accorded.

3. In the above backdrop, learned counsel relied upon a decision of the Tribunal rendered in the matter of *Hari Dutt vs. Union of India & Ors.* (OA No. 1643/2005 - decided on 18.01.2006) where relying upon OM dated 23.08.2001, it has been held that a decision to implement OM dated 15.2.2001 even had been taken prospectively but the benefits would be retrospectively from 8.11.1996 with arrears thereof.

4. Learned counsel would further contend that the applicant is entitled for the benefit of special grade and arrears thereof from the date he acquired eligibility and not from the prospective date of holding the DPC.

5. On the other hand, learned counsel for the respondents vehemently opposed the contentions and stated that the applicant has been rightly accorded the benefit as in the Ministry of Information & Broadcasting, there were only seven sanctioned posts of staff car driver. The required percentage of special grade is infraction. As such, if the cadre is below 10, no special grade is required to be introduced.

6. Learned counsel would also contend that subsequent amendment of the Recruitment Rules promulgated in 2004 would not be applied retrospectively.

7. We have considered the rival contentions of the parties and perused the material on record.

8. We are in agreement with the view taken by the Tribunal in *Hari Dutt's* case (supra) where OM dated 23.08.2001 clearly stipulated that before implementation of OM dated 15.2.2001 which has brought into being special grade for those staff car drivers who had even retired, the implementation as per eligibility would relate back to 8.11.1996 and in that event the benefit would be accorded retrospectively.

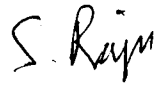
9. Moreover, even the recruitment rules promulgated in 2004 clearly show that there exists a post of special grade of staff car driver and the rules had been made effective retrospectively from 8.11.1996. The Explanatory Memorandum, which has to be treated as part of the rules, also clearly shows implementation of OM dated 15.2.2001 with retrospective effect from 8.11.1996 with grant of arrears in the special grade. Undoubtedly, the recruitment rules, which are statutory in nature framed under Article 309 of the Constitution of India, will supersede any other instructions on administrative side. Thus, DOP&T OM dated 13.2.2002 has to give way to the recruitment rules. By operating the recruitment rules retrospectively when there is a post of special grade which was operated right from 1996, the applicant having completed the eligibility period as per restructuring of staff car driver with respect to special grade in 2000, should have been accorded the benefit of special grade right from

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2000 and not from prospective date of 30.08.2002, which is against the recruitment rules.

10. In the result, for the foregoing reasons, the present Original Application stands disposed of with a direction to the respondents to consider according benefit of special grade to the applicant from the date he acquired eligibility for this grade i.e. in the year 2000 and in that event he would be entitled to all consequential benefits and arrears thereof, which shall be granted to him within a period of two months from the date of receipt of a copy of this order. No costs.


(Mrs. Chitra Chopra)
Member (A)


(Shanker Raju)
Member (J)

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