

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 225/93

New Delhi this 5th day of January 1994

HON'BLE MR. J.P. SHARMA, MEMBER (J)

HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Joginder Singh,
S/o Shri Rishi Chand,
Resident of Mohalla Mehlo,
Village Madaupur Khader,
P.O. Badarpur,
New Delhi-110 044.

... Applicant

(By Advocate Shri T.C. Aggarwal)

Vs.

1. Secretary to the Govt. of India,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-110 001.

2. Chief Engineer, Level I,
Civil Construction Wing,
Directorate General,
All India Radio,
P.T.I. Building,
Parliament Street,
New Delhi-110 001.

3. Shri C.P. Sharma,
Assistant Engineer in
Civil Construction Wing,
through Respondent No. 2

... Respondents

(By Advocate ; None)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant filed O.A. No. 569/91 challenging his termination by the Memo dated 7.9.1990 from the post of Workman Driver. That O.A. was decided by the Principal Bench by its order dated 24.1.1992 and the order of termination was set aside with the direction to the respondents to reinstate the applicant in service. By the said judgement, a liberty was given to the respondents to take action against the applicant in accordance with the law in respect

11

of any specific misconduct. When the said direction was not complied with the applicant filed MP No. 1185/92 which was disposed of by the order dated 4.12.1992 by the Principal Bench holding that the applicant is aggrieved by the decision of the respondents he cannot seek redress by filing an MP. The applicant, therefore, filed the present application in January 1993 in which he claimed another direction to respondents to reinstate him retrospectively with effect from the date of termination i.e. 7.9.1990 with back wages and exemplary cost. He has also prayed for further direction to regularise the applicant in his appointment claiming regular wages of Driver on the basis of Equal pay for Equal work. The applicant subsequently filed the amended O.A. in which he prayed for the grant of the relief that the Memo dated 9.4.1992 be quashed with the direction to the respondents to reinstate the applicant retrospectively from the date of termination of his service i.e. 7.9.1990 with back wages.

A notice was issued to the respondents who contested the application and took the stand that the present application is barred by principle of res judicata. He has further stated that pursuant to the direction issued in O.A. No. 596/91 in the order dated 24.1.1992 the applicant was asked to appear in the trade test/interview but the applicant could not qualify the trade test/interview and could not be appointed as Motor Driver. Since the case of the applicant was duly considered by the DPC and the DPC did not recommend the case of the applicant for appointment and the applicant, therefore, has no case, the same be dismissed.

We have heard the learned counsel for the applicant Shri T.C. Aggarwal and none appeared for the respondents. We have gone through the pleadings of the parties and proceeded to decide the case on merits. The case of the applicant is that the applicant was duly appointed by the Executive Engineer by selection through Employment Exchange out of four candidates. The applicant has also placed reliance on a letter issued by the Executive Engineer to Assistant Engineer, Shri C.P. Sharma on 10.9.1990 where it is mentioned that the applicant has successfully driven in hill area alongwith the AE(E). The preliminary objection of the respondent that the application is barred by the principle of res judicata has no basis. In fact in the earlier application the order assailed was of 7.9.1990 wherein it was stated that services are no more required as he was not having experience of hilly areas and further his behaviour was not found satisfactory. This order was quashed with the direction to the respondents to reinstate the applicant in service within a period of two months from the date of communication of the order. The order was passed in the earlier O.A. No. 596/91 as already stated on 24.1.1992. The Tribunal in that case observed that this order of termination attached stigma to the applicant and has been passed without giving him an opportunity to defend himself. The respondents, therefore has no alternative but to reinstate the applicant and after serving the showcause notice regarding his mis-behaviour or lacking in the experience could have proceeded according to law. That has not been done. The applicant, therefore, filed MP No. 1185/92 which was disposed of on 4.12.1992 by the Bench observing that MP is not maintainable

as a different cause of action has arisen on the basis of the impugned order passed by the respondents. The impugned order is dated 9.4.1992. That order directed the applicant to produce certain documents such as driving licence, qualification certificate and experience etc. but the applicant has failed to produce these required documents. Thus, it is held that the present application is maintainable and has to be decided on merit.

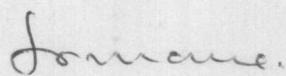
The learned counsel for the applicant during the course of arguments did not press the relief of being reinstated in service from 7.9.1990 with back wages. Obviously, this relief could not be allowed because in the earlier O.A. filed by the applicant the Tribunal ordered for non-payment of back wages and only directed the respondents to reinstate the applicant within a period of two months from the date of communication of the order. The only relief pressed is that the applicant is to be reinstated in service as directed by the Tribunal earlier and the respondents cannot pass another order to the effect that the applicant did not possess the requisite qualifications. The applicant has already been selected on the basis of that selection dated 20.7.1989. He was also transferred to Jammu alongwith Jeep No. DDA-9438. The Executive Engineer vide letter dated 10.9.1990 (Annexure A III) and by a further order dated 11.9.1990 (Annexure A V) allowed the applicant to be taken in service. In view of these facts a fresh D.P.C. was not required to screen the applicant for appointment as it was not a fresh appointment but only continuation of an earlier appointment given to the application after selection on 20.7.1989. In the defence taken in the earlier O.A. the stand of the respondents has been that the applicant cannot be

regularised as he had not completed 240 days of service in each of the two years. It was not stated therein that the applicant is not qualified. The letter of the Executive Engineer of September, 1990 (Annexure A III) clearly goes to show that the applicant has driven vehicles in hilly areas alongwith AE (E). The police verification of the applicant has also been completed (Annexure A IV). In view of the above facts the impugned order that the applicant did not furnish the documents regarding his qualification does not go to show the bonafide nature. In the counter filed by the respondents, it is admitted that he has completed 411 days in 13 months and 17 days. The respondents have averred that the applicant cannot be regularised in his appointment because muster roll staff is purely of casual nature as per rules laid down in Para 26.01 of CPWD Vol. III. If he had completed 411 days from 20.7.1989 to 31.10.1990 it does not appear how the applicant had not completed 240 days in a year. Further in the reply it is stated that the applicant could not qualify the trade test/interview and could not be appointed as Motor Driver. However, it is not stated that the applicant did not furnish the requisite documents required to be filled by the applicant. In the letter sent to the applicant on 3.3.1992 he was only directed to appear only for interview on 17.3.1992 and no particular document was called from him. The contention of the respondents that the applicant is not having the requisite experience cannot be accepted. The applicant has not ^{to} be given a fresh appointment as said earlier but has to ^{be} restored to his original position of employment given to him on 20.7.1989 under the direction of the Tribunal where it was ordered that the applicant be reinstated within two months from the date of communication of the order in the aforesaid O.A.No. 596/91.

The respondents, therefore, have totally erred in not giving effect to the order. Alongwith the rejoinder the applicant has also filed a statement showing the strength of vacancy position in Group 'C' post in Motor Driver cadre as on 31.12.1991 and there ~~was~~ ^{are} 71 vacant posts. The learned counsel for the applicant has also placed reliance on the decision in Civil Appeal No. 3819/89 Shri Krishna Singh and others Vs. Union of India and others. The Hon'ble Supreme Court held in this reported case, when a person is promoted to a post on regular post his promotion cannot be again subjected to scrutiny by another DPC.

In view of the above facts and circumstances the application is allowed and the impugned order dated 9.4.1992 is set aside and the respondents are directed to reinstate the applicant within two months from the date of communication of this order on the post of Driver reserving their rights to proceed against the applicant departmentally in view of the directions issued in the earlier D.A. No. 596/91 by the judgement dated 4.12.1992. In the circumstances the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)