

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3064/2013

Reserved on : 17.02.2016.

Pronounced on : 22.02.2016.

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

1. Rohtas,
S/o late Sh. Banwari Lal,
R/o H.No. 359, Sector-12,
Sonipat, Haryana.
2. Surjeet,
S/o late Sh. Nand Singh,
R/o Village Dagerpur, Distt. Bagpat,
P.O. Ratol (UP).
3. Zam Nei Hau,
S/o Sh. Thangkhogen,
R/o B/197, Timarpur Teacher Colony,
New Delhi.
4. Ram Kumar,
S/o Sh. Munshi Ram,
R/o H.No. 168 R, Aarambag,
New Delhi.
5. Prem Chand,
S/o Sh. Kishan Lal,
R/o 1728, Sector-03, Pushap Vihar,
New Delhi-17.
6. Ramesh Kumar,
S/o Sh. Meer Singh,
R/o V&PO Bharthal,
New Delhi-77.
7. Rameshwar Prasad Sharma,
S/o Sh. Molak Ram Sharma,
R/o C-751, Delhi Administration Flats,
Timar Pur, Delhi.-54. Applicants

(through Ms. Bimla Devi for Sh. Ajesh Luthra, Advocate)

Versus

1. Govt. of N.C.T. of Delhi
through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.

2. The Commissioner,
Food, Supplies & Consumer Affairs,
(GNCT of Delhi), K-Block, Vikas Bhawan,
New Delhi. Respondents

(through Ms. Alka Sharma, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicants are working as Staff Car Drivers in the Department of Food, Supplies and Consumer Affairs, GNCT of Delhi. By the impugned order dated 25.10.2011 they have been granted promotion to Special Grade/Grade-I/Grade-II of the Staff Car Drivers with immediate effect. Their grievance is that such promotion should have been granted to them from the date of eligibility i.e. the date on which they completed the requisite length of service rather than with immediate effect. Their contention is that they have been singled out for grant of promotion with immediate effect whereas various departments of GNCT of Delhi have been granting promotions to similarly situated drivers from the date from which the concerned person completed requisite length of service in the feeder grade. They have made several representations in this regard one such being on 11.01.2012 (Annexure A/7). However, the respondents rejected the same by a cryptic order dated 11.02.2013 (Annexure A/3). Hence, they have approached this Tribunal seeking the following relief:-

- “(a) quash and set aside the impugned order passed at Annexure A/3 in to-to and
- (b) quash and set aside the impugned order placed Annexure A/1 and A/2 to the extent the respondents have denied the promotion/higher grade to the applicants w.e.f. the date of their completion of requisite length of service.
- (c) direct the respondents to grant the applicants the promotion/higher grade with effect from the date of their

completion of requisite length of service in the lower grade with all consequential benefits.

- (d) direct the respondents to immediately release the arrears of monetary benefits arising upon grant of prayer(s) above alongwith interest @18% p.a.
- (e) award costs of the proceedings and
- (f) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case."

2. The respondents in their reply have averred that they have followed the Scheme of promotion of Staff Car Drivers as laid down vide DoP&T O.M. dated 15.02.2001 and 22.08.2001. Further, as per Swamy's Establishment and Administration Rule Nos. 17.10 and 17.11, it is provided that the promotion has to be granted from the date of validity of the panel or the date of actual promotion, whichever is later. Rule-17.11 further provides that DPC or the date of actual promotion of the officer, whichever is later, should be reckoned as the date of regular promotion of the officer.

3. We have heard both sides and have perused the material placed on record. Learned counsel for the applicant argued that the applicants have been discriminated against inasmuch as in various other departments of GNCT of Delhi drivers were being promoted from the date of eligibility. In this regard, learned counsel has produced several orders of various departments where such promotions have been granted from back date. Thus, at page-19 of the paper-book order of Commissioner, Food Supplies & Consumer Affairs is available in which several drivers have been promoted from dates indicated against their names rather than the date of issue of order, which was 18.12.2007. Similar orders are also available at pages-20, 23 & 24. At page-23 is such an order of Department Heath & Family Welfare whereas at page-24 is an order of General Administration Department of Govt. of NCT of Delhi. Learned counsel

for the applicant drew our attention to page-25 of the paper-book on which an order of the Commissioner of Excise, Entertainment & Luxury Tax is available granting promotion to one Sh. Rakesh Kumar, Staff Car Driver with immediate effect. On the next page a corrigendum issued by the same department is available by which the date of promotion of Sh. Rakesh Kumar was changed to 17.11.2008 instead of immediate effect. Learned counsel argued that for reasons of parity the applicant also deserved to be promoted from their dates of eligibility.

4. We have considered the aforesaid submissions. We are convinced that the general principle for granting promotion is from the date of DPC or from the date of assumption of charge on higher post, whichever is later. This is because generally promotion involves assumption of higher duties and, therefore, higher pay is made admissible only from the date from which the promoted officers starts discharging higher duties. However, in the case of Staff Car Drivers, the nature of their duties remains the same. Further, in their Scheme of promotion as modified by DoP&T O.M. No. 22036/1/92-Estt.(D) dated 27.07.1995 in Para 2.2 it is provided that in small cadres there may not be movement of persons on promotion and the promotion may be granted *in situ*. Nevertheless, the Scheme of promotion also provides percentage of posts to be kept in each scale in a cadre of Staff Car Drivers in every Ministry/Department. Promotion can be granted to a driver only when post in higher grade is available based on the percentage prescribed and the concerned driver has put in required length of service in the feeder grade.

5. The applicant has cited orders of various department of GNCT by which back dated promotions have been given to Staff Car Drivers. While from perusal of these orders it is clear that promotions granted were from back date,

it cannot be inferred from them that these dates were dates on which the concerned driver completed the requisite length of service in the feeder grade. Such promotions could not have been granted if promotional posts were not available. For grant of promotion both conditions have to be met, namely, availability of post and completion of requisite length of service.

6. Considering the above facts, we are of the opinion that for reasons of parity, the applicants also deserve to be promoted from back date just as promotions have been granted to similarly situated persons of various departments of GNCT of Delhi. However, such promotion shall be from the date of eligibility of the concerned person or date of availability of the post in higher grade, whichever is later. We order accordingly. The respondents shall extend the above benefit to the applicants within a period of eight weeks from the date of receipt of a certified copy of this order. The applicants shall also be entitled to arrears arising out of such promotion without interest. The O.A. is disposed of accordingly. No costs.

(Shekhar Agarwal)
Member (A)

(A.K. Bhardwaj)
Member (J)

/Vinita/