

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 401/2007

Reserved on 11.2.2014

Pronounced on 20th February, 2014

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Dashrath Kumar Sharma aged about 50 years son of late Ram Lakhan Sharma, at present working as Driver Grade II, All India Radio, Lucknow.

Applicant

By Advocate: Sri Surendran P

Versus

1. Union of India through the Secretary, Ministry of Information and Broadcasting, New Delhi.
2. The Director General, All India Radio, Akashvani Bhawan, New Delhi.
3. Station Director, All India Radio, Prasar Bharti, Lucknow.

Respondents

By Advocate: Sri S.K.Awasthi

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-


Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the order dated 29.8.2007 contained in Annexure No.1 and a direction be issued to promote the applicant as Staff Car Driver Grade II with effect from 29.12.96 and Staff Car Driver Grade I with effect from 29.12.2002 with all consequential benefits. It is so prayed in the interest of justice.

2. The brief facts of the case are that the applicant was appointed as Ordinary Grade Driver on 29.12.1987 and since then he was working on that post and was given promotion as Staff Car Driver Grade II by means of an order dated 17.7.2007 w.e.f. 1.4.207. The learned counsel for the applicant pointed out that the applicant was entitled to get promotion of Staff Car Driver Grade II w.e.f. 29.12.1996 and further Driver Grade I w.e.f. 29.12.2002 as per the provisions of

Promotional Scheme for Staff Car Drivers with graded structure of pay. The extract of said rules are annexed as Annexure No.3 to the O.A.

3. The learned counsel for applicant also pointed out that the respondents have issued the necessary orders in this regard vide O.M. dated 27.7.1995 and as per the said O.M. the minimum eligibility criteria for appointment to the posts in the Grades i.e. Ordinary Grade, Grade II, Grade I and special Grade and method of appointment to the posts in Grade II and Grade I of staff Car Drivers will be by promotion on non-selection (seniority cum fitness) basis and further subject to passing of a Trade Test of appropriate standard. The learned counsel for applicant has also pointed out that large number of juniors have been given promotion in Grade II and Grade I ignoring the claim of the applicant and he has also indicated that the date of appointment of one Sri VedPrakash, Ordinary Grade Driver is 4.10.1988 who was promoted as Grade II w.e.f. 4.10.1997 and thereafter promoted as Grade I w.e.f. 4.10.2003 i.e. after completion of 6 years regular service in Grade II.

4. Learned counsel appearing on behalf of the respondents filed their reply and through reply it was indicated by the respondents that the entire controversy centres around the order dated 29.8.2007 which is issued in respect of the applicant's representation wherein it has been clearly pointed out that the DPC has not found him fit for promotion, hence his case was not cleared for promotion. Apart from this, it is also indicated by the learned counsel for the respondents that the impugned order dated 29.8.2007 was passed by the competent authority which is well reasoned and speaking order and the same has been passed with proper application of mind, considering all aspects of the case, strictly as per norms and rules. It is also pointed out by the respondents that the annual confidential reports for preceding five years were not upto the mark as such the applicant could not be



considered for promotion as per norms and when he was found fit, he was given promotion to the post of Staff Car Driver Grade II in the pay scale of Rs. 4000-100-6000 w.e.f. 1.4.2007.

5. Learned counsel for the applicant has filed Rejoinder Reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated. Apart from this, it is also indicated by the learned counsel for the applicant that the DPC cannot adopt any other criteria other than what has been given in the O.M. dated 27.7.1995 and there was nothing against the applicant during the period of five years. Therefore, the denial or promotion w.e.f. the due date is an arbitrary action when the criteria has been laid down as seniority cum fitness.

6. Learned counsel for the respondents have also filed the Supple. CA and through Supple. C.A. once again they reiterated the averments made in the C.A. and denied the averments made in the Rejoinder reply.

7. Heard the learned counsel for the parties and perused the record.

8. Admittedly, the applicant was appointed in the respondents organization as Motor Driver and by means of an order dated 11.7.1988, he was transferred from All India Radio, Jalandhar to All India Radio, Mathura on his own request and his seniority was required to be counted in the new zone from the date of joining at All India Radio, Mathura. After the said joining, he started working with the respondents organization and was found fit for promotion by the DPC held on 4.7.2007. Hence on the recommendation of the DPC, the applicant was promoted to the post of Motor Driver Grade II w.e.f. 1.4.2007. It is also indicated by the respondents that undisputedly, the applicant has completed 9 years of service on 27.8.1997, the date having been reckoned from the date of joining of the applicant in this zone i.e. 27.8.1988. The ACR of the applicant was not upto the mark therefore, he was not promoted to the post of Motor Driver Grade II

from the year 1997. It is also indicated by the respondents that for further promotion, it is necessary that applicant would have to complete 6 years service in Motor Driver Grade II. Not only this, the allegation leveled by the applicant in regard to granting promotion to Sri K.P.Singh and VedPrakash is concerned, they were found fit for promotion by the DPC. Hence they were promoted on the post of Motor Driver Grade II. The Govt. order pertaining to the promotional scheme for staff Car Drivers with graded structure of pay provides for the method of appointment to the posts in Grade II and Grade I of Staff Car Drivers will be by promotion on Non-Selection (Seniority-cum-Fitness) basis and further subject to passing of a Trade Test of appropriate standard, contained in the Annexure No.1 to the O.M. which provided as under:-

EXCEPTION

4. These orders would not apply in the Ministries/ Departments where drivers already have more than one scale of pay.
5. Ministry of Finance, etc. are requested to take further action to implement the scheme urgently."

Apart from this, the said O.M. also provided for initial appointment which reads as under:-

"INITIAL APPOINTMENT

3. While making initial appointment to the above newly created scales, each Ministry /Department will screen the list of Staff Car Drivers, who have rendered not less than 15 years of service, may be considered for appointment to the posts in grade I direct to the extent of availability of vacancies in that grade, subject to being found fit by DPC on the basis of seniority cum-fitness and passing of Trade test. In the same manner, Staff Car Drivers, who have rendered not less than 9 years service (including those who could not be accommodated in

Grade I in spite of putting in 15 years of service, for want of vacancies, may be considered for appointment to Grade II by following the some eligibility and other criteria prescribed for appointment to these posts.”

9. Since the impugned order is explicitly clear to the extent that the applicant was not found fit by the DPC held earlier and when the DPC considered the applicant eligible for promotion, the promotion was accorded to the applicant. As observed by the Hon'ble Apex Court in the case of **Indian Air Lines Corporation vs. Capt. K.C. Shukla reported in 1993 1 SCC page 17**, "the High Court cannot assume the role of Screening Committee." The Hon'ble Apex Court further observed as under:-

“2. Whether the decision of the High Court is well founded on various aspects shall be examined presently but the alternative relief granted by the High Court probably in an anxiety to be fair and just to those others who had been selected by reducing the interview percentage to 12.5% then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required cannot be accepted as proper exercise of jurisdiction under Article 226. Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case.”

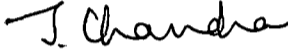
10. Not only this, the Hon'ble Apex Court in the case of **Jagdish Prasad Vs. State of Rajasthan and others reported in (2011) 7 SCC page 789** has been pleased to observe as under:-

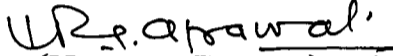
“A Government servant only gets right to be considered for promotion for which he is eligible in

accordance with law and that right is not indefeasible.”

11. In the instant case, the respondents considered the case of the applicant through DPC and when DPC found the applicant fit to be considered for promotion , they issued an order of promotion to the applicant, as such, claiming parity with earlier co-employees is not justified on the part of the applicant.

12. Considering the submissions made on behalf of the partis and also on the basis of observations of the Hon'ble Apex Court, we do not find any justified reason to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-