

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 15/03
See
915

O.A. No. 476/2002/03
T/A/No.

200

He/KA/15/03

DATE OF DECISION 5.2003

MR. JEEWAN RAM SWAMY Petitioner

MR. C.B.SHARMA Advocate for the Petitioner(s)
MR. RAM JEEWAN SWAMY

Versus

UNION OF INDIA AND OTHERS Respondent

MR. TEJ PRAKASH SHARMA Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

(A.P.Nagrath)
Adm.Member

(G.L.Gupta)
Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

.....
Date of Order : 9.05.2003.

O.A. NO. 476/2002

Jeewan Ram Swamy S/o Shri Kalyan Mal Swamy, aged about 36 years, resident of Plot No. 40, Ganesh Colony, Jhotwara, Jaipur, Presently working as Driver in Mail Motor Service, G.P.O., Jaipur.

.....Applicant.

Mr. C.B. Sharma

For the applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi - 110 001.
2. Principal, Chief Post Master General, Rajasthan Circle, Jaipur - 302 007.
3. Director, Postal Services, Jaipur Region, Jaipur - 302 007.
4. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur - 302 006.

.....Respondents.

Mr. Tej Prakash Sharma

For the Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member

.....
ORDER

[Per Mr. Justice G.L. Gupta]

The following reliefs have been prayed in the instant O.A. :-

"(i) that the entire record relating to the case be called for and after perusing the same respondents may be directed not to withdraw promotion allowed in the Scale of Rs. 4000-6000 w.e.f. 20.10.1999 by quashing memo



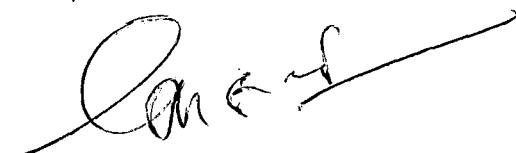
dated 17.10.2002 (Annexure A/1) and memo dated 3.10.2002 (Annexure A/2) with all consequential benefits.

- (ii) that the respondents be further directed not to reduced pay and not to recover any amount on account of so called excess payment from the applicant.
- (iii) any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) that the cost of this application may be awarded."

2. The applicant was initially appointed as Driver on 22nd September, 1990 in the pay scale of Rs. 950-1500 (Revised Pay Scale Rs. 3050-4590). Under the promotion scheme for Staff Car Drivers, the applicant was considered and given promotion to grade-II in the pay scale of Rs. 4000-6000 as he had completed nine years of service vide orders dated 9th October, 2001 (Annex.A/3) and 10th December, 2001 (Annex.A/4). In the seniority list of the Drivers as on 1st January, 2002, the name of the applicant was shown at Sl. No. 9 in the grade of Rs. 4000-6000. However, thereafter, the respondent No. 2 issued a show cause notice to the applicant on 19th September, 2002 stating that he was not eligible for promotion w.e.f. 20th October, 1999 and his promotion was being reviewed. The applicant made representation against the said show cause notice. After the Review D.P.C., the respondents have withdrawn the promotion of the applicant from 20th October, 1999 and instead have given him promotion w.e.f. 10th June, 2002 vide Memorandum dated 3rd October, 2002 (Annex.A/2).

3. The grievance of the applicant is that when he was given promotion on the basis of the recommendation of the D.P.C., the promotion could not be withdrawn and the date of promotion could not be changed.

4. In the reply, the respondents' case is that by mistake the applicant was given promotion ignoring the claim of the senior persons and now, the mistake has been corrected vide orders at Annexs. A/1 and A/2.



5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. It is not in dispute that the two persons viz. Shri Dalpat Singh and Shri Abdul Mattin, who have been given promotion vide order dated 3rd October, 2002, were senior to the applicant in the ordinary grade of Staff Car Drivers. When before issuing the order Annexure A/3, the claim of two senior persons had been ignored, the Review D.P.C. has been rightly held.

7. The Review D.P.C. has found the two senior persons viz., Shri Dalpat Singh and Shri Abdul Mattin, fit for promotion from the dates the vacancies were available and they have been given promotion w.e.f. 24th October, 1998 and 2nd January, 1999. Since there was no vacancy available in the higher grade on the date the applicant was earlier given promotion, the respondents were perfectly justified in changing the date of promotion of the applicant from 20th October, 1999 to 10th June, 2002.

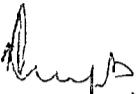
8. There is no merit in the contention of the learned counsel for the applicant that the respondents were estopped from changing the date of promotion. The factual errors can always be corrected. It is significant to point out that in the instant case, the error has been corrected after giving notice to the applicant.

9. There is, however, merit in the contention of the learned counsel for the applicant that the respondents should not recover the excess amount paid to the applicant as there was no fault on the part of the applicant when he was given promotion from earlier date. It has to be accepted that it will cause great hardship, if the respondents are allowed to recover the amount paid to the applicant on account of his promotion from the earlier date. It is a fit case, in which respondents are restrained from recovering any amount from the applicant on account



of change of the date of his promotion.

10. Consequently, the O.A. is allowed in part and the respondents are restrained from recovering any amount from the applicant on account of change in the date of his promotion. The respondents shall, however, be free to fix the pay of the applicant from the changed date of promotion in accordance with rules. No order as to costs.


(A.P.Nagrath)
Adm. Member


(G.L.Gupta)
Vice Chairman

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