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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1047/2004

New Delhi, this the 21st October, 2005

Hon'ble Mr.Justice M.A.Khan, Vice-Chairman (J)
Hon'ble Mr.M.K.Misra, Member(A)

Sh. Balwant Singh Dogra,
S/o Sh. Milkhi Ram
Working as Motor Lorry Driver
CPWD, Nirmam Bhawan,
R/o D-4/85, Laxmi Nagar,
Delhi -110 092. ...Applicant.
(By advocate: Shri R.P.Luthra with Shri Krishan Kumar)

Versus

Union of India through

1. Secretary,
Ministry of UD & PB
Nirmam Bhawan,
New Delhi.
2. Director General of Works
CPWD, Nirmam Bhawan
New Delhi.
3. The Superintending Engineer
Gaziabad Central Division CPWD
Gaziabad.
4. The Executive Engineer
Noida Central Division
CPWD, B-310, I.P.Bhawan
New Delhi. ...Respondents.

(By Advocate Shri A.K.Singh)

O R D E R (ORAL)

By Mr. Justice M.A.Khan VC(J):

The applicant has filed this application for a direction to the respondents to consider him for regularization as Motor Lorry Driver (MLD) in the respondents-department at par with his juniors with effect from November 1995 with consequential benefits.

2. The applicant, who is working as MLD on hand receipt basis, was initially engaged as Jeep Driver on 12.9.1988 with the respondents. Screening test of all daily wage MLDs was conducted in June 1995 in which the applicant had qualified but his services were not regularized. The applicant made several representations for redressal of the grievances but no action was taken by the respondents. In the OA, the applicant

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has stated that some persons junior to him, namely S/Shri V.S.Rawat, Willson Masih and Raj Kumar had been regularized as MLD as per the order of the Tribunal in OA 1338/2000. The applicant also stated that he is similarly situated and he should also be given the benefit of that order.

3. In the counter, it is stated that the services of some persons juniors to the applicant have been regularized to fill up the backlog of SC/ST and OBC seats as they had passed the Trade Test before him in 1993 or 1994. The applicant had earlier filed OA before this Tribunal for regularization of his services on the ground that his juniors had been regularized and he had also passed the Trade Test on 31.7.1995. The applicant's junior Shri B.S.Rawat passed the Trade Test on 26.12.1994 and Shri Mool Chand passed the Trade Test on 23.6.1993 which is prior to the applicant. On the basis of Trade Test declared on 31.7.1995, only two persons were regularized that too to fill up the backlog of SC/ST & OBC seats whereas the applicant had only informed the department on 14.5.98 that he belonged to OBC category though he was declared passed on 31.7.98 as a General category candidate.

4. In the amended counter reply, the respondents have pleaded that the case of the applicant for regularization will be considered by the Department as and when his turn matures subject to fulfilling the terms and conditions of service/recruitment rules. But in the rejoinder, the applicant has controverted the allegations of the respondents.

5. During the hearing, learned counsel for the applicant has drawn our attention to the seniority list of MLDs working on hand receipt basis which is filed as Annexure A/2 to the rejoinder in which the applicant is placed at Sl. No.1 above S/Shri Gurdeep Singh and Vishamber Misra who are placed at Sl. Nos. 2 and 3 respectively. He has also drawn our attention to the two orders of the respondents dated 26.9.2005 whereby services of Bishamber Mishra and Shri Gurdeep Singh have been regularised as MLD. Learned counsel for the respondents has taken time to seek instructions from the respondents about these orders. Today he has produced a copy of the order dated 14.10.2005 before us which does not deny that Shri Gurdeep Singh and Bishambhar Misra are junior to the applicant after merger of the seniority list of two divisions but it is stated that the services

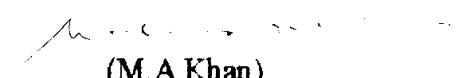
of Shri Gurdeep Singh and Bishambhar Misra were regularized in compliance of the order of the Tribunal as a special case.

6. Learned counsel for the respondents has stated that the case of the applicant will also be considered for regularization on his turn. He has also stated that there are 7 posts of MLD and all of them are occupied by the different incumbents and no vacancy is available for regularization of the services of the applicant. It is further submitted that as and when a vacancy is arisen, the applicant will also be considered for regularization on the above post. However, learned counsel for the respondents has not been able to explain as to why the case of the applicant was not considered when two persons junior to him were regularized in compliance with the order of the Tribunal. The respondents cannot ignore the claim of the applicant for regularization because of his higher position in the seniority list on the ground that the service of junior persons was regularized under an order of the Tribunal or Court unless his case can be distinguished on facts and law.

7. Accordingly, we dispose of this OA directing the respondents to consider the claim of the applicant afresh for regularization of his services on the post of MLD at par with his juniors who have been regularized and in the event he is found eligible, his services shall also be regularized. The respondents shall do this exercise within two months from the date of receipt of a copy of this order. Consequential benefits shall also be given to the applicant at par with his juniors in case his services are regularized. The parties shall bear their own costs.



(M.K.Misra)
Member (A)



(M.A.Khan)
Vice-Chairman(J)

/kdr/