

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 826 of 2000

Jabalpur, this the 23rd day of March, 2004

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

1. Chhotelal Kori
aged about 56 years,
S/o Late Shri Dayaram Kori,
Ambulance Driver Grade-I,
Ticket No. 5014,
V.F.J. Estate Hospital,
R/o House No. 906,
Ward Hawabagh, Gorakhpur,
Jabalpur(M.P.)
2. Gopal Prasad Vishwakarma,
aged about years,
S/o Shri Motilal Vishwakarma,
Ambulance Diver Grade II,
Ticket No. 5101,
V.F.J. Hospital, R/o New
Kanchanpur, Near Chauk-sey Hotel
Ward Adhartal, Jabalpur(MP)

APPLICANT

(By Advocate - None)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Defence,
Department of Defence,
Production and supplies,
Government of India,
South Block,
New Delhi - 110011.
2. Director General Ordnance
Factories 10-A, Shaheed
Khudiram Bose Road,
Calcutta - 700 001
3. General Manager,
Vehicle Factory,
Jabalpur(MP)

RESPONDENTS

(By Advocate - Shri P. Shankaran)

O R D E R

By G. Shanthappa, Judicial Member -

By filing this Original Application the applicants have
claimed the following main reliefs :

- "(i) to quash the impugned orders both dated
2.8.2000 (A-3 & A-4/A) so far as they relate to the
applicants as being void, illegal and arbitrary,
- (ii) to hold that the impugned orders are violative
of Article 311(2) of the Constitution of India,
- (iii) to direct the respondents to grant all



consequential service benefits retrospectively including arrears of salary, pay fixation, seniority etc. in accordance with the factory order dated 12.3.1999 (A-2) and to fix the applicants in the promoted scale as per Annexure A-2 and pay them salary accordingly under the revised pay scales as and when applicable."

2. The brief facts of the case are that the applicants substantively hold the post of Ambulance Driver Grade-I and Ambulance Driver Grade-II respectively. The first applicant was initially appointed as Labour Grade-B in Vehicle Factory, Jabalpur on 26.8.1972. Subsequently on 5.7.1973 he was directly recruited as Ambulance Driver Grade-II. on 14.5.1986 the applicant No. 1 was promoted as Ambulance Driver Grade-I w.e.f. 15.5.1986 against an existing vacancy. Further on 6.5.1998 the applicant No. 1 was subjected to Trade test, for promotion to Ambulance Driver-I which he successfully completed. On 12.3.1999 the DPC was conducted as per rules from Ambulance Driver Grade-I to Ambulance Driver Grade-I (1320-2040/- revised scale as per the order of respondent No. 1, dated 30.7.1996) w.e.f. 27.2.1997 against an existing vacancy. On 2.8.2000 the applicant No. 1 was appointed/ redesignated from Ambulance Driver Grade-I to Ambulance Driver Grade-II against an existing vacancy w.e.f. 1.1.1996. The applicant No. 2 was initially appointed as Labour Grade-B in the year 1980. Subsequently he was directly recruited and appointed as Ambulance Driver Grade-II, on 18.10.1988. On 6.5.1998 the applicant No. 2 was subjected to the trade test for promotion to Ambulance Driver-II which he successfully passed. On 12.3.1999 DPC was convened and applicant No. 2 was promoted from Ambulance Driver Grade-I to Ambulance Driver Grade-II (1200-1800, under the order of respondent No.1 dated 30.7.1996) against an existing vacancy w.e.f. 1.10.97. On 2.8.2000, the applicant No. 2 was redesignated from Ambulance Driver Grade-II to Ambulance Driver (OG) against an existing vacancy w.e.f. 1.1.1996.



2.1. The structure of pay scale in the cadre of Ambulance Driver has undergone change frequently which is as under ;

"Prior to 1.1.1986	w.e.f.1.1.86 to 31.12.1995	Pursuant to letter dated 30.7.1996 of respondent No. 1	w.e.f.1.1.96
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A.D. Grade-II	A.D. Grade-II (950-1500)	A.D. (OG) (950-1500)	A.D. (OG) (3050-4590)
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A.D. Grade-I	A.D. Gde-I (1150-1500)	A.D. Gde-II (1200-1800)	A.D. Gde-II (4000-6000)
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	A.D. Selection Grade (1320-2040)"	A.D. Gde-I (1320-2040)	A.D. Gde-I (4500-7000)
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The service drivers working under various Departments of the respondent No. 1 approached the Madras Bench of the Tribunal which rendered a decision on 2.1.1996 in OA No. 961/1994 directing the respondents to prepare a promotional scheme, as a result of which the respondent No. 1 issued letter dated 30.7.1996 introducing the promotional scheme for civil motor drivers and ambulance drivers in the Ordnance and Equipment Factories. Thereafter a clarification was issued by the respondent No. 2 regarding revision of pay scale of the Ambulance Motor Drivers as provided in the promotional scheme which is to be given with effect from 1.1.1996 and not from 30.7.1996. The respondents have issued an order dated 2.8.2000 in which they have reverted the applicants back to the position as existed prior to their promotion orders which had been issued after duly constituted DPC as per the recruitment rules. Prior to the issuance of the promotion order the applicants were subjected to screening by way of interview which they duly attended and only after they were declared pass their case was placed before the duly constituted DPC which recommended them for promotion. The impugned order dated 2.8.2000 is bad in law and the same was issued without hearing the applicant. The promotion awarded to the applicants have been against existing vacancies as it is evident from the promotion orders. The impugned orders are issued without

g.s.

holding the full scale departmental enquiry, which violates Article 311(2) of the Constitution of India.

3. The respondents have filed their reply denying the averments made in the Original Application the applicants are working as Ambulance Driver Grade-II and Ambulance Driver (Ordinary Grade) respectively under respondent No. 3. The respondent No. 1 introduced a promotion scheme for the Civilian Motor Driver and Ambulance Drivers employed in Ordnance and Ordnance Equipment factories vide letter dated 30th July, 1996. To implement the said scheme a departmental promotion committee was held on 18.2.1999 to consider the eligible candidates against the following sanctioned strength of Ambulance Drivers allocated in the office of respondent No.3 :

- "a) Ambulance Driver Grade-I (Rs. 1320-2040) -1
- b) Ambulance Driver Grade-II (Rs. 1200-1800) -2
- c) Ambulance Driver (OG) (Rs. 950-1500) -3"

The DPC found Shri K.C. Sahu and Shri Chhote Lal fit for promotion to Ambulance Driver Grade-I in the improved/revised pay scale of Rs. 1320-2040/4500-7000/-. Shri K.C. Sahu, the senior most person was undergoing the penalty as a result of disciplinary action taken against him when the DPC met on 18.2.1999. He was not promoted and in his place the second senior most person Shri Chhote Lal was promoted to the improved pay scale. Similarly, the resultant vacancy in the scale of Rs. 1200-1800/- consequent of placing Shri Chhote Lal in higher scale was also filled by promoting Shri G.P. Vishwakarma to the grade of Rs. 1320-2040/4000-6000/-. On revision of the policy and to introduce the benefit of improved scale with retrospective effect i.e. from 1.1.1996 the promotion effected was reviewed and accordingly, the senior most Ambulance Driver Grade-I Shri K.C. Sahu was promoted to the improved scale of Rs. 1320-2040/4500-7000/- from 1.1.1996. On that date there was no disciplinary action pending or contemplated against him and he could not




have been denied promotion on 1.1.1996. The applicant No. 1 has been reverted to Ambulance Driver Grade-II in the scale of Rs. 1200-1800/4000-6000/-. There is no arbitrariness or illegality in doing this as the respondents cannot hold more incumbents on the post than the authorised strength. The applicant No. 2 was earlier promoted to Ambulance Driver Grade-II could not be retained in this grade as Ambulance Driver Grade-II was already in excess to the authorised strength. He also did not fulfill the requisite service of 9 years as Ambulance driver (OG) for promotion to higher grade on 1.1.1996. Therefore the promotion to Ambulance Driver Grade-II did not arise on 1.1.1996 for want of vacancy and eligibility criteria. The applicant No. 2 is in this category and he cannot agitate for promotion when there is no vacancy available with the respondents. Hence the applicant No. 2 is placed in the Ordinary Grade after reviewing the policy and as notified in factory order dated 2.8.2000. The placements were not considered as promotion but only upgrading the scale of pay because of introducing improved scale of pay. It is however contended that there was no question of reversion of the applicants to lower grade in violation of Article 311(2) of the Constitution of India. The applicants were placed in the higher scale based on the earlier instruction to place the Ambulance Drivers in the improved pay scale from 30.7.96. Since it is a policy decision the respondents have taken proper decision and issued the necessary orders. The rights of the applicants are not violated. Hence the OA is liable to be dismissed.


4. We have heard the learned counsel for the respondents. Since none is present for the applicant, we propose to dispose of this OA by invoking the provisions of Rule 15 of CAT (Procedure) Rules, 1987.



5. The applicants have challenged the impugned Annexure A-3 dated 2.8.2000 by which they were reverted to the position as existed prior to their promotion. When the applicants were promoted under the DPC proceedings in accordance with the rules, there was no reason to revert back the applicants. The action of the respondents is illegal. Prior to issuance of the impugned orders the applicants were not heard. Hence the impugned orders are not sustainable in the eye of law. The respondents have not clarified that on what grounds and reasons the impugned orders were issued. The respondent No. 1 introduced the promotion scheme for Civilian Motor Drivers and Ambulance Drivers in the Ordnance and Equipment factories. Under the said scheme the departmental promotion committee applicant No. 1 was held. The DPC found fit/for promotion to the post of Ambulance Driver Grade-I in the revised pay scale of Rs. 1320-2040/4500-7000/-. Since Mr. KC Sahu the senior most person was undergoing the penalty as a result of disciplinary action taken against him when the DPC met on 18.2.1999, the applicant No. 1 was promoted to the improved scale. The resultant vacancy in the scale of Rs. 1200-1800/- consequent of placing^{the} applicant No. 1 in higher scale, the applicant No. 2 was promoted in that scale. When Mr. K.C. Sahu was promoted to the improved scale as per policy decision, the first applicant has to come down to the place of second applicant. If that be so the second applicant to to be reverted back, as there are only two posts of Grade-II Ambulance Driver. Under the impugned order the first applicant is not effected and he has been facing a following position but in case of second applicant, if there are any other vacancy, he can be accommodated. Since it is a policy matter, there is no illegality or irregularity committed by the respondents while deciding the impugned orders. This Tribunal should not interfere with the policy matters. It is for the respondents to implement the scheme. Since it is an



administrative matter this Tribunal, declined to interfere with the action of the respondents. Since the applicants have no legal right to ask for a particular post, under a scheme, we find that the applicants have not made out any case and accordingly the Original Application is dismissed. However, we observe that if any vacancy arise subsequent to filing the OA, the applicant No. 2 is directed to submit his representation in this regard, and the respondents are directed that if such a representation is filed the same may be considered and disposed of in accordance with the rules within a period of three months. No costs.


(G. Shanthappa)
Judicial Member

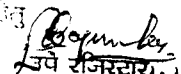

(M.P. Singh)
Vice Chairman

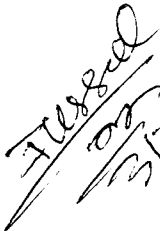
"SA"

पृष्ठंकल सं ओ/न्या.....जयलपुर, दि.....
प तिलिपि अक्टो दिना...

- (1) सचिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जयलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्पी श्री/श्रीमती/कु.....के काउंसल
- (4) गांधीनगर, कोमला, जयलपुर न्यायाधीश
सूचना एवं आवश्यक कार्रवाई हेतु

S. Narayn,
P. Shankar.


उपे रजिस्ट्रार
31/12/04


31/12/04