



*"There is no sanctioned post of Jeep Driver available, with the respondents, therefore, no direction can be given to the respondents regarding the regularization of the applicant on the post of Jeep Driver. However it is observed that whenever the post of Jeep Driver is created with the respondents, the respondents should consider the case of the applicant taking into consideration the experience, conduct and behaviour of the applicant very sympathetically. With these observations this O.A. is dismissed. No order as to costs."*

Against this order the applicant filed a Civil Miscellaneous Writ Petition No. 35558/98 stating that one post of Driver is lying on account of retirement of one Shri Rajendra Upadhyaya on attaining the age of superannuation w.e.f. 2.11.1995. The Writ Petition was disposed of vide orders dated 22.1.2003 which reads as follows:-

*"In view of this, regularization of the petitioner on the vacant post of driver may be considered expeditiously, preferably within a period of three months' from the date of production of a certified copy of this order before respondent no.4. With this observation, the writ petition is disposed of. No orders as to costs."*

2. Thereafter the respondents regularized the services of the petitioner from the date of his joining the post i.e. 16.9.2003. The case of the applicant is that, he should have been regularized with effect from 2.11.1995 i.e. the date on which the post fell vacant and not from 16.9.2003 as provided by the respondents. Several representations were made in this regard, but not receiving any response the applicant filed O.A.933/2005. When the matter came up for hearing the Tribunal held that the petitioner had claimed

plural reliefs, accordingly, the applicant withdrew the relief regarding recovery being made. Vide order of the Tribunal dated 16.1.2006 the counsel for applicant requested for withdrawal of the OA. with liberty to file fresh O.A. with regard to the relief No.8.1. Accordingly, the present OA. has been filed seeking the following reliefs:


*i. To issue a writ, order or direction in the nature of mandamus directing the respondent No.3 to antedate the date of regularization of the petitioner on the post of Driver from 16.9.2003 to that of 2.11.1995 i.e the date when the aforesaid post became vacant substantively fixing seniority of the petitioner therein with effect from 2.11.1995 with all other benefits attached therewith within a period as may be specified/stipulated by this Hon'ble Tribunal.*

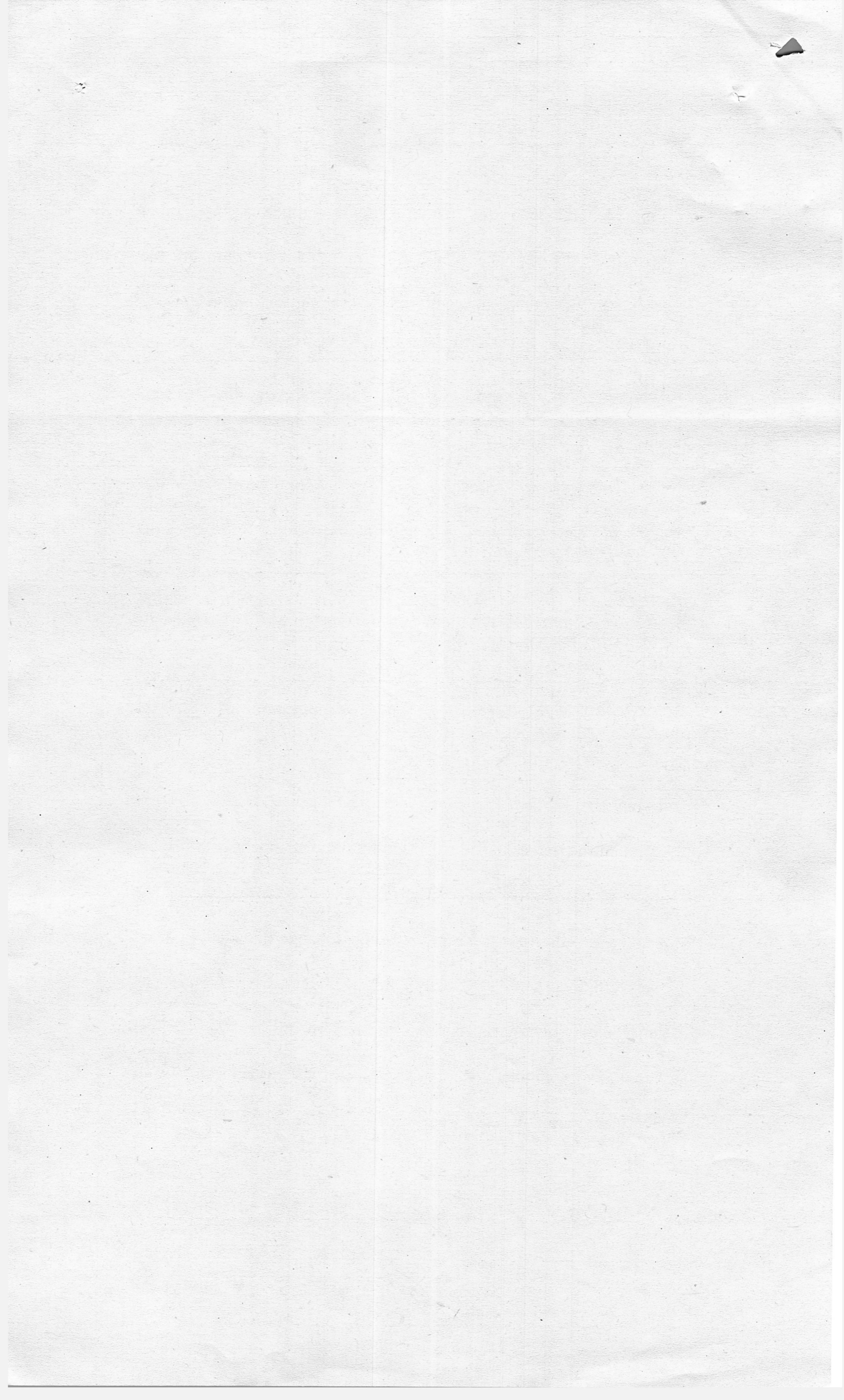
*ii. To issue any other and further suitable writ, order or direction that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*iii. To award the cost of this petition in favour of the petitioner.*

3. In the counter affidavit filed by the respondents, it is stated that there is no post of Jeep Driver, but because of the need, a list was called for from the Employment Exchange and the applicant was verbally ordered to work as daily rated Jeep driver without any letter of appointment. He took charge on 25.7.1989. He was subsequently regularized on the post of Driver in Mail Motor Services, Varanasi vide order dated 16.9.2003.

4. The respondents have taken the stand that the applicant was not regularly selected as there was no post for which such selection





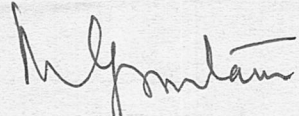
could be made. It is also not stated in the order of the Hon'ble High Court that the applicant may be regularised from the date the vacancy came into existence, but he is to be regularized preferably within three months from the date of receipt of copy of the order.

5. I have heard both the counsel and perused the record on file. The question to be decided is, whether there is any merit in the claim of the applicant who is asking for regularization w.e.f. the date on which the vacancy came into existence, if opposed to the date on which orders regarding his regularization were passed. The issue as to whether he came through a selection process/Employment Exchange is not important as according to the order of the Hon'ble High Court, the respondents took the decision to regularize him. The issue is whether the regularization can be done retrospectively or not? The order of the Hon'ble High Court dated 22.1.2003 does not state that the applicant should be regularized from a particular date. It is for the respondent to take a decision in the matter within three months. Accordingly, the respondents have passed appropriate orders on 16.9.2003. That the applicant had been worked all along on daily rated wage basis and he joined the regular post only on 16.9.2003, as such, all the benefits of a regular post accrue from that date. It is not clear as to how he could be regularized with retrospective effect when the



orders of the Hon'ble High Court were dated 22.1.2003 and the vacancy arose on 2.11.1995.

6. There is no merit in the claim made by the applicant and therefore, the O.A. is accordingly dismissed. No costs.



MEMBER(A)