

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 263 of 2002

Jabalpur, this the 9th day of February, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Bhanu Pratap Singh Chouhan,
S/o Shri Shivpal Singh Chouhan,
aged about 40 years,
R/o Ghana, Khamaria,
Jabalpur(M.P)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
through its Secretary,
Ministry of Information &
Broadcasting, New Delhi.
2. The Director,
All India Radio,
Katanga, Jabalpur(MP)
3. The Superintendent Engineer,
All India Radio,
Jabalpur(M.P.)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

By filing this Original Application, the applicant has sought a direction to the respondents to appoint the applicant on the post of Driver and grant him seniority and other consequential benefits from the date the post had fallen vacant i.e. from 31.1.2001.

2. The brief facts of the case are that the applicant was initially appointed in May, 1991 as Driver under the respondents. He was possessing the driving licence and requisite qualification to be appointed on the post of Driver. He continued to work as Driver from May, 1991 to December, 1995 to the entire satisfaction of his superior. He was not regularised on the post of Driver but was given an offer to be absorbed against a Group-D post. As he did not furnish

his option sought for, his services were terminated. Aggrieved by this, he had filed O.A.No.178 of 1996, in which the Tribunal vide its order dated 25.7.2000 passed the following directions-

"4.1 If there is a regular vacancy for the post of Driver or if such vacancy does not exist and arises in near future i.e. within three years from today under the control of respondent no.2 or 3 for which the applicant is eligible and found suitable and such vacancy arises in that event, the respondents no.2 and 3 shall first consider the applicant and accommodate him against such vacancy in preference to the newly appointed persons without of course taking the plea of age bar. The respondents shall also take into account the fact that the applicant has gained three years of experience under them".

Thereafter, the applicant made a representation to the respondents for considering his claim for appointment as per this Tribunal's order. The department vide order dated 24.10.2000 (Annexure-A-3) directed the applicant to fulfil certain conditions. Thereafter, the applicant duly fulfilled the said formalities. However, the department did not take further action on the particulars furnished by him. One post of Driver had fallen vacant under respondents 2 and 3 due to retirement of one Shri Nathu Ram with effect from 31.1.2001. In view of the judgment of the Tribunal, the applicant had a preferential right to be considered for the purpose of filling up the said post. However, the applicant has not been considered and to over-reach the order of the Tribunal, a modus operandi was adopted by the respondents whereby one Shri Kailash Singh has been transferred from Rewa Radio Station to Jabalpur. According to the applicant, the action taken by the department is not only contrary to the order passed by the Tribunal in OA 178 of 1996 but against Articles 14 and 16 of the Constitution. Aggrieved by this, the applicant has filed this Original Application.

3.

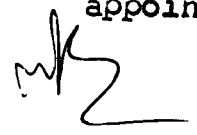
The respondents in their reply have stated that



Kailash Singh has not been newly appointed but he had been working on the post of Driver at Akashwani Rewa, before the order was passed by this Tribunal, on regular basis. Further as per the order passed by the Directorate General, All India Radio dated 23.8.2002, a ban has been imposed on new appointments, therefore, it was not possible for Akashwani, Jabalpur, to appoint the applicant on the vacant post but they had no other option but to transfer a driver from some other place.

4. Heard both the learned counsel for the parties and perused the pleadings available on record.

5. The Tribunal has specifically directed, by its order dated 25.7.2000, the respondents to consider the applicant against the regular vacancy for the post of Driver. It was only on the ground that if such vacancy does not exist and arise in near future i.e. within three years from the date of the order of the Tribunal, under the control of respondent No.2 or 3, they were directed to consider the applicant and accommodate him against such vacancy in preference to the newly appointed persons without taking the plea of age bar. It is an admitted fact that regular vacancy of Driver had become available with effect from 1.2.2001 on retirement of one Shri Nathu Ram with effect from 31.1.01. The respondents have also directed the applicant to submit his particulars for considering his case vide their letter dated 24.10.2000 and the applicant had submitted his particulars. Instead of considering his case as per directions of the Tribunal, the respondents have filled up the post by transfer of one Shri Kailash Singh from Rewa on 8.5.2001. Now, they have taken the ground that the applicant could not be considered for appointment as Driver, as a ban has been imposed on new appointment. In this context, they have relied on the order



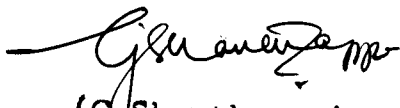
passed by the Directorate General, AIR dated 23.8.2002 and the DOPT's instructions dated 16.5.2001 (Annexure-R-7).

6. We find from the facts narrated above that the direction was given by the Tribunal on 25.7.2000, in the earlier OA 178/1996 filed by the applicant, to the respondents to consider the applicant's case against the regular vacancy in the grade of Driver under respondents 2 and 3. A regular vacancy in the grade of Driver under respondents 2 and 3 had arisen on 01.2.2001 consequent to retirement of Shri Nathu Ram on 31.1.2001. The respondents have also obtained particulars from the applicant to consider his case vide their letter dated 24.10.2000. However, instead of considering the case of the applicant, they have filled up the post of Driver on 8.5.2001 by transferring a third person i.e. Shri Kailash Singh from AIR, Rewa. Now, they are taking the plea that the post of Driver could not be filled up by direct recruitment as there is a ban imposed by the DOPT on 16.5.2001 and by the DG, AIR on 23.8.2002. It clearly shows that the respondents 2 & 3 have flouted the orders of the Tribunal. The above facts in chronological order indicate that the respondents have filled up the post by way of transfer to circumvent the orders of the Tribunal. There was no ban on the direct recruitment on the date of vacancy i.e. on 1.2.2001. Even if there was a ban, this could not have come in the way as there was a specific direction given by the Tribunal to consider the case of the applicant and if found suitable to appoint him on regular basis. This clearly shows the respondents were so casual and contemptuous in not following the direction given by the Tribunal. We are, therefore, of the considered view that in such a situation the respondents be directed to consider the case of the applicant.

7. In the result, the OA is allowed. The respondents are directed to consider the case of the applicant against the vacancy which had arisen on 01.2.2001 on retirement.

of Shri Nathu Ram on 31.1.2001. If the applicant is found suitable he be considered for appointment as Driver with effect from the same date and fix the pay of the applicant on notional basis and thereafter grant him all consequential benefits including seniority etc. The respondents are also directed to pay a cost of Rs.10,000/- (Rs.Ten thousand only) to the applicant. The above direction shall be complied with by the respondents within a period of two months from the date of communication of this order.

8. The Registry of This Tribunal is directed to send a copy of this order to the Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001/ by registered post to enquire as to why the orders of the Tribunal have not been properly complied with and if necessary the cost of Rs.10,000/-(Rs.Ten thousand only) imposed by the Tribunal on the respondents, may be recovered from the salaries of the officers/individuals who are found responsible.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

Forwarded
om
19/2/04

कृतांकन सं ओ/न्या..... दि.....
पलिलिपि उ
(1) सति, उवा
(2) अनेन
(3) प्रतय
(4) वंयवत, उ
सतन एव

S. Paul
S A Dharmadhikari
Reporter
Bojindor
19/2/04