

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3459/2012

Order Reserved on: 01.12.2016

Pronounced on: 23.12.2016.

**Hon'ble Mr. Rajvir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Mulkh Raj,
Staff Car Driver,
BCAS HQRS
Janpath Bhawan,
New Delhi.

(By Advocate Shri Yogesh Sharma)

-Applicant

Bureau of Civil Aviation Security
Govt. of India, 'A' Wing,
1-III Floor
Janpath Bhavan,
New Delhi through
Commissioner of Security.

-Respondents

(By Advocate Shri Amit Anand)

O R D E R

Hon'ble Shri K.N. Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main relief:

“(i) Pass an order/directions that the Applicant be granted promotion to Grade-II with effect from 01.01.2011 with all consequential benefits;”

2. The brief facts of this case are as under.

2.1 The applicant joined as a Staff Car Driver (SCD) in Bureau of Civil Aviation Security (BCAS) on 01.01.2002. He became eligible for promotion to Grade-II Driver on 1.1.2011.

2.2 As per the Recruitment Rules (RRs), it is mandatory that a Driver should pass the prescribed trade test before he is granted promotion to Grade-II. The applicant applied for the trade test on 03.11.2010. There was some delay at the end of the respondents in holding the trade test. However, the test was finally held on 28.03.2011. The applicant passed the trade test. He was promoted as Grade-II Driver vide Annexure A-7 order dated 23.11.2011 and was granted the SCD Grade-II position in PB-1+Grade Pay Rs.1900/-.

2.3 Subsequently, the respondents without giving any Show Cause Notice (SCN) to the applicant, vide impugned Annexure A-1 order dated 19.04.2012, altered the date of promotion of the applicant from 23.11.2011 to 29.03.2012.

2.4 Aggrieved by the said action of the respondents the applicant has filed the instant OA, praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The important points mentioned in the reply are as under:

- i) The DPC in its meeting held on 20.10.2011, recommended promotion to the applicant to SCD Grade-II w.e.f. 23.11.2011 and accordingly vide Annexure A-1 order came to be issued. The promotion was to be effective from the date of assuming the charge by the applicant.
- ii) The applicant had passed the requisite trade test on 28.03.2011 and, therefore, as per the RRs for the post of SCD Grade-II, he was not eligible for promotion to the said post with effect from the crucial date 01.01.2011 for the vacancy year 2011. Hence, it was decided to re-consider the case of the applicant for the vacancy for the year 2012 for which the crucial eligibility date was 01.01.2012. Accordingly, a meeting of the review DPC was convened on 29.03.2012, wherein he was recommended for promotion and accordingly, vide impugned Annexure A-1 order dated 15.04.2012 he has been promoted as SCD Grade-II w.e.f. 29.03.2012.

4. The applicant thereafter filed his rejoinder.

5. With the completion of the pleadings, the case was taken for hearing the arguments of the parties on 01.12.2016. The Arguments of the parties were heard.

6. We have considered the arguments of the learned counsel for the parties and have also gone through the pleadings. In terms of the RRs, the applicant became due for promotion to the post of SCD Grade-II w.e.f. 01.01.2011. He had applied for the trade test on 03.11.2010. There was inordinate and inexplicable delay at the end of the respondents in holding the trade test. Finally, the trade test was held on 25.03.2011, which the applicant passed. Pursuant to his passing of the trade test, vide Annexure A-1 order dated 23.03.2011 the applicant was promoted presumably against the vacancy for the year 2011.

7. The action of the respondents in altering the date of promotion from 23.11.2011 (Annexure A-7) to 29.03.2012 (Annexure A-1) was not only arbitrary but also against the principles of natural justice. No SCN was issued to the applicant before the impugned Annexure A-1 order was passed. As observed by us in pre-paras, the delay in holding the trade test took place at the end of the respondents. It would be unfair that for such delay, the applicant should be penalized. Further, we would like to observe that promotion of SCD to higher grade is not exactly in the traditional sense of promotion; in fact it is a mere financial upgradation. Such promotion/financial upgradation is not incumbent upon existence of any vacancy as such.

8. In the conspectus of the discussions in the foregoing paras, we set aside the impugned Annexure A-1 order dated 19.04.2012 and allow the OA. The promotion of the applicant vide Annexure A-7 order dated 23.11.2011 is upheld.

9. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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