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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

Original Application. Nos. 105, 106 & 107/2004

Date of order: 12th September, 2008

Hon'ble Mr. D.Sankaran Kutty, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Mohan Lal, s/o Shri Roopa Ram Mehgal, aged about 41 years, resident of Paniwali Zatan, PO Lalgah Zatan, Sri Ganganagar, at present employed on the post of CMD(ordinary) under G.E. Largarh, Distt. Sri Ganganagar (Raj).

: applicant in O.A. NO. 105/2004

Darshan Singh, s/o Shri Jogendra Singh, aged about 40 years, resident of Ward No. 42, Gali No. 1 Gurunanak Basti, Sri Ganganagar, at present employed on the post of CMD, Gr. II under G.E. Ganganagar (Raj)

Keshar Singh, s/o Birbal Singh, aged about 47 years, resident of Village & Post 1.D Sadhu Wali, Sri Ganganagar, at present employed on the post of CMD, Gr. II under GE. Sri Ganganagar (Raj)

: Applicants in O.A. No. 106/2004.

Dharam Pal, s/o Shri Lazman Ram aged about 47 years, resident of Village 3 ML PO 2 ML Nathawala, District Sri Ganganagar, at present employed on the post of MTD (CMD-II) under G.E. Largarh, District, Sri Ganganagar (Raj)

Applicant in O.A. No. 107/2004.

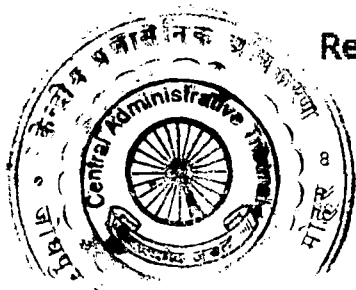
Rep. By Mr. J.K. Mishra &
Mr. B. Khan

: Counsel for the applicants.

Versus

1. Union of India through the Secretary to Government of India, Ministry of Defence, Raksha Bhawan, new Delhi.
2. The Engineer-in Chief's Army Head quarters, Kashmir House, DHQ, New Delhi.
3. The Head Quarter Chief Engineer, Western Command, Chandimandir
4. The Chief Engineer, Batinda Zone, Bhatinda Conti.
5. The Garrison Engineer(GE) LALGARH, Sri Ganganagar (Raj)

: Respondents in all the O.As



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Rep. By Mr. Mahendra Prajapat proxy counsel
For Mr. Ravi Bhansali : Counsel for the respondents.

ORDER.

Per Mr. Tarsem Lal, Administrative Member.

All these applications have been filed under Sec 19 of the Administrative Tribunals Act, 1985. As the issue involved and the relief prayed for in all these O.As are similar, they were heard together with the consent of learned counsel and are being disposed of by this common order. The facts of the case and pleadings have been taken from O.A No.107/2004 and supplemented from other OAs wherever necessary.

2. The applicant was initially appointed as Mazdoor on 26.09.78. He was promoted to the post Mate on 21.05.82, MTD II on 01.01.87 and CMD II (erstwhile MTD I w.e.f. 01.04.97) where he is working at present.

3. Earlier there were three categories of drivers i.e. MTD II, MTD I and MTD Special. These categories have now been redesignated/restructured into four categories, with effect from 01.01.96 viz. CMD, ordinary, CMD II, CMD I and CMD Special. The applicant appeared in the trade test on 02.12.97 held for promotion to the post of CMD II (erstwhile MTD-I) and he was declared passed vide letter dated 20.04.98.

4. The applicant came to know that some of the juniors to the applicant have been given promotion to the post of CMD II and their



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pay has been fixed in the pay scale of Rs. 4000-6000 with effect from 01.01.96, vide order dated 09.07.2001 (Annex. A/1).

5. The applicant has explained that the post of CMD II is a non selection post. The promotion is made on the basis of seniority subject to passing the trade test on the basis of command wise seniority. The applicant made a representation on 11.12.2002 (A/2) requesting the authority to release his promotion at par with his juniors w.e.f. 01.01.96.

6. The applicant was given promotion to the post of CMD II in the scale of Rs. 4000-6000 vide order dated 02.06.2003 (A/3), wherein the name of the applicant was shown at Sl.No. 49.

7. The applicant has claimed that he was never called for appearing in the Trade Test for promotion to the post of CMD II(MTD -I) prior to 02.12.1997. Not only this the trade test for the post was conducted in other zones in the year 1990-91 whereas no such Trade Test was conducted before 02.12.97 in Bhatinda Zone to which the applicant belongs. Therefore there was no fault on the part of the applicant in not appearing in the trade test. He has claimed that the benefit of promotion was given to some of his juniors in the year 2001, i.e. after the applicant had passed the Trade Test. Therefore there is no nexus in cut off date for passing the trade test particularly when he has not been responsible for the same. Aggrieved by the same the applicant has filed this O.A.



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8. The respondents are contesting the O.A by filing a detailed reply, inter alia pleading that the applicant was initially appointed as 'Mazdoor' on 26.09.78 at Garrison Engineer, Sri Ganganagar and was further promoted as MTD II on 01.01.87. At the time of recruitment of the applicant there were three categories of Drivers viz MTD II, MTD I and MTD special. The applicant is now working as MTD under Garrison Engineer, Lalgarh, Military Station.

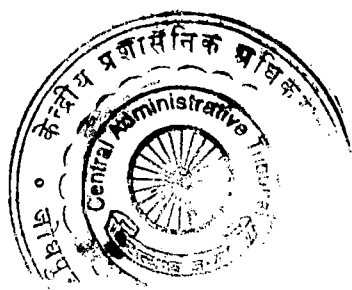
9. On the basis of recommendations of 5th Pay Commission, the Government of India, Ministry of Defence, vide their letter No. PCDA/2001/1/STC(V)/2730/D (Works) dated 17.07.98, sanctioned periodical promotional scheme for Staff car Drivers.

10. Consequently, under restructuring scheme, promotion of serving MT Drivers in MES was made as under:

"(a) Civilian motor Drivers who have rendered not less than 15 years of regular service (both ordinary grade and grade II together) will be considered for promotion to civilian MT Driver GDE I w.e.f. 01.01.96 to the extent of availability of the vacancies in that Grade, subject to their being found fit by the Department of Promotion Committee on the basis of seniority-cum-fitness and passing trade test.

(b) In the same manner, Civilian MT Drivers (OG) who have rendered not less than Nine years of service (including those who could not be accommodated in Grade I inspite of putting in 15 years of service for want of vacancies) may be considered for appointment to Grade II by following the same eligibility and other criteria prescribed for appointment to these posts.

(C) If any Civilian MT Drivers have been promoted to the next higher Scale in terms of Ministry of Defence OM No. (I)/E-III/88 dated 13th Sept. 1991. Such MT Drivers if not considered by regular DPC for promotion as indicated above may be allowed to come over to revise scale of Rs. 1200-1800 i.e. Rs. 4000-6000 as per RPR -97 w.e.f. 01.01.1996.



11. Consequent upon restructuring, of civilian Motor Drivers, the applicants were redesignated as CMD Ordinary Grade as per the

terms and conditions fixed by the department and eligibility of the applicants.

12. The respondents have explained that the applicant has passed the trade test for erstwhile MTD I during 1997 and has been promoted to CMD II w.e.f. 01.04.1997, vide Chief Engineer, Western Command SRO No. 19/S/2003 dated 02.06.2003. (R/2). The MT drivers who have passed the Trade Test for MTD I prior to 1996 have only been promoted to CMD II w.e.f. 01.01.96 and no juniors to the applicant had been promoted to CMD Gr. II without passing trade test. In view of the above the respondents have prayed that the O.As deserved to be dismissed.

13. The learned counsel for the parties have been heard. They have generally reiterated their arguments already given in their respective pleadings.



14. We have considered this case carefully and perused the documents placed on record. We find that the applicant was appointed as MTD II in the year 1987. The posts of MTDs ^{have} now ^{been} restructured into four categories in 1998, and the scheme was made applicable w.e.f. 01.01.96. The individuals were required to pass the Trade Test and they were given the pay scale Rs. 4000-6000, subject to finding suitable by the DPC on the basis of seniority.

15. It is an agreed position that seniority of Drivers is maintained at the command level by the Hq. CE, Western Command, Chandi

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Mandir. It is also amply clear from the pleading that trade test was held in the year 1991 for Drivers in other zones under the HQ CE Western command, but no test was held in Bhatinda Zone. Therefore the applicants were not in a position to undergo the prescribed trade test as no opportunity was given to them, whereas drivers posted in other zones under the same command were given opportunity to appear in the trade test.

16. Subsequently, the applicants have been allowed to appear in the trade test in the year 1997 and they have been given promotion w.e.f. 01.04.97. The above promotions were given in the year 2003 with retrospective effect. It is considered that there was no fault on the part of the applicant in not appearing in the trade test and qualifying in the same. It is seen from Annex. A/2, that number of juniors to the applicants have been given promotion w.e.f. 01.01.96, whereas the applicants, though senior, were given promotion w.e.f. 01.04.97. Therefore, there is hostile discrimination against the applicants.



17. In view of the above discussion, the respondents are directed to re-consider the case of the applicants and give them promotion in the pay scale of Rs. 4000-6000, as has been done to the juniors to the applicants while the applicants have already passed the Trade Test. If, for any reason, for giving the applicants the pay scale of Rs.4000-6000 w.e.f. 01.01.96, any of the juniors in the Command have to be reverted to the lower grade, this may be done after following the principles of natural justice.

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18. We make it clear that the applicants are entitled to all consequential benefits including arrears of pay. The above exercise may be completed within a period of three months from the date of receipt of a copy of this order.



19. The O.As are allowed as above.

20. No order as to costs.

Tarsem Lal

[Tarsem Lal]
Administrative Member.

Jsv.

[Signature]
[D.Sankaran Kutty]
Judicial Member.

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