

51

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1680 of 1997

DATE OF ORDER:

31st May, 1999

BETWEEN:

A.V.ETHIRAJ

.. APPLICANT

AND

1. Union of India rep. by the
Secretary to the Government,
Ministry of Finance,
Department of Economic Affairs,
New Delhi,

2. The General Manager,
Security Printing Press,
Mint Compound, Saifabad,
Hyderabad,

3. Shri T.Vivek Kumar.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.RAMA MOHANA RAO

COUNSEL FOR THE RESPONDENTS: Mr.B.NARASIMHA SARMA, Sr.CGSC
for R-1 to R-2.

Mr.K.Sudhakar Reddy for R-3

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.Shiva for Mr.N.Rama Mohana Rao, learned
counsel for the applicant, Mr.B.Narasimha Sarma, learned
standing counsel for the official respondents and
Mr.K.Sudhakar Reddy, learned counsel for the private
Respondent NO.3.

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2. The applicant and R-3 are hailing from the Scheduled Caste community. The applicant is working as Auto Mechanic-cum-Driver in the scale of pay of Rs.1150-1500 from the year 1990 whereas R-3 is working as Auto Mechanic-cum-Driver on regular basis with effect from 29.8.85. R-3 is senior to the applicant as is evident from the seniority list enclosed at Anexure A-7 at page 16 to the OA. R-3 is at Sl.No.2 and the applicant is at Sl.No.4 of that seniority list. R-3 was promoted as Auto Supervisor-cum-Mechanic which is^a promotional post from the lower category of Auto Mechanic-cum-Driver by the impugned Diary Order NO.49 dated 4.4.97 (Annexure A-3 at page 12 to the OA).

3. This OA is filed to set-aside the impugned promotion order of R-3 issued under Diary Order No.49 and communicated through the proceedings No.SPP/AI/3505/97/6180, dated 4.4.97 of R-2 by holding the same as arbitrary, illegal and unsustainable.

4. There is only one post of Auto Mechanic-cum-Supervisor in the respondents' organisation and there are four posts of Auto Mechanic-cum-Driver in that organisation. The mode of recruitment to the above post is governed by the Security Printing Press, Hyderabad (Industrial Workmen) Unclassified Cadre Recruitment Rules, 1988. Item No.33 of those rules deals with the post of Auto Supervisor (Automobile) in the grade of Rs.1320-2040. According to this rule, the post of Auto Supervisor is the selection post and the mode of recruitment is promotion

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failing which by direct recruitment. In the present case, as there are eligible personnel in the feeder cadre i.e., in the category of Auto Mechanic-cum-Driver for promotion to the post of Auto Supervisor there is no need for direct recruitment and the post of Auto Supervisor is to be filled only by promotion.

5. The Auto Mechanic-cum-Driver with two years of regular service in the grade of Rs.1150-1500 will be eligible for being considered for the higher post of Auto Supervisor.

6. Earlier, the post of Auto Supervisor was manned by one Md. Asman and he was promoted as Foreman (Automobile) by Diary Order No.24 dated 15.9.94 (Annexure A-1 at page 10 to the OA). That vacancy, the applicant submits, was to be filled by a Scheduled Caste candidate as the first vacancy has been filled by OC and the second vacancy has to be necessarily filled by an SC candidate in view of the reservation rules. As the applicant belongs to SC community, he is eligible for consideration as he fulfilled necessary recruitment rules.

7. The applicant admits that R-3 is also a SC candidate and he is senior to him. But ^{the applicant's version is that} he is unfit for promotion as R-3 had met with an accident in the year 1987 which caused spiral cord injury. As Auto Mechanic-cum-Driver is supposed to undertake the work of driving vehicle to outstation for carrying assignments to the indentors and as R-3 had spiral cord injury, it ^{as} was not possible for him to drive heavy motor vehicle. But the administration

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taking a sympathetic view entrusted the job of driving staff car or jeep which is lighter duty, to R-3 and hence the entire burden of job of truck driving to outstations fell on the remaining Auto Mechanic-cum-Drivers in the lower category. The applicant had done the job though it was strenuous ungrudgingly and to the entire satisfaction of his superiors. The applicant further adds that R-3 can never be posted as Auto Supervisor as he does not possess the experience of Auto Mechanic-cum-Driver as he did not drive heavy vehicles for a very long period. Glossing over this fact, the official respondents granted promotion to R3. The post of Auto Mechanic-cum-Driver is a specialised post which requires expertise in driving the heavy vehicles. Then only a supervisor can be an effective Supervisor as it is a specialised trade. As R-3 did not discharge the full complement of duties entrusted to a Auto Mechanic-cum-Driver post he cannot be considered fit for promotion as Auto Supervisor. The applicant further adds that the duties of Auto Mechanic-cum-Driver are not exclusively limited to Heavy Motor Vehicle driving but it includes driving of all combined fleet of Lorries, Jeeps, Cars, Ambulance, Vans etc. and attending to their repairs. As he did not perform those duties, his promotion is devoid of merits and that promotion order has to be set-aside.

8. In the reply, it is admitted that R-3 had met with an accident and he was in the hospital from 2.3.87 to 16.4.87 for treatment for Central Spine Disorder. After the accident, R-3 was allowed to drive light vehicles within the city limits. In September, 1993 the Department

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had referred the case of R-3 to the Nizam's Institute of Medical Sciences (NIMS for short), Hyderabad for medical examination. The NIMS vide its certificate dated 10.12.92 (Annexure R-IV to the reply) stated that R-3 was fit for driving only light vehicles.

9. In February, 1997 the DPC had met and considered R-3 for promotion to the post of Auto Mechanic-cum-Supervisor against roster point NO.1 (carried forward point) reserved for SC candidates. While recommending R-3 for adhoc promotion, the DPC had suggested to refer him to the Osmania General Hospital for obtaining fitness certificate within six months from the date of promotion. The DPC while cosidering the case of R-3 opined that he was found driving car, jeep, van and some times lorries also and further as the post of Auto Mechanic-cum-Supervisor being of supervisory nature, the DPC considered the case of R3 and recommended for promotion as he being a senior SC candidate in the grade of Driver-cum-Mechanic and fulfilled other conditions set for promotion to the post of Auto Supervisor. Accordingly R-3 was promoted by the impugned order. As noted by the DPC, R-3 was referred to Osmania General Hospital for medical examination and he was certified fit for driving heavy vehicles by the letter dated 30.8.97 (Annexure R-5 to the reply). The respondents thus submit that there is no irregularity committed in promoting R-3 as Supervisor. R-3 being the senior most eligible candidate **** he was found ***** fit by the DPC Hence, for promotion to the post of Auto Supervisor. / there is no irregularity committed by the respondents in this connection.

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10. The respondents have also given the details of duties and responsibilities of the post of Auto Mechanic-cum-Supervisor by the enclosed Annexure letter bearing NO.SPP/A1/OA-1680 of 1997/99 dated 5.4.99.

11. It is an admitted fact that the post of Auto Mechanic-cum-Supervisor is a single cadre post. Hence there may not be any reason to fill up that post by following the roster reservation procedure. If that is so, the applicant cannot be considered for promotion as there is one Mr.MSR Philip who is senior to the applicant. If R3 cannot be promoted, then the case of Mr.Philip had to be considered as he is senior to the applicant herein. But that point may not be considered at this juncture in view of the final direction to be given in this OA.

12. We have perused the selection proceedings, detailed * notes put up to the DPC by the respondents' organisation and the recommendations given by the DPC. In the notes put up to the DPC by the office, there appears to be a doubt in regard to R-3 having driven heavy motor vehicles while working as Auto Mechanic-cum-Driver. But in the DPC proceedings, it has been stated that R-3 was driving car, jeep, van and somes times lorries also. As the remarks given by the DPC are not matching with the remarks in the office note, we called for log book of the booking staff working as Auto Mechanic-cum-Driver.

13. A perusal of the log book indicates that R-3 was also driving heavy vehicles within the city limits and was

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taking them to repairs etc. The log book entries were also shown to the learned counsel for the applicant. The learned counsel for the applicant submitted that the log book entries are not genuine entries and probably they are forged to sustain the case of the applicant. For that contention, he has quoted certain pages in the log book where entries had been made booking R-3 for driving heavy vehicles. It was further added by the learned counsel for the applicant that the duty of the Supervisor is more specialised one and mere driving within the city limits is not sufficient to make him an efficient Auto Supervisor. R-3 thus had not discharged one of the duties of lower post of Auto Mechanic-cum-Driver and hence he cannot be considered fit for promotion to the post of Auto Supervisor. He had especially brought to our notice one of the pages in the log book where R-3 had only signed in that page whereas others had not signed the entries in that page thereby indicating that entries in the log book are not reliable.

14. We have perused the log book entries. We do not find that the doubts raised by the applicant's counsel can be sustained. The log book entries are made as per the use of vehicle. It cannot be said that R-3 having booked to drive a particular vehicle did not drive it but allowed his helper to drive it. Such a contention of the applicant cannot be sustained unless he conclusively proves that even though R-3 was booked to drive the heavy vehicle even within the city limits, he did not do so but allowed his helper to drive that vehicle. No records were produced by the applicant to prove the above statement.

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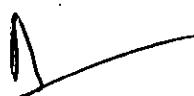
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15. The DPC had observed that R-3 was found driving car, jeep, van and some times lorries also and further the post of Auto Mechanic-cum-Supervisor being of supervisory nature, the DPC did not feel the experience of long distance driving of heavy motor vehicles very essential for promotion to the post of Auto Mechanic-cum-Supervisor. The DPC probably must have felt that R-3 having experience in driving the heavy vehicles even though it is in the city limits, may be sufficient to discharge the duties of Auto Mechanic-cum-Supervisor which is a supervisory post controlling the lower category of staff. If such a view is taken by the DPC, this Bench cannot question the same as Members of the DPC are expert bodies. No malafides had been attributed to the members of the DPC because of which the DPC had recommended the case of R-3.

16. Though R-3 was to be given only light duties as per te NIMS medical certificate dated 10.12.93, the same was reviewed subsequently, on the basis of the observation of the DPC, by the Osmania General Hospital and it certified him fit to drive heavy motor vehicles as per the letter dated 30.8.97. Thus, the earlier view of the medical authorities has been reviewed by the later Board and found him fit for driving heavy motor vehicles. Hence we feel, in the circumstances explained as above, the contention raised by the applicant against the promotion of R-3 cannot be sustained.

17. R-3 in his affidavit filed on 22.4.99 has stated that he was driving light and heavy motor vehicles from 1993 onwards. Management allowed him to drive only light

32



and medium vehicles. However, now and then he was driving heavy motor vehicles within the city limits and for taking them to repairs etc. By the above statement of R-3, it appears that R-3 was driving heavy motor vehicles in the lower category of Auto Mechanic-cum-Driver. Hence it cannot be said that R-3 had not discharged the duties of Auto Mechanic-cum-Driver. Even if he discharged the duties in the lower category in a limited way, that should not be the main reason to reject the case of R-3 for promotion if he otherwise fulfills the major portion of the recruitment rules for promotion. The DPC having considered all the points, had taken an over all view that R-3 is fit to be promoted as Auto Supervisor-cum-Mechanic. Hence to reject the recommendations of the DPC thereby setting aside the impugned promotion order dated 4.4.97 may not be appropriate.

18. In view of what is stated above, there is no reason to set aside the impugned order and the OA is liable only to be dismissed. Accordingly it is dismissed.

19. The learned counsel for the applicant submitted that the representation submitted by the applicant on 20.4.97 (Annexure A-4 at page 13 to the OA) followed by the reminder dated 20.6.97 (Annexure A-5 at page 14 to the OA) were not replied by the respondents due to the lethargic attitude and that lethargic attitude on the part of the respondents cannot be condoned and penal action has to be initiated for the irresponsible action of the respondents in not replying to the representations of the applicant.

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20. The respondents in their reply have stated that though the representation has no merits for consideration for the reasons stated in the reply, the Department was preparing for the reply; but before the reply could be issued, the applicant had approached this Tribunal and hence the reply could not be issued.

21. This OA was filed on 25.11.97 whereas the first representation of the applicant was dated 20.4.97. There appears to be some reason for not issuing the reply. However, there was a time lag of 7 months in the submission of the first representation dated 20.4.97 and filing of this OA on 25.11.97. If the respondents had taken some decision, they could have replied his representation well before the filing of this OA. In that view, the respondents are directed to be more careful in disposing of the representations received from the employees of that organisation in time without delay. Similar view was also taken by us in an another OA filed by the employees of the same organisaiton. R-2 should note the above observation of ours and ensure that these observations are fulfilled both in letter and spirit in future.

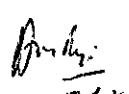
22. No order as to costs.


(B.S.JAT PARAMESHWAR)
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

vsn

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DATED : 31/5/1999


R.RANGARAJAN
31/5/1999

