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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 518/2004

New Delhi, this the 29th day of November, 2005

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Ashfaquul-Nabi Khan,
Aged about 66 years,
S/o Shri Mohd. Nabi Khan,
Retired Staff Car Driver,
AIR, Rampur
R/o D-35, MIG Flat, DDA,
B-Block, Vivek Vihar, Phase-II,
(Opp. Jhilmil Colony)
Delhi – 110 095
(By Advocate: Shri H.P. Chakraverty)

... APPLICANT

VERSUS

Union of India: Through

1. The Director General,
All India Radio,
Broadcasting Corporation of India,
Prasar Bharti, Information & Broadcasting Ministry,
Sansad Marg,
New Delhi
2. The Station Director,
All India Radio, Prasar Bharti,
Lucknow

3. The Station Engineer (Head of the Office),
All India Radio, Prasar Bharti,
Rampur

(By Advocate : None)

... RESPONDENTS

O R D E R (Oral)

BY MUKESH KUMAR GUPTA, MEMBER (J):

Since none appeared on behalf of the Respondents despite revised call, we decided to invoke rule 16 of the Central Administrative Tribunals (Procedure) Rules, 1987 and after hearing the learned counsel for the

[Signature]

Applicant, considering respective pleadings of the parties, decided to proceed with the matter.

2. In this OA, challenge has been made to communications dated 03.03.2003 (A-1) and 13.02.2003 (A-2) issued by the Respondents rejecting applicant's request for retrospective promotion stating that since he retired from service prior to 08.11.1996, he was not entitled to the benefit in terms of DOP&T's OM dated 23.08.2001. The applicant also seeks direction to the Respondents to grant him the pay scale of Rs.1325-2040/- w.e.f. 01.08.1993 along with arrears of pay as well as re-fixation of pensionary benefits with interest from 01.05.1996 till the date of actual payment.

3. The facts sans unnecessary details of the case are as under.

4. The applicant, who joined All India Radio on 01.10.1965, retired on attaining the age of superannuation w.e.f. 31.01.1996 as Staff Car Driver. His grievance is that in terms of DOP&T's OM dated 30.11.1993, which was based on a judgment passed by this Bench of the Tribunal in OA No.2957/1991, **Staff Car Drivers' Association vs. Union of India**, the Government devised a promotional scheme for Staff Car Drivers from 01.08.1993 on par with Ministry of Railways, replacing in-situ promotion and a three scale structure was provided, namely, Rs.950-1500 (Staff Car Driver – Ordinary Grade), Rs.1200-1800 (Staff Car Driver Grade-II) and Rs.1320-2040 (Staff Car Driver Grade-I). The method of appointment to the posts in Grade II and Grade I of Staff Car Drivers was non-selection (seniority-cum-fitness) basis subject to passing of a Trade Test of appropriate standard and the said OM was made applicable w.e.f. 01.08.1993. The aforesaid Scheme was modified vide DOP&T OM dated 27.07.1995. Based on the aforesaid OMs, Directorate of Publicity issued

order dated 07.03.1997 (Annexure A-9) granting the benefits of promotion to Grade-I and Grade-II to the Staff Car Drivers in service as well as retirees. The grievance of the applicant is that the aforesaid Scheme had not been implemented almost for a period of five years by the Station Director, All India Radio, Lucknow and the Station Engineer, All India Radio, Rampur, where the applicant happened to be posted and he in the meantime had retired on attaining the normal age of superannuation. In the meantime, the case for grant of higher pay scale akin to master craftsmen in the Railways, i.e., Rs.5,000-8,000/- was under consideration before this Tribunal and after the verdict in their favour, DOP&T OM dated 15.02.2001 was issued and the special grade of Rs.5000-8000/- was granted with arrears from 08.11.1996. As many as 13 persons were granted the scale in Grade-I, i.e. Rs.4,500-7000/- w.e.f. 01.08.1993 ignoring the applicant. The persons at serial No.2 onwards were junior to him as they were appointed in the year 1968 onwards. In such circumstances, he submitted a representation, followed by reminders, which were ultimately rejected vide the impugned orders dated 13.02.2003 and 03.03.2003.

4. It is the contention of the applicant that no trade test was held prior to the date when he attained the age of superannuation and the only ground on which he had been denied such a benefit is that since he had retired prior to 08.11.1996, the benefit admissible in terms of DOP&T's OM dated 23.08.2001 was inadmissible. There had been no adverse entries against him, though he was very well available for trade test after issuance of OMs dated 30.11.1993 and 27.07.1995 till he attained the age of superannuation, but no such test was conducted and he has been made to suffer for no fault of his. He rendered 30 years of satisfactory service and

was not even accorded a single promotion in his whole service career. The Respondents cannot be allowed to take advantage of their own inaction for not conducting the trade test under the shelter of DOP&T's OM dated 23.08.2001, which, in fact, was a clarification to the OM dated 15.02.2001. It is contended that para-3 of the said OM dated 23.08.2001 in fact states that "in respect of Staff Car Drivers, who were in position as on 8.11.1996 and have resigned or died or have retired before implementation of the O.M. dated 15.2.2001, it has been decided that the requirement of the trade test may be waived in their case to enable them to avail the promotion." The special grade of Rs.5,000-8,000/- was granted w.e.f. 08.11.1996 by changing/enhancing the percentage of Grade-II and Grade-I and in respect of persons already covered prior to issuance of OMs issued earlier could not be implemented by one reason or other for which the applicant cannot be made to suffer. The Respondents themselves granted the benefit of such promotion w.e.f. 1.08.1993 in UP Zone to the retired vehicle drivers, who retired or died, without subjecting them to any trade test and the denial of such benefit to him is not only highly unjustified and illegal but also violative of the provisions of the Constitution of India, besides OMs dated 30.11.1993 and 27.07.1995.

5. The Respondents in their reply contested the claim and stated that the applicant was not entitled to revised pay scale of OM dated 1.4.1996 as he was not in the service of the Respondents as on 01.10.1996. Action to implement the instructions of the Directorate was initiated in the year 1998 though the promotion scheme was notified vide DOP&T's OM dated 30.11.1993 and particulars of all the Drivers were called from the stations in the Zone. After completing all the required formalities, order dated 15.05.2002 was issued promoting certain Drivers. It is stated that the



Scheme was implemented as soon as the instructions to implement the same were received and there was no delay on their part. No details of retired Driver was brought to the notice of Respondent No.2 at the time of implementing the promotion Scheme for Staff Car Drivers and his representation made in the year 2001 was dealt with expeditiously without any delay.

6. After receiving Applicant's representation dated 05.06.2001, the matter was taken up with Respondent No.1 for clarification, which was clarified vide OM dated 23.08.2001. The issue of extending the benefit of promotion to the Staff Car Drivers, who had retired/resigned/died during 01.08.1993 to 31.03.1997 and from 16.02.2001 to 31.01.2002 was taken up with Ministry of Information & Broadcasting, who clarified that only such retired Staff Car Drivers are to be considered for promotion who are covered under the instructions contained in OM dated 23.08.2001.

7. The applicant by filing a detailed rejoinder controverted Respondents' averments and relied upon the order dated 13.12.2004 granting benefit of promotion retrospectively in the pay scale of Rs.1320-2040 with effect from 01.08.1993 to similarly situated persons though they had retired/expired during the years 1995-1998.

8. We have heard the learned counsel for the applicant and perused the pleadings on record.


9. On perusal of the material on record, particularly order dated 13.12.2004, which is annexed with the rejoinder filed on 29.06.2005, we find that four officials were granted the said benefit retrospectively w.e.f. 01.08.1993, though they had expired/retired during the years 1995-1998.

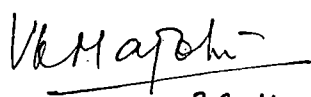
10 As noticed hereinabove, OM dated 23.08.2001, particularly para 3, provides that the requirement of trade test had been waived in respect of persons resigned/retired/died to enable them to avail the promotion to

Grade-I in the pay scale of Rs.4,500-7,000/- and Grade-II in the pay scale of Rs.4,000-6,000/-, which is a non-selection post. On consideration of the entire matter, we find that the said OM is basically a clarification of the OM dated 15.02.2001, which came into force w.e.f. 08.11.1996 and required that those who resigned or died before implementation of such promotion be also considered for promotion along with those still in service provided they were otherwise eligible for promotion, with all consequential benefits. It is not denied by the Respondents that initially promotional scheme for Staff Car Drivers was devised by DOP&T vide OM dated 30.11.1993, which was further modified vide OM dated 27.07.1995, particularly paras 2 and 3, which provided minimum eligibility criteria for appointment to Grade-I Staff Car Driver. It is not the case of the Respondents that the directions of the aforesaid OMs were implemented and a trade test was conducted till 31.01.1996 when the applicant was in service. Further more, it is not the case of the applicant that there was any delay or inaction on the part of the applicant seeking his assessment for the said trade test. The only ground on which he had been denied the benefit vide the impugned communications dated 03.03.2003 and 13.02.2003 is that since he retired prior to 08.11.1996, he was not entitled to the benefit in terms of DOP&T's OM dated 23.08.2001. We may note, at the cost of repetition that the 4 persons, namely, S/Shri Noor Masih, Ram Kishan, Chandra Dev Prasad and Mohd. Yunus were granted retrospective promotion in the grade of Rs.1320-2040/- vide order dated 13.12.2004 though Noor Masih, Ram Kishan and Mohd. Yunus died on 28.02.1997 and 13.05.1998 respectively while Chandra Dev Prasad attained the age of superannuation on 28.02.1997. Shri Ram Kishan, in any case, had died on 23.12.1995 i.e. prior to 08.11.1996 and that he had been granted retrospective promotion w.e.f. 01.08.1993. The Respondents have neither denied nor explained

the circumstances under which such promotion was accorded. As we have already noticed that the condition of passing the trade test was waived vide clarificatory OM dated 23.08.2001. Under these circumstances, we find justification in the applicant's contention that the Respondents have not extended similar benefit as accorded to various officials as noticed hereinabove and thus, there is a discriminatory treatment meted out to him. We may also note, at this stage, that the applicant has named some more similarly situated officials, namely, S/Shri Ram Prakash Dubey and Pyare Lal, who were allowed the said benefit without putting them to any trade test in para 5.8 of the OA, which fact had also not been controverted by providing any detailed reply by the Respondents. As such there is discrimination per-se.

11. In view of the discussions made hereinabove, we allow the Original Application in part and quash & set aside impugned communications dated 03.03.2003 as well as 13.02.2003 and hold that the Applicant would be entitled to the benefit of waiver of trade test, as allowed to others. Consequently the applicant would be entitled to the grant of pay scale of Rs.1320-2040/- w.e.f. 01.08.1993. However, in the facts and circumstances of the present case, we do not wish to either accord him the arrears of pay or interest as prayed for. However, the Applicant would be entitled to re-fixation of his pensionary benefits along with arrears of pension and pensionary benefits. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra)
Vice-Chairman (A)
29.11.05