

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2869 of 2004

New Delhi, this the 13th day of July, 2005

**HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN (A)
HON'BLE Mrs. MEERA CHHIBBER, MEMBER (J)**

Shri S.C. Singh,
Motor Driver,
Intelligence Bureau, R.K. Puram,
New Delhi-110066.

.....Applicant.

(By Advocate : Shri K.L. Bhandula)

VERSUS

1. Union of Indian through
Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.
2. The Director
Intelligence Bureau, North Block,
New Delhi-110001.
3. The Assistant Director,
Intelligence Bureau,
R.K. Puram, New Delhi-110066.Respondents.

(By Advocate : Shri Nasir Ahmed)

ORDER (ORAL)

BY HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN (A) :

By filing the present Original Application, the applicant is claiming the following reliefs:-

- "i) to regularise the applicant in post of Junior Intelligence Officer Grade-II (Motor Transport) i.e. Driver, vacancies for which are available and the applicant has been working in the said post for the last 13 years without break.
- ii) the applicant may also be considered against the vacancies for which the applications have been invited now by giving age relaxation.



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iii) Any other directions which the Hon'ble Tribunal may deemed fit and award of the cost of the proceedings."

2. Brief facts of the case, as stated by the applicant, are that he has been working as Driver since March, 1991. According to the applicant, he fulfills all the essential qualifications ^{i.e. he} is a matriculate; possessing driving license and has knowledge of motor mechanic and thus, he is eligible for regularization to the post of Driver. According to the applicant, he was earlier called for interview for the post of Driver in the year 1998 as per the directions given by this Tribunal dated 28.10.1998 in OA NO.952/1998 and is also now entitled for consideration for the post of Driver by granting relaxation in age. On 15.6.2004, the respondents have issued a Circular whereby they invited applications for the post of Junior Intelligence Officer Grade-II (Motor Transport) i.e. Driver. Despite the fact that the applicant has been working since 1991, the respondents have not called the applicant for interview by granting age relaxation, which is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. Hence, this OA.

3. Respondents in their reply have stated that the applicant was engaged as a Driver on 'no work- no wages' basis in view of the exigency of work. Applicant's engagement was neither casual nor daily waged nor ad hoc in nature. Applicant belongs to General category. As such his age on crucial date was 40 years, 3 months and 6 days and thus, he was ineligible for the post of Driver being overage. Hence, his candidature was rejected.

4. Heard the learned counsel for the parties and perused the material available on record.



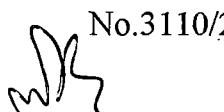
5. It is not in dispute that the applicant has been working as Driver with the respondents since 1991. In pursuance of the directions given by the Tribunal on 28.10.1998 (supra), the applicant has been considered by the respondents for the post of Driver by granting age relaxation but he was not selected/ appointed being lower in merit. We find that at the time of initial appointment as Driver in the year 1991, applicant was within the prescribed age limit for the post of Driver. The instructions issued by the Govt. of India, Department of Personnel and Training vide OM No.49014/2/86-Estt. (C) dated 7.6.1988 (mentioned in *Swamy's – Establishment and Administration*), in Chapter 23 Para 1 General Terms and Conditions for employment of casual labour provides as follows:-

“(x) The regularization of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularization, a casual worker may be given relaxation in the upper age-limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age-limit for the relevant post.”

6. Apart from it, the Hon'ble Supreme Court in the case of Bhupinder Singh Saini and others Vs. State of Punjab and others, (2003) 9 SCC 161, has held as under :-

“4..... It is also undisputed that the appellants have served in the Census Organisation from 1991 till 1994 though with breaks and then in the Municipality from 10-3-1995 till 10-4-1997. Taking these factors into consideration we think it appropriate to direct that it would be open for these appellants to compete along with others against any available vacancies and the Government of Punjab would consider the cases of these appellants by relaxing the age to the extent they have served in the Census Organisation as well as in the Municipality.”

In a similar case, this Tribunal vide its order dated 5.8.2004 passed in OA No.3110/2003 has given the following the directions:-



“(a) Respondents shall not insist on applicants' names being sponsored by the Employment Exchange again in view of their long service on casual basis with the respondent-department.

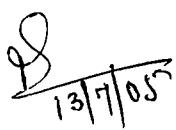
(b) Candidature of the applicants will be considered by the respondents alongwith other candidates sponsored by the Employment Exchange; and

(c) Age relaxation to the extent of their casual engagement will be considered by the respondents.

I order accordingly. No costs.”

7. Since the fact that the applicant has been working with the respondents since 1991 as Driver has not been disputed, applicant should be granted age relaxation to the extent, he has served with the respondents-department.

8. In view of the facts mentioned above and having regard to the decisions of the Apex Court (supra) as well as of this Tribunal (supra), we allow this Original Application. The respondents are directed to consider the applicant for regularization to the post of Driver by granting age relaxation to the extent he has already ~~been~~ served in the respondents-department within the period of three months from the date of receipt of a copy of this order. If the applicant is found suitable for the post of Driver, he should be given appointment to the post of Driver on regular basis. No costs.


 13/7/05
 (Mrs. MEERA CHHIBBER)
 MEMBER (J)


 (M.P. SINGH)
 VICE CHAIRMAN (A)

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