

Final Order

O.A.No. 928 of 2005

Order dated: 20.09.2007

This case has been referred to the third member in view of the difference of opinion expressed by the two members (Hon'ble VC and Hon'ble Administrative member).

2. Succinctly stated, the applicant had been appointed by virtue of Annexure A-2 order dated 23rd April, 1993 as O.B. Van Driver in the then scale of Rs 1150 – 25-1500 at Doordarshan Kendra, Bhubaneswar on temporary basis. The applicant joined the said post on 24-04-1993. The Government had, by Annexure A-3 order dated 30th November, 1993 introduced a three tier pay scale structure in respect of Staff Car Drivers who were in the pay scale of Rs 950 – 1500 and thus, the three pay scales were (a) Rs 950 – 1500, (b) Rs 1200 – 1800 and Rs 1320 – 2040. It appears from Annexure A-4 communication dated 1st June 1995, that the scheme was not extended in the Directorate General of Doordarshan, as it was stated therein that a proposal was sent to the Government for implementation of the said scheme to this Organization. It was as

late as on 31-01-1997 that Recruitment Rules for the post of Staff Car Drivers with the three tier structure as mentioned above were framed and rule 3 thereof stated that the incumbents who have been appointed on regular basis before the commencement of these rules, will be deemed to be appointed under these rules and their services will be counted to the promotion. In the wake of the acceptance of the V Central Pay Commission Recommendations and framing of CCS (Revised) Pay Rules, 1997, the pay of Staff Car Drivers as above have been replaced respectively with the scale of (a) 3,050 – 4,590, (b) Rs 4,000 – 6,000 and Rs 4,500 – 7,000/- Annexure A-8 office memorandum dated 01-06-1998 (effective from 01-01-1996). ACP scheme was introduced w.e.f. 9-8-99 and the applicant were placed in the pay scale of Rs 4,000 – 6,000 w.e.f. 09-08-1999, vide Annexure A-10. From Annexure A-12 OM dated 15-10-1999 it appears that matter relating to pay scale of OB Van Drivers of Doordarshan was under consideration. Vide Annexure A-13, the pay scale of one Shri Rajinder Prasad, O.B. Van Driver was fixed in the scale of Rs.1350 w.e.f. 01-08-1993 in the scale of Rs 1,320 – 2040. This was in implementation

of the decision taken "to allow the scale of Rs 1320 – 2040 to those senior Motor Drivers also who have been Motor Driver on or after 01-08-1993 as personal to them on provisional basis till the O.B. Van Driver's scale is finalized from Date/Minute of I & B as per intimation vide DG Doordarshan, New Delhi letter No. 2-1/98-S II Dt. 15-10-1999". Applicant through Annexure A-14 representation dated 19-04-2000 requested for an identical treatment to him. Independent of the above representation, the respondents have, by Order dated 11-06-2001 (Annexure A-15) confirmed the applicant as OB Van Driver w.e.f. 24-04-1995. The applicant renewed his request for higher pay scale vide Annexure A-16 communication dated 30-01-2002 and A-17 communication dated 28-07-2003. Nothing happened. Meanwhile, a special grade of Rs 5,000 – 8000 was introduced as pay scale vide OM dated 03-12-2003 effective from 08-11-1996. As nothing was forthcoming as regards the applicant's request, the applicant moved OA No. 147/04 in which counter was filed by the respondents who had contested the OA. The said application was disposed of, vide order dated 11th May,

2005 at Annexure A-20, wherein the Tribunal passed the following order:-

“...Hence the Respondent-Department should long before decide whether the O.B. Van Drivers should remain as part and parcel of the cadre of Staff Car Drivers or should be treated as a separate unit. The Respondents have also not thrown enough light in this matter. We find from Annexure-A/12 that the Respondent-Department did commit in unambiguous term that the matter was being examined in consultation with the Ministry of Information & Broadcasting; but in the meantime several years have passed by. It is high time that they decide the issue once for all. We would, therefore, direct the Respondents to notify their final decision, if the same has not been already notified, within a period of three months from the date of receipt of this order as to whether O.B. Van Drivers are to be treated as part and parcel of Staff Car Drivers. Once this is answered in clear-cut and unambiguous terms, the grievance as ventilated in this OA will get resolved. However, as the matter now stands, the applicant being governed by the terms and conditions of service pertaining to Staff Car Drivers, we have no doubt he has got his legitimate dues.”

3. As there was no response, much less positive response, after word of caution through legal notice as to the consequence of disobedience of the order of the Tribunal, the

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applicant had filed CP on 25-11-2005. It was exactly on the very same day (25-11-2005) that the respondents have issued impugned annexure A-22 OM which reads as under:-

“In pursuance to the Order dated 11.05.2005 of the Hon’ble CAT, Cuttack Bench, Cuttack in OA No. 147/2004 (Sri C. Hansda vrs. Union of India & Others) and the legal notice dated 23.09.2005 received from Shri Ras Bihari Mohapatra, Advocate, Shri C. Hansda is informed that “Consequent upon introduction of the Staff Car Drivers Scheme for Motor Drives and as well as OB Van Drivers retrospectively from 01.08.1993 with designation of post as Staff Car Driver (Ordinary Grade), Grade-I. Grade II and Senior Scale, the individual identity as OBVan Drivers has ceased to exist.”

It is against the said order that this OA has been filed praying for the following reliefs:-

:8. Relief(s) Sought:-

Under the above facts and circumstances, the Applicant humbly prays that this Hon’ble Tribunal may be graciously pleased to

- i) admit this Original Application.
- ii) Issue notices to the Respondents and call for the relevant documents and paper;



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- iii) And after hearing both the parties, perusing the pleadings, the relevant documents in support of such pleading and allow the present original application by quashing the impugned order dated 25.11.2005 under Annexure-A/22;
- iv) And pass necessary order/direction(s) against the Respondents to revise the scale of pay of Applicant in the scale of Rs.1320/- to Rs.2040/- w.e.f. 01.08.1993 and replacement of scale of pay of Rs.4500/- to Rs.7000/- w.e.f. 01.01.1996 as under:

Pay to be fixed in the pre-revised Scale of Rs.1320-30-1560-EB-40 <u>Rs.2040/-</u>			Pay to be fixed in the scale of <u>Rs.4500/-125-7000/-</u>		
Rs. 1350	-	01.08.1993	Rs.4,500/-	-	01.08.1996
Rs.1380	-	01.08.1994	Rs.4625/-	01.08.1996	
Rs.1410	-	01.08.1995	Rs.4750/-	01.08.1997	
			Rs.4875/-	01.08.1998	
			Rs.5000/-	<u>01.08.1999</u>	

at par of Shri Rajendra Prasad, O.B.Van Driver of DDK, New Delhi and in view of ACP scheme and judgment dtd.05.05.2000 passed in OA No.2529 of 1996 by the C.A.T, Principal Bench, New Delhi.

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- v) And differential of Arrears accrued after above fixation of scale of pay be paid within stipulated period

along with interest @ 10% and cost thereof;

vi) And pass any other appropriate order(s) as deems proper and fit in the interest of justice, by prosecuting the Respondents under contempt of courts act for non-implementation the direction made by this Hon'ble Tribunal in order dtd.11.05.2005 under Annexure-A/20;

vii) And for which act of your kindness, the Applicant as in duty bound shall ever pray."

4. In their counter, the respondents have clung to the above-reproduced Annexure A-22 order and stated that when the post of OB Van Driver ceased to exist w.e.f. 01-08-1993 onwards, there is no question of any different pay scale for the applicant.

5. The applicant had filed his rejoinder, in which, without diluting his claim as prayed for in the OA, he has furnished documents reflecting the subsequent events and the same are as under:-

(a) The applicant was promoted as Staff Car Driver Grade II w.e.f. 08-11-1996 in the scale of 4000 -

6000 vide order dated 01-05-2006 (Annexure A-23).

(b) The respondents have passed an order dated 30th June, 2006 stating that treating OB Van Drivers at par with Staff Car Drivers of Doordarshan for purposes of Promotion Scheme of Staff Car Drivers as contained in OM dated 30-11-1993 (Annexure A-3) and 01-06-1998 (Annexure A-8) has been made final for all purposes. Annexure A-24 refers.

(c) By Annexure A-25 order dated 8/9-8-2006, the OB Van Drivers will be called as Staff Car Drivers henceforth.

(d) The applicant was promoted as Staff Car Driver Gr. I w.e.f. 01-12-2004 in the scale of Rs 4,500 – 7,000 vide Annexure A-26.

When the case came up for final hearing, the Hon'ble Member (A) had held as under:-

“7. By drawing our attention to the materials placed in support of the pleadings, learned Counsel for the Applicant has tried hard to persuade us that the decision under Annexure-A/22 being contrary to instructions, the same may be quashed by directing the Respondent No.1 to take a decision afresh without being prejudiced

to the averments made in the counter. This was vehemently opposed by the Learned Counsel for the Respondents by stating that the decisions of the Government was only communicated under Annexure-A/22, there is no need to send the matter back for clarification from Respondent No.1. Having heard the parties at length, we find that there would be no wrong if the matter is referred to the Respondent No.1 for taking a decision in the matter; as the settled position of law is that in the matter of pay and framing policy for promotion, primarily it is for the executive government to decide. The contention of the applicant that after the direction of this Tribunal in the earlier OA, the matter ought to have been examined by the Respondent No.1 instead of rejecting the same by the Respondent No.4 by referring an order which was available at the time of decision of this Tribunal also sounds logical.

8. In view of the above, expressing any opinion on the merit of the matter may prejudice the decision making process of the Respondent No.1. Therefore, without expressing any opinion on the merit of this matter, the Respondent No.1 is hereby called upon to examine the grievance of the Applicant in the light of the decisions rendered by this Tribunal in earlier OA (quoted above) within a period of 60 days from the date of receipt of a copy of this order and communicate

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the result thereof to the Applicant within the aforesaid period."

Disagreeing with the above, the Hon'ble VC had held as under:-

"11. I have perused the pleadings and considered the rival submissions of the parties. It is found that by virtue of Annexure-A/2 dated 23.4.1993 the applicant was offered the post of O.B. Van Driver in the pay scale of Rs.1150-25-1500/- on temporary basis and put on probation for a period of two years from the date of his joining the post. By Annexure-A/3 dated 30.11.1993, i.e. just within a span of 6/7 months of the posting of the applicant to the grade of O.B. Van Driver, the Department of Personnel & Training issued an Office Memorandum with regard to promotion scheme for Staff Car Drivers. By virtue of this, three grades, viz., Staff Car Driver (Ordinary Grade), Staff Car Driver (Grade-II) and Staff Car Driver (Grade-I) were introduced carrying the pay scale of Rs.950-1500/-, Rs.1200-1800/- and Rs.1320-2040/- respectively, which came into force with effect from 30.11.1993. Nowhere there is any mention of pay scale in respect of OB Van Driver carrying Rs.1150-25-1500/-. Soon after the scheme for promotion of Staff Car Driver came into force with effect from 30.11.1993, the post of OBVan Driver ought not to have existed

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since it was not an ex cadre post and thereby the status of the applicant should have been restored to his substantive cadre, i.e., Staff Car Driver from which post he, on the basis of an interview, was offered the post of O.B. Van Driver on temporary basis in the very same year 1993. But according to the applicant, he was allowed to continue as such. Be that as it may, the 5th Central Pay Commission prescribed three pay scales for the three respective grades of Staff Car Drivers. From the pleadings, it appears that the applicant has no grievance with regard to his fixation of pay in line with the recommendation of the 5th CPC. The Applicant's grievance is that the Respondent-Department, vide Annexure-A/13 dated 08.02.2000, had taken a decision on pay parity in the scale of Sr. Motor Driver, Gr.I carrying the scale of Rs.1320-2040/- in respect of those Senior Drivers who have been working as Motor Drivers on or after 01.08.1993 as personal to them on provisional basis till the O.B. Van Driver's pay scale is finalized. The basis on which the applicant has laid his claim is that one Rajinder Prasad, O.B. Van Driver is in receipt of Rs. 1320-2040/- w.e.f. 1.8.1993. In this connection, we would say that the applicant was offered the post of O.B. Van Driver on temporary basis carrying the scale of Rs.1150-25-1500/- vide Annexure-A/2 dated 23.4.1993 from the grade of Staff Car Driver carrying the scale of Rs.950-

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1500/- Even at that time, the applicant was not at all eligible to be promoted to the post of Driver, Gr.II carrying the scale of Rs.1200-1800/- and the scale of pay which he drew as O.B.Van Driver was less than Gr.II Driver. If the applicant is allowed the scale of Rs.1320-2040/-, as has been prayed for by him, with effect from 1.8.1993, it would amount to embarking upon on the Grade I Driver with effect from the date when he was not at all even eligible for promotion to Grade II Driver. Thus, the prayer of the applicant in this respect is wholly misconceived. Aside this, we are not posted with the facts and circumstances under which Rajinder Prasad was allowed the scale of Rs.1320-2040/- w.e.f. 1.8.1993. But as Annexure-A/13 reveals, the pay of Rajinder Prasad has been fixed at par with his junior. The Respondents have clearly mentioned in the memorandum dated 25.11.2005 (Annexure-A/22) that consequent upon introduction of the Staff Car Drives Scheme for Motor Drives and as well as O.B.Van Drivers retrospectively from 01.08.1993 with designation of post as Staff Car Driver (Ordinary Grade), Grade III and Grade I, the individual identity as O.B.Van Drivers has ceased to exist. In view of this and in view of the settled position of law that determination of pay scales is the primary function of the Executive and not the Judiciary, we do not find any merit in the Original Application.”



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In view of the above difference of opinion, the case has been listed before a third member.

6. It has been argued by the counsel for the applicant that OB van Driver possesses heavy vehicle driving licence unlike the Staff Car Drivers who have only light vehicle driving licences. It has also been contended by the counsel for the applicant that the matter relating to revision of pay had not attained finality and order at Annexure A-12 and A-13 are sufficient proof.

7. Counsel for the respondents did agree that the OB Van Drivers are to possess heavy vehicle driving Licences. However, he has stated that by virtue of the impugned order, the post of OB Van driver ceased to exist w.e.f. 01-08-1993.

8. Arguments were heard and documents perused. At the very outset, the contention that the post of OB Van Driver ceased to exist w.e.f. 01-08-1993 by virtue of the impugned order dated 25-11-2005 or on the ground that there was no mention of OB Van



Driver in the Recruitment Rules (vide Annexure A-5) should be summarily rejected. For, the documents at Annexure A-12, A-13, A-15, para 14 of Annexure A-18 counter and Annexure A-25, would go to show that the post continued to exist beyond 01-08-1993. The applicant was confirmed in the very post of OB Van Driver, with retrospective effect from 24-04-1995, vide Annexure A-15 order dated 11-06-2001. Vide Annexure A-13, the pay scale extended to Rajinder Prasad is in the wake of a conscious decision as contained therein. The decision reads as under:-

“ to allow the scale of Rs 1320 – 2040 to those senior Motor Drivers also who have been Motor Driver on or after 01-08-1993 as personal to them on provisional basis till the O.B. Van Driver's scale is finalized from Date/Minute of I & B as per intimation vide DG Doordarshan, New Delhi letter No. 2-1/98-S II Dt. 15-10-1999”

9. Again, vide Annexure A-2, what was trifurcated in 1993 was the erstwhile pay scale of Rs 950-1500 and even when that scale was existing, higher scale of Rs 1150 – 1500 was available to OB Van Drivers. It was, presumably, on account of this higher pay scale that vide annexure A-13, the decision taken

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was to afford pay scale of Rs 1320 – 2040 to those senior Motor Drivers who have been Motor Driver on or after 01-08-1993. Admittedly, the applicant was functioning as O.B. Van Driver as on 01-08-1993 and vide Annexure A-2 order, the applicant's designation prior to his appointment as OB Van Driver was Motor Driver. Thus, the benefit available to all other OB Motor Drivers as per the aforesaid decision has to be made available to the applicant. And it was precisely the same which the applicant claims but which the respondents under a misconception that there is no post of OB Van Drivers from 01-03-1993 denied. When the Tribunal in its earlier order dated 11th May 2005 directed the respondents to examine as to whether the OB Van Drivers were to be treated as part and parcel of Staff Car Drivers, the respondents maintained only a sphinx silence for a substantial period and the applicant had chosen to move a contempt petition, hurriedly, the respondents have issued the impugned order. There is no mention that the same was issued with the consent of the Nodal Ministry i.e. Ministry of Personnel. It was taking into account all the above that the Hon'ble Administrative Member held that the matter should be examined

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'in the light of the decision rendered by this Tribunal in earlier O.A.', vide para 8 of his order. I am in full agreement with the above direction.

10. It must be held here that the decision to be arrived at now shall be independent of the one communicated vide Annexure A-24 and 25

11. Hence, this OA is disposed of with a direction to the respondents to examine the entire matter de-novo and in consultation with the nodal Ministry, keeping in view the decision earlier taken vide Annexure A-13 order and the other significant factors such as need to possess heavy vehicle driving license by OB Van Drivers and the arduous work by such drivers compared to other Staff car Drivers. No cost.



(DR.K.B.S.RAJAN)
MEMBER (JUDL.)