

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA. No. 060/00592/2014**Reserved on: 29.04.2015
Pronounced on: 1.5.2015**CORAM:** HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

1. Vakil Singh s/o Late Sh. Nathu Ram
2. Rakesh Kumar s/o Late Sh. Balbir Singh
3. Bhupinder Singh s/o Sh. Kehar Singh
4. Mahesh Chand Prajapati s/o Sh. Horam Singh
5. Puran Chand s/o Late Sh. Multan Singh
6. Roop Singh s/o Late Sh. Jawahar Singh
7. Manoj Kumar s/o Sh. Govardhan Prasad

All the applicants are working as Drivers Ordinary Grade in the office of Regional Director, Central Ground Water Board (NWR), Plot No. 3B, Bhujal Bhawan, Sector 27-A, Chandigarh-160019.

.....Applicants

Versus



1. Union of India through, Secretary, Government of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
2. Chairman, Central Ground Water Board, Ministry of Water Resources, Government of India, Bhujal Bhawan, N.H.4, Faridabad, Haryana.
3. Regional Director, Central Ground Water Board (NWR), Plot No. 3B, Bhujal Bhawan, Sector 27-A, Chandigarh - 160019.

.....Respondents

Present: Mr. V.D. Sharma, counsel for the applicant.
Mr. Deepak Agnihotri, counsel for the respondents.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- (i) Quash the Impugned Memorandum (A-9) vide which the representation submitted by applicants has been rejected for promotion from Staff Car Driver (OG) to Staff Car Driver (Grade-II) by one time relaxation in experience as the same has been granted to similar situated Drivers. The posts of Driver Grade-II exists before the notification of new Recruitment Rules of 2010 and old Rule of 2000 were prevalent at time of occurrence of vacancies and which provide promotion as the only source of recruitment to the post of Driver Grade-II.
- (ii) Quash the Ministry of Water Resources, the Central Ground Water Board, Staff Car Drivers, Group 'C' Posts, Recruitment Rules, 2010 (A-3) as published on 30.11.2010 to the extent prescribe eight years of experience in the grade to the Driver

al ———

(OG), ignoring the three years experience which was initially required for appointment as Driver (OG), for promotion as Grade-II whereas a direct recruitment requires only a total experience of eight years.

- (iii) To promote the applicants on the post of Driver Grade-II by relaxation in Rules w.e.f. 30.11.2010 when the new Rules came in existence as the vacancies exist on that day and the same are to be filled up as per old prevailing Rule 2000 and past practice by granting relaxation in age, experience. Or otherwise the applicants be granted deem date promotion over and above the direct recruited driver (Grade-II) appointed under the new Recruitment Rules, 2010."

2. It has been stated in the OA that the applicants No. 1 to 4 were appointed as Drivers (Ordinary Grade) on 09.11.2005, 06.12.2006, 11.12.2006 & 26.12.2006 respectively in the pay scale of Rs. 5200-20200 + 1900 Grade pay with qualification of 8th pass, matriculation and intermediate, all are in possession of driving licence for Heavy Vehicle, three years of experience and knowledge of motor mechanism. Applicant no.5 to 7 were initially appointed as cleaners on 15.04.1997, 05.05.1997 and 24.01.2000 respectively. Applicant No.5 Puran Chand was put to work as Driver w.e.f. April 2003 till his promotion as Driver (OG) and applicant No.6 Roop Singh was put to work as Driver of LMV w.e.f 31.01.2000 till his promotion as Driver (OG). All the applicants possess driving licence for LMV/HMV. Applicant No.5 and 6 have signed and

As ———


made entries in log books of their respective vehicles from date they were put to work as Drivers prior to their promotion as Driver (OG) on 29.08.2005 and 26.09.2005 except applicant No.7 who has driving licence to drive HMV since 28.11.2004 prior to his promotion as Driver (OG) on 06.07.2007. Chart of particulars of applicants is annexed herewith as Annexure A-1. At the time of appointment of the applicants Central Ground Water Board Driver (Group 'C Posts) Recruitment Rules, 2000 (Annexure A-2) were in existence and the same were prevalent up to 30.10.2010. The post of Drivers (OG) was filled 50% by direct recruitment and 50% by promotion from among "Cleaners" with 6 years regular service in the grade and possessing a valid motor driving licence for heavy vehicle on basis of driving test of heavy vehicles. The promotion was made by a duly constituted DPC. As per Recruitment Rules, the next post above Driver (OG) was that of Driver (Grade-II). The only method of recruitment was by 100% promotion from Drivers (OG) with 8 years of regular service in the grade subject to passing of Trade Test. Further promotion to Driver Grade-I was purely by promotion from amongst the Driver Grade-II with 8 years of regular service in the grade subject to passing of Trade Test.

As _____

However, as per the new rules, namely Ministry of Water Resources, The Central Ground Water Board, Staff Car Drivers, Group 'C' posts, Recruitment Rules, 2010 (Annexure A-3) which have been notified on 30.11.2010 the posts of Driver (OG) Grade is filled 80% by direct recruitment and 20% by promotion from among "Cleaners" with two years regular service in the grade and possessing a valid motor driving licence for heavy vehicle on basis of driving test of heavy vehicles. The promotion is made by a duly constituted DPC. The next post above Driver (OG) is that of Driver (Grade II). The method of recruitment is promotion failing which by direct recruitment. Promotions are made from among Driver (OG) with eight years of regular service in the grade subject to passing of Trade Test. The educational qualifications required for direct recruitment are matriculation, possession of driving licence for Heavy Vehicle and knowledge of motor mechanism. Further promotion to Driver Grade I was purely by promotion from amongst the Driver Grade II with 5 years of regular service in the grade subject to passing of Trade Test.

3. It has further been stated that all the applicants except applicant No.7 have more than 8 years experience of driving Heavy

As

Motor Vehicle and were better placed to be considered and promoted as Drivers Grade II in the scale of Rs. 5200-20200 with Grade Pay of Rs. 2400/- than a direct recruit. The respondents have on earlier occasions also promoted the Drivers (OG) in April and July 2009 by counting their entire driving experience by seeking relaxation in the Rules. The respondent No.2 directed respondent No.3 vide letter dated 14.03.2011 to initiate the process for direct recruitment instead of considering and promoting the Drivers (OG) as per past practice, to fill 90 posts of Drivers in Grade II out of which 10 posts of Drivers Grade II are in the office of Regional Director where applicants are working apart from 80 other posts all over India. Out of 10 vacancies in Chandigarh, 7 are unreserved, 2 are reserved for SC and 1 is reserved for ST. The vacancies in question had arisen prior to the coming into force of the new Recruitment Rules and were liable to be filled under the new Rules 2000 as per law and past precedent. As per the information provided under RTI, 80 posts of Staff Car Drivers (Grade-II) were vacant on 30.11.2010. Copy of letter dated 14.03.2011 and RTI information dated 10.06.2014 are attached herewith as **Annexure A-4 & 5** respectively. 

4. Respondent No.3 issued advertisement in May 2011 to fill these posts of Drivers Grade II and the last date of submission of application was 30.06.2011 (Annexure A-6). The respondents resorted to the new Recruitment Rules of 2010 despite the fact that the vacancies pertained to the period prior to 30.06.2011 and 2000 Rules were to govern the field. The applicant No. 2 to 5 applied against the same. Although they were not fulfilling the criteria of eight years experience in the Grade of Driver (OG) for promotion but they were fulfilling the qualification for direct recruit i.e. 8 years of experience apart from the other criteria. Applicant No.1 and 7 could not apply being under matric and applicant No.6 also could not apply being over age by a few months. The applicants submitted individual representations on 19.08.2011 and 23.08.2011 (Annexure A-7 colly) raising various grounds including reference to past practice, having more than eight years of experience as drivers etc but no decision was taken on the same. The applicants then approached this Tribunal by filing OA No.1043-CH/2011. The OA was disposed of vide order dated 11.3.2014 with directions to the respondents to consider the representations within three months (Annexure A-8 colly). In

u —

pursuance of order dated 11.03.2014, the respondents passed impugned order dated 21.04.2014 (Annexure A-9) and rejected the claim of the applicants for granting of promotion for the post of Staff Car Driver (Grade-II) on the ground that Ministry did not agree for one time relaxation in experience. Hence this OA.

5. In the written statement filed on behalf of the respondents, it has been stated that during 2008, there were 45 vacancies of Driver (Grade II). The eligible candidates were not available in the feeder grade of Driver (OG) and in order to avoid abolition of these posts, the respondents sought and obtained one time relaxation vide letter dated 21.5.2008 for filling the vacancies of Driver (Grade II). Similarly, relaxation was also allowed in 2009 vide letter dated 15.4.2009 (Annexure R-4). However, in 2010, when the number of vacancies had increased to 79, relaxation was not allowed by the Ministry of Water Resources and in view of the advice tendered by the Ministry, the proposal for amendment of the Recruitment Rules was prepared. The Recruitment Rules were amended vide letter dated 30.11.2010 (Annexure R-7) and the following provision was incorporated:-

M —

"Promotion from amongst Staff Car Driver (OG) having experience of 08 years regular service, failing which by direct recruitment."

6. It has further been stated that it is mandatory to a candidate that he should have requisite experience as prescribed in the relevant Recruitment Rules for considering the promotion to the next higher grade and the experience rendered in any other cadre cannot be clubbed. Since the eligible candidates amongst the feeder grade were not available for promotion to the post of Driver (Grade II), the Board adopted the alternate method i.e. by direct recruitment and the respective Regional Directors including that of Regional Director, CGWB, NWR, Chandigarh were authorized to fill these vacancies, by failing which clause, i.e. by direct recruitment to avoid abolition of post, since the post of Driver is a vital post in the Board being an operational department and cannot be left vacant for an indefinite period. Hence, there was no discrimination with Drivers (OG) of the Board, since Board has made all out efforts to fill the vacancies of Driver (Grade II) by promotion, but the same could not be filled up through DPC due to non-availability of eligible candidates. After publishing 90 vacancies of Staff Car Drivers (Grade II) in the Weekly

As ———

Employment News, 38 candidates were appointed through direct recruitment and they have already joined their duty at their respective place of postings in the CGWB. If any departmental candidates fulfil the eligibility criteria, they can also apply against the direct recruitment posts. However, as per the Seniority List of Drivers (OG) issued as on 01.01.2011 (Annexure R-8), none of the Driver (OG) was eligible for consideration for promotion to the post of Driver (Grade II). In order to fill the post of Driver (Grade II), the DPC for 2014-15 had been convened, wherein the name of Sh. Vakil Singh, Driver (OG) has been considered and he had already been promoted to the post of Driver (Grade II) vide CHQ, Faridabad's office order dated 27.6.2014 (Annexure R-9) and joined as Driver (Grade II) on 30.6.2014 at his present place of posting. The post of Driver (Grade II) is a promotional post to be filled from the feeder post of Driver (Ordinary Grade). The posts of Driver (Grade II) could not be filled up by promotion due to the fact that available Drivers (Ordinary Grade) in the feeder grade have not completed their residency period and hence were not eligible for promotion to the post of Driver (Grade II). As _____

7. In the rejoinder filed on behalf of the applicant, it has been stated that the available vacancies should be filled year-wise when they had arisen in accordance with the rules applicable at that time and the new rules should not be made applicable for filling these vacancies. Although some of the applicants had been promoted meanwhile, but their date of promotion should be retrospective keeping in view the date when the vacancies against which they were being promoted arose.

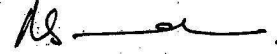
8. Arguments advanced by the learned counsel for the parties were heard when learned counsel for the applicant also pressed that in the past, relaxation had been given to the Drivers (OG) for promotion as Driver Grade II, but the applicants had been discriminated against and the respondents had resorted to direct recruitment. The directly recruited persons had been placed senior to the applicants while the applicants were entitled to promotion from back date when the vacancies arose. Learned counsel also stated that the amended rules notified in November, 2010, should be struck down as the same eligibility criteria had been prescribed for the promotion to the higher grade as had been prescribed for direct recruitment to this grade. As

9. Learned counsel for the respondents stated that all the applicants had already been promoted as Drivers (Grade II) as per orders issued on 27.6.2014 and 16.4.2015. He also stated that direct recruitment was resorted to only when there was no person available in the feeder category with the requisite qualifying service for promotion. As and when the Staff Car Drivers (OG) met the eligibility criteria of 8 years, they were being promoted as Staff Car Drivers (Grade II). Direct recruitment had to be resorted to by the respondent department since Staff Car Drivers (OG) did not meet the eligibility criteria for promotion and if the posts were to be kept vacant, the departmental work would suffer and also the vacant posts would be abolished.

10. We have given our thoughtful consideration to the matter. It is clear from the material on record that as per the Recruitment Rules, 2010, the direct recruitment is to be resorted to only if qualified candidates are not available for promotion and it is in this situation that the respondents have directly recruited the Drivers Grade II. The applicants cannot claim relaxation of the rules regarding eligibility criteria as a matter of right. We do not see any defect in the Recruitment Rules of 2010. There is no merit

As _____

in the claims of the applicants and hence the OA is rejected. No costs.



(RAJWANT SANDHU)
MEMBER(A)



(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 1.5.2015

ND*