

**Central Administrative Tribunal
Principal Bench**

OA No.679/2015

**Order reserved on :28.10.2017
Order pronounced on :31.10.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Tara Singh (Rtd. SCD Grade I), Aged 64 years,
S/o Late Ram Singh
R/o Village Godalpur, Gali No.14,
P.O. and P.S. Azadpur, District Delhi.Applicant

(By Advocate: Shri Amit Kumar)

Versus

1. The Govt. of NCT of Delhi
Through the Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.
2. The Labour Commissioner,
Govt. of NCT of Delhi,
Department of Labour,
5, Sham Nath Marg, Delhi-110054. ...Respondents

(By Advocate : Ms. Harvinder Oberoi)

ORDER

Hon'ble Ms. Nita Chowdhury, Member (A)

This is the third round of litigation. Present Original Application (OA) has been filed by the applicant claiming the following relief:-

“(a) Call for the records leading to issuance of impugned order dated 09.04.2014 (Annexure A-1).

(b) Quash and set aside the impugned order dated 9.4.2014 (Annexure A-1), directing the respondent No.2 to grant Special Grade, in the pay scale of Rs.5000-8000 (pre-revised) to the applicant along with

arrears and interest incurred there upon w.e.f. 28.08.2005 till date of actual payment, in terms of DOP&T's OM dated 15.02.2001.

(c) In alternate, direct the respondent to act upon their finding, whereby they found the applicant eligible for Special Grade in the pay scale of Rs.5000-8000 (pre-revised) w.e.f. 21.08.2010 in the pay scale of Rs.5000-8000 (pre-revised) along with arrears and interest incurred there upon w.e.f. 21.08.2010 till date of actual payment, in terms of DOP&T's OM dated 15.02.2001.

(d) Impose exemplary cost for dragging the applicant in third round litigation for his legitimate claim despite eligibility, availability of vacancy and specific direction direction by the Hon'ble Tribunal".

2. Facts, in brief, are that the applicant was appointed as Staff Car Driver (SCD) (Ordinary Grade) on 31.08.1987. Thereafter, on 30.11.2000 he was promoted as SCD Grade-II and as SCD Grade-I on 21.08.2007. He became due for next promotion as SCD (Special Grade) w.e.f. 21.08.2010 before retirement. On 31.12.2010, he retired on superannuation in terms of order dated 21.01.2010. Further, he has submitted that as he had worked for more than three year in Grade-I, before his retirement, entitling him for Special Grade in terms of DOP&T's OM, he made representations on 25.08.2010, 27.10.2010 and 20.05.2011 but in vain. Hence he was forced to file OA No.623/2012 to redress his grievance. The said OA was disposed of by the Tribunal on 06.03.2012 directing the respondents to decide the applicant's representation with reasoned and speaking order on all permissible grounds as per rules within a period of 2 months from the date of receipt of a copy of the order. Thereafter, he filed representation but the same was rejected by the respondents on 15.05.2012.

3. Applicant further submits that being aggrieved by order dated 15.05.2012 passed by the respondents, he was forced to file second OA bearing No.3500/2012 which was allowed by this Tribunal on 02.01.2014. The operative part of the said order reads as under:-

“4. In the circumstances, the OA is disposed of directing the respondents to consider the case of the applicant for promotion to the Special Grade Driver with effect from the date of his eligibility, as per rules, within three months from the date of receipt of a certified copy of this order, and in the event the applicant is found fit, since the applicant has already been retired, they will issue appropriate orders with all consequential benefits. However, the applicant is not entitled for any interest on the arrears amount. No order as to costs”.

4. Further, on 09.04.2014, despite specific direction for promotion of the applicant to the Special Grade, the respondents denied him promotion on the sole ground that “Not recommended for Special Grade as there is only one post in this grade available in the department and same is kept in sealed cover for Shri Amar Singh Jatav being senior to Shri Tara Singh (applicant)”. Though the vacancy is available and the applicant has been found fit for Special Grade by the DPC, this action of the respondents is against the DOP&T OM dated 14.11.2014 enforcing strict compliance of DOP&T OM dated 12.10.1998 regarding consideration of retired employees who were within the zone of consideration in the relevant year(s) but are not actually in service when the DPC is being held.

5. Thereafter, he filed CP No.483/2014 for wilful disobedience of Tribunal's order dated 02.01.2014. The CP was closed on 29.09.2014 and the following order was passed by the Tribunal:-

“2. In compliance to the same, the respondents have constituted a DPC and as per the recommendations of the said DPC, the case of the applicant has not been recommended for Special Grade. The respondents have passed a detailed order vide Annexure CP/1 dated 09.04.2014, giving reasons for not granting the Special Grade.

3. In the circumstances, and in view of the orders passed by the respondents, we are of the considered view that the respondents have substantially complied with the orders of this Tribunal and hence no contempt is made out in this case. Accordingly, the CP is closed. Notices are discharged. However, the applicant is at liberty to challenge the order now passed by the respondents, if so aggrieved, and if so advised. No order as to costs”.

Hence, applicant has prayed that his OA be allowed and he be granted promotion from back date in terms of OM of DOP&T dated 15.02.2001.

6. The respondents have filed their reply and pleaded that there were 05 sanctioned posts of SCD before 12.09.2005. 05 more posts of SCD in the department were created w.e.f. 12.09.2005 vide sanction order dated 28.09.2005. The promotion scheme for SCD was introduced w.e.f. 01.08.1993 vide OM No.22036/1/92-Esst. dated 30.11.1993. The scheme was further modified w.e.f. 08.11.1996 vide OM No.43019/54/96-Estt dated 30.11.2001. According to the modified scheme, the posts of SCDs were categorized in four grades with following designation and quota:-

S.No.	Grade	Pay Scale	Percent	No. of Posts to be earmarked
01	Special Grade	Rs.5000-8000	5%	0.5 (Say 1)
02	Grade-I	Rs.4500-8000	35%	3.5 (Say 3)
03	Grade-II	Rs.4000-6000	30%	3
04	Ordinary Grade	Rs.3050-4500	30%	3
	Total			10 Posts

7. They have further submitted that as per the modified scheme there is only one post of Special Grade SCD. Sh. Amar Singh Jatav was senior to Sh. Tara Singh, applicant. The details of their joining and retirement are as under:-

- i. Sh. Amar Singh Jatav, SCD, (Retd.)(DOA: 17.05.1983)
- ii. Sh. Tara Singh, SCD, Grade-I (Retd.) (DOA: 28.08.1987)

Sh. Amar Singh was under suspension w.e.f. 29.06.1995 in a case of forgery and cheating which was pending in a trial court and, therefore, the Departmental Promotion Committee in its meeting dated 17.11.2000 decided that Sh. Amar Singh Jatav cannot be promoted at this stage and recommended that the next senior most SCD, Sh. Tara Singh (applicant herein) for promotion to the SCD Grade-II. The DPC also decided that as Sh. Amar Singh Jatav fulfils all the requirements as per RRs except that of vigilance clearance and adverse remarks in his ACR as such his case was kept in sealed cover till the outcome of the proceedings/findings of

the Court Case. The applicant Sh. Tara Singh was promoted to the post of SCD, Grade-I w.e.f. 21.08.2007. In the meanwhile, the senior most SCD, Sh. Amar Singh Jatav retired on 28.02.2011. He was acquitted in the Court Case by the Ld. Metropolitan Magistrate on 26.06.12 and subsequently vide office dated 01/10/2012, Sh. Amar Singh Jatav was cleared from vigilance angle. The suspension period of Sh. Amar Singh Jatav was also regularised by the Head of Department and was treated as period spent on duty. A copy of the order dated 01/10/2012 is annexed as Annexure-R-1. Sh. Amar Singh Jatav expired on 05.05.2013.

8. They have further submitted that as Sh. Amar Singh Jatav was the senior most SCD and had rendered more than 27 years of service before retirement and was also cleared from vigilance angle. However there was an adverse remark in the ACR for the year 1993-94. ACRs for the period 29.06.1995 to 31.08.2005 and for the period 2007-2008 are not available. Besides this no work of driving was given during the period 01.09.2005 to 31.03.2006. Further no specific grading was given in the ACR of 2006-07, which mentioned only 'faithful servant'. The Departmental Promotion Committee in its meeting dated 05.03.2014 considered all these aspects and decided to keep the case of promotion of Sh. Amar Singh Jatav in the sealed cover till the opinion of Services Department, GNCT of Delhi is received in respect of deficient ACRs as mentioned above

Accordingly the opinion of the Services Department has been sought in respect of abovementioned points and on receipt of the same, a decision regarding the promotion of Sh. Amar Singh Jatav or Sh. Tara Singh to the post of Staff Car Driver, Special Grade would be taken as there is only one post, i.e. 5% in the Labour Department. Hence, they have submitted that 5% of the posts in the Special Grade SCD comes to only one post and Shri Amar Singh Jatav was senior as he has rendered 27 years of service so applicant is not entitled for any relief.

9. We have heard the learned counsel for the parties and perused the pleadings on record.

10. The core controversy involved in this case is whether applicant can claim promotion against a single post of SCD Special Grade from back date. No doubt, he was considered for the post of SCD Grade-I w.e.f. 21.08.2007 but was not recommended for Special Grade as there is only 1 post (5%) in this grade available in the Department and same was kept in the sealed cover for Shri Amar Singh Jatav being senior to Shri Tara Singh. Applicant retired from Government service on 31.12.2010 whereas Shri Amar Singh Jatav retired on 28.02.2011. We may further mention that as per para 4 of the OM of DOP&T dated 15.02.2001, promotion to the Special Grade shall be by non-selection (seniority-cum-fitness) from Grade-I with 3 years regular service in Grade-I SCD. Hence applicant

completed 3 years as Grade-I on 21.08.2010, i.e., much prior to retirement, but as Shri Amar Singh Jatav was senior so applicant is not entitled for any relief in this OA and cannot claim that the lone post of SCD Special Grade be given to him. Accordingly, the OA lacks merit and is dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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