

(Reserved on 15.10.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 9th day of November, 2012

Present:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER-A

ORIGINAL APPLICATION NO. 1185 of 2006

1. Harish Chand, aged about 45 years, S/o Late Sheetal Prasad, R/o H. No. 274-B, Meerpur Cantt., Kanpur.
2. Virendra Singh, aged about ----- years, S/o Shri Shambhu Singh, R/o H. No. 53/07, Safed Colony, Juhi, Kanpur.
.....Applicants.

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Engineer – in- Chief, Army Headquarters, Kashmir House, New Delhi.
3. The Chief Engineer, Central Command, Lucknow.
4. Commander Works Engineer, M.E.S. Cnat., Kanpur.
5. Garrison Engineer, M.E.S. Cantt., Kanpur.
..... Respondents

Present for the Applicants: Sri R.K. Shukla

Present for the Respondents: Sri Shri R.K. Srivastava

ORDER

By Hon'ble Mr. Sanjeev Kaushik, JM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicants have prayed following main reliefs: -

1.

i. To issue a writ order or direction in the nature of mandamus directing the respondents to promote the applicants on the post of M.T. Driver for which they have already passed the trade test and also performing the duties of trade tested post with entire satisfaction to the respondents (Annexure A-I).

ii. To issue a writ, order or direction in the nature of certiorari quashing the impugned advertisement for filling up the posts of M.T. Driver through direct recruitment instead of not allocating the posts for promotional quota (Annexure A-II).

iii. To issue a writ order or direction in the nature of Mandamus directing the respondents to decide the representations dated 26.08.2006 submitted by the applicants before filling up the posts of M.T. Drivers through direct recruitment.”.

2. The facts of the case, in brief, are that the applicants, who were initially appointed as Mazdoor in pay scale of Rs. 196-232, were promoted to Mate (MTD) in pay scale of Rs. 2650-4000 vide order dated 20.05.2002. Both the applicants were allowed to appear in the trade test for promotion to the post of MTD (Ord.) on 12.12.2003 in which they were declared successful on 22.12.2003 (Annexure A-V). The respondents published an advertisement on 25.08.2006 for filling up 8 posts of M.T. Drivers from open market. Aggrieved the applicants preferred representation on 26.08.2006 requesting therein to promote them first before filling up the post through direct recruitment

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(Annexure A-VI). As the applicants did not receive any reply they filed the instant original application.

3. Pursuant to the notice the respondents resisted the claim of the applicant by filing detailed Counter Affidavit. A preliminary objection has been raised by the respondents that the applicants have no locus standi to approach this Tribunal as, the applicants, who were appointed as Mazdoor and they were allowed to work as Mate M.T Driver, are not at all entitled to be considered against the vacancy advertised for 100% direct recruitment. It is stated that when the clarifications were received in this regard from the office of Engineer -in-Chief, they were given option to adopt line of Industrial Trade. It is also stated that the cause of action must be accrued in favour of the applicants and they must be aggrieved by the executive action in order to invoke the extra ordinary jurisdiction of the Court. Reliance in this regard has been placed on judgment of Apex Court in the case of **State of Maharastra Vs. Sant Dhyaneshwar - 2006 (9) SCC 01** and **B. Srinivas Reddy Vs. Karnataka - JT 2006 (8) SCC 293**.

4. On merits, it is stated that there is no feeder category of Mate M.T. Driver as per existing Govt. Policy and Recruitment Rule SRO No. 309 dated 10.08.1971 and SRO No. 07 dated 01.01.1986 referred in Letter dated 01.03.2007 (Annexure CA-1). In August 2006, 8 posts of M.T Driver against

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direct recruitment were advertised. Since none of the applicant was eligible therefore, they are not entitled to be considered against direct recruitment quota. It is stated that there is no provision of adjustment of Mate MT Driver to the post of M.T Driver. It is also stated that as per revised recruitment rules dated 08.12.1994 the individuals who had already passed the trade test of Mate but not yet promoted to the Mae (MTD) be re-designated on the basis of their length of service rendered in the trade.

5. Applicants have filed Rejoinder Affidavit. Para 12, 13, 14 and 16 of the Rejoinder Affidavit, in which the applicants have denied the pleas taken by the respondents in their C.A, reads as under: -

"12. both the applicants were promoted on the post of Mate (MTD) in the pay scale of Rs. 2650-4000 vide order dated 20.05.2002, already filed as Annexure A-IV. They have never been offered any choice to adopt line of Industrial. They are still doing the job of Mate MTD and also driving light and heavy vehicles.

13. there is no provision in SRO for recruitment of M.T Drivers through open market by 100% but instead of it, as per existing SRO the same should be filled by 100% through promotion.....

14. as per existing S.R.O, M.T Driver Mate post is a feeder post of M.T Drivers. Further it is submitted that the Annexure CA-1 is pertaining to the promotional scheme

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for Civilian Motor Drivers in M.E.S and not for promotion of Mate (MTD) to Motor Drivers.

16. under the existing SRO Mate Drivers are in chain and in feeder category for promotion of M.T. Drivers and hence, they allowed to the applicants to appear in the trade test for M.T Drivers, in which the applicants declared as passed vide Respondent's letter No. 11220/44/ElC(2) dated 22.12.2003."

6. In para 30 of the R.A it has further been stated that the applicants are holding the post of Mate MTD and being in line of promotion, they were allowed to appear in the trade test for promotion as MTD (ORD) and they passed the same. It is also stated that since the applicant are in waiting list hence as per Instructions contained in Ministry of Defence I.D No. 2862/DS/D/FY-II dated 11.1983,/ Ministry of Home Affairs, Department of Personnel and Admn Reforms O.M No. 2201/2/79-Estt. dated 08.02.1982, which provides that the recruitment whether from the open market or through a departmental competitive examination should take place only when there are no candidates available from an earlier list of selected candidates, they are entitled for appointment as M.T. Driver.

7. Respondents have also filed Suppl. Counter Affidavit enclosing therewith several documents including the photocopy of the Feeder category of Civil Motor Driver at Annexure SCA-3.

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8. We have heard Shri R.K. Shukla, learned counsel for the applicants and Shri D. Tiwari, holding brief of Shri R.K. Srivastava for the respondents and have gone through the pleadings on record.

9. Alongwith the Suppl. Counter Affidavit the respondents have appended the copy of Recruitment Rules of Civilian Motor Driver. Column 11 of said rule provides method of Recruitment by absorption failing which direct recruitment. The respondents have also appended the order dated 30.04.2008 whereby they have re-designated the MT Drivers and held all the categories of Mate eligible to be promoted as C.M.D provided they fulfill the requisite qualification, years of service, age and trade test for CMD as given in the Recruitment Rules. The order dated 30.04.2008 reads as under: -

"1. As per SRO 309 of 1971 (copy enclosed) the method of recruitment for MT Driver Gde II was "By transfer failing which by DR". However, above SRO was amended vide SRO 344 of 1980 (copy enclosed) and method of recruitment was made "By promotion failing which transfer failing both by direct recruitment". The mates with three years regular service in the grade and in possession of valid driving license for all type of vehicles from State Government and having passed the trade test of MT

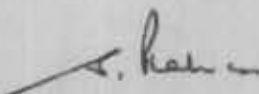
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Driver Gde II were made eligible for promotion to MT Driver Gde.II.

2. In the present scenario Mt Driver Gde. II has been re-designated as Driver (Ordinary Gde) and Mates (SS) have been categorised as Mate Vehicle Mech, Mate Electrician, Mate Refrigerator Mech, Mate Carpenter, Mate Mason, Mate Painter, Mate FGM, Mate Fitter, Mate Upholster and Mate others. Therefore, all these categories of Mate are eligible to be promoted as CMD provided they fulfill the requisite qualification, years of service, age and trade test for CMD as given in the RR."

Therefore, we are not convinced with the argument of the respondents that there is no feeder cadre for the post of M.T Driver for promotion.

10. In view of the above the O.A is disposed off with direction to the respondents to consider the case of the applicants in the light of observations made above. No costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

/Anand/