

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1080/2004

29

Thursday, this the 19th day of January 2006

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)**

Sudhan Ram
S/o Jai Dayal
MT Driver Grade-I (Retd.)
O/o Adjutant & QM
Equine Breeding Stud
Hisar (Haryana)

Residential Address:-

Sudhan Ram
House No.R-549, Gali No.6
Swatantra Nagar
Narela, Delhi – 40

..Applicant

(By Advocate: Shri GD Bhandari)

Versus

Union of India through

1. The Secretary
Ministry of Defence
Govt. of India, New Delhi
2. The CDA (Pay Tech)
Western Command
Sector-9 C
Chandigarh
3. The Commandant
Equine Breeding Stud
Hisar (Haryana)

..Respondents

(By Advocate: Shri DS Mahendru)

O R D E R (ORAL)

Shri Shanker Raju:

Heard the both the learned counsel.

2. Though during the course of hearing of this OA by an additional affidavit filed on 17.8.2005, the respondents have brought into notice of this Court an order passed by them promoting the applicant in MT Special Grade and also an order passed on 24.4.2004 wherein the promotion has been cancelled post-retirement of the applicant and promoting one Shri Zermez

Singh, we cannot take cognizance of this and quash the orders as the same have not been assailed before us in the present OA.

3. Although the grievance raised by the applicant, who superannuated on 31.1.2004, pertains to grant of MT Driver Grade from 1.1.1996 on the strength of an order passed by the Ministry of Defence on 17.7.1998 where the similarly circumstanced Wing of a Ministry of Defence, i.e., MES, MT Drivers have been granted Grade-I from 1.1.1996. Learned counsel for applicant alleges invidious discrimination under Articles 14 & 16 of the Constitution.

4. On the ground of grant of special grade of Rs.5000-8000, it is stated that although in the earlier scheme, three grades structure was introduced but subsequently vide Annexure A-8, Ministry of Defence in continuation of its earlier orders dated 5.12.1996 and 29.6.1998 introduced Special Grade, eligibility of which is three years of regular service in Grade-I. Accordingly, it is stated that as the applicant, who was entitled for grant of MT Grade-I from 1.1.1996 and in the year 1999 he acquired eligibility, he be considered for this Special Grade, which has now been cancelled without according any opportunity to the applicant.

5. On the other hand, learned counsel for respondents vehemently opposed the contentions but it is stated that the grade structure and its implementation from 1.1.1996, as has been done in MES, has been represented and this case has been taken up with the Headquarters for redressal.

6. On the ground of cancellation of promotion, it is stated that having not been a cause of action raised in the present OA, the same cannot be entertained by this Court, which is beyond jurisdiction.

7. On a careful consideration of the contentions raised by the parties and having regard to the decision of the Constitution Bench in **D.S. Nakara & others v. Union of India & others**, 1983 SCC (L&S) 145, any invidious discrimination without reasonable differentia would be without any nexus and would be violative of Articles 14 & 16 of the Constitution.

8. In the above backdrop, once the Ministry of Defence, which is a cadre controlling authority, extends through its notification dated 17.7.1998, benefit of three grades structure of the MT Drivers from 1.1.1996 and depriving another Wing of Ministry of Defence wherein MT Drivers who perform identical duties with eligibility criteria and recruitment rules being identical

and any differential action when these cadres form a same class, would be hostile and would not be consonance with the Articles 14 & 16 of the Constitution.

9. As regards the contention of the grant of Special Grade, if on grant of Grade I the applicant fulfils the eligibility as per Annexure A-8, which has been operated retrospectively to ensure that those who had retired during the interregnum of the promulgation of these instructions and before actual consideration, it has been decided that even without finalization of statutory rules, one has to be considered for such Special Grade and would be entitled to all the consequential benefits.

10. The above decision of the Government is clear to the effect that even those who had retired but acquired eligibility earlier before implementation of Special Grade cannot be deprived of the benefits, which would be in form of pay and allowances and determination of their retrial benefits accordingly.

11. In the result, for the forgoing reasons, this OA stands partly allowed. Respondents are directed to extend to the applicant the benefit of Grade I Driver in MT cadre, as extended to MES as per OM dated 17.7.1998, with all consequential benefits and arrears within a period of three months from the date of receipt of a copy of this order. Insofar as the consideration for Special Grade is concerned, in the light of Annexure A-8, the case of the applicant shall also be considered for promotion to Special Grade and in the event of promotion, consequential benefits and retrial benefits would also be revised within the same period. No costs.


 (N.D. Dayal)
 Member (A)


 (Shanker Raju)
 Member (J)

/sunil/