

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00240/2017

Wednesday, this the 4th day of July, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

K.V.Asoka Kumar, S/o.late Chellappan,
Ushus House, Kizhakkumbagham,
Kazhakuttam, Thiruvananthapuram District.
Now working as MTS, Office of the Director of Census Operations,
Kerala C.G.O. Complex, Poonkulam, Vellayani P.O.,
Thiruvananthapuram – 695 522. ...Applicant

(By Advocate – Mrs.K.Girija Gopal)

V e r s u s

1. The Registrar General of India,
Office of the Registrar General, India,
Government of India, Ministry of Home Affairs,
2A, Mansingh Road, New Delhi – 110 011.
2. The Director,
Office of the Director of Census Operations, Kerala,
C.G.O.Complex, Poonkulam, Vellayani P.O.,
Thiruvananthapuram – 695 522. ...Respondents

(By Advocate – Mr.V.A.Shaji,ACGSC)

This Original Application having been heard on 28th June 2018, the Tribunal on 4th July 2018 delivered the following :

O R D E R

O.A.No.180/240/2017 is filed by Shri.K.V.Asoka Kumar, erstwhile Staff Car Driver working as MTS under Respondent No.2. He is aggrieved by his posting as a MTS from his original designation as Staff Car Driver, the reversion, according to him, being against his wishes and aspirations. The reliefs sought in the O.A are as follows :

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1. Call for the records leading to Annexures A-11, A-13, A-14 and A-15 and quash the same as being illegal and arbitrary.
2. Declare that the classification of applicant as Surplus Staff and his readjustment as MTS is illegal, and that he is entitled to continue to hold the post of Staff Car Driver itself and that he shall not be forced to do the jobs of sweeping and cleaning office premises, bathrooms, toilets etc.
3. Declare that the applicant is entitled to continue in the post of Staff Car Driver itself and further to direct the respondents to give him his due grade promotion in the post of Staff Car Driver.
4. Declare that the applicant is entitled to be accommodated in the vacancy of Staff Car Driver at DCO, Karnataka and to direct the respondents to issue orders in this regard.
5. Pass such other orders or directions and deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant had been initially posted in the service of Respondent No.2 as a Peon. He was then appointed to the post of Car Driver Grade III on regular basis with effect from 30.11.2004 (Annexure A-1). As per Special Rules, a copy of which is available at Annexure A-2, governing the method of recruitment to the post of Staff Car Driver in the office of the Registrar General as well as in the offices of the Director of Census Operations the said category is classified as Group 'C'. There is one post of Staff Car Driver under the Directorate of Census Operations, Kerala and the post is placed in PB-1 with scale of pay of Rs.5200-20200 with GP of Rs.1900/-.

3. As per the recommendations of the 6th Pay Commission all Group 'D' posts in the Government were upgraded to Group 'C' and they were placed in the PB-1 with GP of Rs.1800/- after suitable training wherever required. In pursuance to the Model Recruitment Rules the Respondent No.1 drew up

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the Multi Tasking Staff (Group C) Post Recruitment Rules, 2011, a copy of which is available at Annexure A-6. In compliance with the same the Respondent No.2 had prepared a consolidated list of employees classified as MTS and sent them for training at appropriate level.

4. The applicant submits that all these were going while he continued to discharge the duties of Staff Car Driver until the sole staff car available in DCO, Kerala was condemned and auctioned on 27.10.2010. Although in the absence of a car he was assigned temporary duties, he continued in the category of Staff Car Driver until the audit party came with a query as to whether the idling of services of Staff Car Driver is permissible. In pursuance of this the Respondent No.1 directed the Respondent No.2 to ascertain whether the applicant was willing to work as Staff Car Driver in a vacant post of that category in another State and in the event he was not willing to do so, seeking an undertaking from the applicant that he is ready to work in the post of MTS. Without comprehending the situation entirely, the applicant submitted his written agreement that if he cannot be retained as Staff Car Driver in Kerala, he is willing to work as MTS (Annexure A-7). This was done under the bonafide impression that the accommodation as MTS was only as a temporary measure and he would continue to be paid the same emoluments as that of Driver. Also on 25.11.2013 he filed a representation addressed to the Respondent No.2 that he was willing to go to DCO Karnataka where there existed a clear vacancy of Staff Car Driver

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and requested that his earlier proposal for reversion as MTS may be treated as withdrawn. The applicant claims to have submitted other representations as at Annexure A-8 and Annexure A-9 as he did not hear anything further about his request to be posted to DCO Karnataka.

5. However to his dismay, the applicant was served with an order dated 3.6.2015 by which he was informed that the competent authority has not agreed to his request for transfer to DCO Karnataka and that he was to be adjusted as MTS accepting his request dated 30.1.2013 and that he is going to be adjusted in the post of MTS in PB-1 with scale of pay Rs.5200-20200 with GP of Rs.1800/- under the scheme for redeployment of surplus staff. The applicant who was then working as Staff Car Driver in the Grade Pay of Rs.2000/- thus found himself reverted to a post carrying lesser Grade Pay of Rs.1800/-. He claims to have made frantic inquiries with his superior authorities as to how such an order came about greatly to his detriment and interest. Yet he had to resort to Right to Information Act to get copies of internal communications at Annexure A-12 to Annexure A-15. The grievance of the applicant is accentuated by the fact that the Staff Car Driver post under the Respondent No.2 is not formally abolished till date and also the procedures required under CCS (Re-employment and Surplus Staff) Rules 1990 as revised in 2002 have not been adhered to. The applicant is put to great distress as he is now required to attend to menial duties such as sweeping, mopping, dusting and cleaning etc. which effectively amounts to a downgrading in rank.

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6. As grounds, the applicant submits that no redeployment of an employee to a lower post is permissible merely to meet audit requirement. As already mentioned no formal abolition of Staff Car Driver's post has been issued by the Respondent No.1. Even assuming so as per O.M 1/1/2002-CS III dated 26.3.2002 issued by the Department of Personnel and Training there are clear modalities and steps for identification and declaration of surplus staff. None of these have been followed in this case. The so called order of redeployment virtually amounts to a reversion of the applicant to a post carrying lower Grade Pay as well as duties and responsibilities. Such reversion is equivalent to a punitive step taken against him for no fault of his. The initial undertaking that he was prepared to work as MTS if posted in Kerala itself had been the result of a misunderstanding owing to his limited understanding of office procedure. He had reversed his stand and opted for a transfer to a vacant post at Karnataka and it would be unfair and illegal to hold him to the first request made by him when he had clearly withdrawn the same.

7. Per contra a detailed reply statement has been filed on behalf of Respondent Nos.1 and 2. It is submitted that the departmental vehicle of DCO Office, Kerala was condemned and disposed off on 27.10.2010 and as a result the applicant who was a Staff Car Driver was left with no driving duties. Internal Audit inspected the office during April, 2012 and raised an objection on the idling of Staff Car Driver. The Headquarters, Respondent No.1 considered the case in this background and gave the applicant two

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options (i) to give his willingness to work as Staff Car Driver in another state where the post of Staff Car Driver is vacant or (ii) to give an undertaking to the effect that if he is not willing to go to another state to work in the post of MTS which he was holding earlier before his appointment as Driver. The applicant provided the written undertaking stating that he would like to work as MTS rather than be posted to another Directorate as Staff Car Driver, a copy of the letter of undertaking dated 30.1.2013 is at Annexure R-1. Having worked as MTS already the applicant cannot deny that he was unaware of the duties and responsibilities attached to the said post.

8. In the O.A it has been submitted that to be clubbed along with MTS necessary training is to be imparted. This is a part of the recommendations of the 6th CPC and relates to Group D employees who are to be reclassified as Group C. As the applicant was already a Group C employee there was no need to impart any further training to the said individual.

9. The respondents also rebutted the argument of the applicant that he was unaware and he is not familiar with English language as he himself has stated in his Annual Confidential Report that he can read and write Hindi and English. Further his contention that his prospects for promotion to the post of Staff Car Driver Grade II and even grant of 1st ACP with effect from 13.4.2014 have been taken away, are entirely wrong. In fact after adjusting the applicant as MTS on 3.6.2015 the first MACP upgradation in PB-1

Rs.5200-20200 with Grade Pay Rs.2000/- with effect from 30.11.2014 was granted to him on completion of ten years in the grade of Staff Car Driver. Thus there was no financial loss caused to him on account of his service being utilized as MTS. Now both the posts of MTS and Staff Car Driver are Group C posts. The applicant's pay being fully protected and he having been adjusted on the basis of his written undertaking, there is nothing illegal in the redeployment that has been ordered in the case of the applicant. It is further stated that when a new staff car is allotted, he may be considered for assignment as Staff Car Driver. It is submitted that there is no need to keep the individual idling until this happens.

10. The applicant has argued that necessary steps in keeping with the Department of Personnel and Training O.M dated 26th March 2002 (Annexure R-2(2) have not been followed while declaring the employee as a surplus employee. The communication from Respondent No.1 addressed to Respondent No.2 on the subject, a copy of which is at Annexure R-2 (1), empowers the latter office "to deal with the matter on its own as DOP&T deals with redeployment/readjustment of surplus employees taken on the roll of Central Surplus Cell, DoP&T." This effectively answers the applicant's charge.

11. Heard Smt.K.Girija, learned counsel for the applicant and Shri.Shaji.V.A., learned ACGSC for the respondents. The applicant's case is that he has been overtaken by circumstances which are not of his making

and from this perspective the reversion that he has suffered is illegal. He had been working in the position of Staff Car Driver and had no driving duty to perform after the car was auctioned off. The employee was given a choice between accepting the position of Staff Car Driver in Karnataka or agreeing to work as MTS under Respondent No.2 in Kerala. As per undertaking provided on 30.1.2013 the applicant accepted the latter option. He claims that he had through submissions at Annexure A-8 dated 25.11.2013 withdrawn his earlier undertaking and states that he is now willing to go to DCO Karnataka “provided he is given promotion as Staff Car Driver Grade II at a later date”. Under instructions from the Respondent No.1, Respondent No.2 issued order dated 3.6.2015 (Annexure A-11) adjusting the applicant in the post of MTS. However, he was granted his first MACP on 3.6.2015 with Grade Pay of Rs.2000/- with effect from 30.11.2014 considering his ten years regular service in the grade of Staff Car Driver. Thus he can claim no discrimination on this score.

12. Smt.K.Girija, learned counsel for the applicant argued that readjustment of the applicant as MTS has been stated to be a part of redeployment of surplus staff. She submitted that there are procedures which are necessary to go through and this involves seven stages starting with identification and concluding with implementation. None of these procedures have been adhered to. However, as per Annexure R-2(1) document, which is a communication from Respondent No.1 addressed to Respondent No.2, DOPT has advised Respondent No.1 in this case to

decide the matter on its own. In any case, keeping a Driver for a car which is not in existence does not amount to a optimal utilization of material resources. The important point to be considered is whether the applicant has suffered any monetary disadvantage on account of this and the answer to this point is in the negative. In any case, acting on his own initiative the applicant had submitted an undertaking seeking readjustment to which now he is raising objection. Having been given a choice and having accepted one of the alternatives the applicant cannot claim that he ought to be considered for the other option at a later stage especially when no material disadvantage is caused to him. He had been a Group D employee initially and could not have been unaware of the duties and responsibilities of the said category now rechristened as MTS.

13. One contention raised by the applicant is that post of Staff Car Driver is still in existence under Respondent No.2 and has not been abolished. But this does not bestow any right upon the applicant to remain idle in a job which has no functional requirement. Learned counsel for the applicant also referred to judgment of the Hon'ble Apex Court in **Major K.D.Gupta vs. Union of India and another** reported in **1984 KHC 561**. In the said judgment the Hon'ble Apex Court has looked down upon a posting order issued in order to meet the requirement of audit. In this case, however, the circumstances are quite dissimilar. The respondents have only acted as per a written undertaking/request made by the applicant.

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14. On a consideration of all factors this Tribunal comes to the conclusion that the O.A has no merit. The O.A is dismissed. However, in the event of Respondent No.2 acquiring a staff car in DCO Kerala, the applicant may be accommodated in that post. Also, in the event that the respondents on a future date would like to accommodate him as Staff Car Driver at DCO in Karnataka, he may similarly be favoured with necessary transfer order. No order as to costs.

(Dated this the 4th day of July 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00240/2017

1. **Annexure A-1** – A true copy of the order dated 30.11.2004 issued by the 2nd respondent.
2. **Annexure A-2** – A true copy of the Office of the Registrar General, India and the Offices of Directors of Census Operation in States and Union Territories, Staff Car Driver Group C post Recruitment Rules, 2005.
3. **Annexure A-3** – A true copy of the Statement showing Group wise sanctioned strength of officials in the Directorate of Census Operations, Kerala.
4. **Annexure A-4** – A true copy of the order dated 12.7.2010 issued by the 2nd respondent showing the statement of annual increment of staff w.e.f 1.7.2010.
5. **Annexure A-5** – A true copy of the Model Recruitment Rules with its Annexure as per OM dated 30.4.2010.
6. **Annexure A-6** – A true copy of the Multi Tasking Staff (Group C) Post Recruitment Rules, 2011.
7. **Annexure A-7** – A true copy of the letter dated 30.1.2013 submitted by the applicant to the Joint Director DCO Kerala.
8. **Annexure A-8** – A true copy of the representation dated 25.11.2013 submitted by the applicant before the 2nd respondent.
9. **Annexure A-9** – A true copy of the representation dated 28.3.2014.
10. **Annexure A-10** – A true copy of the order dated 27.10.2014, granting First MACP to the applicant.
11. **Annexure A-11** – A true copy of the order dated 3.6.2015 issued by Joint Director, Directorate of Census Operations Kerala.
12. **Annexure A-12** – A true copy of the reply dated 15.12.2016 received by applicant to his application under the Right to Information Act, issued by the office of the 2nd respondent.
13. **Annexure A-13** – A true copy of the letter dated 18.11.2013 addressed to the 2nd respondent by the office first respondent.
14. **Annexure A-14** – A true copy of the letter dated 29.5.2014 addressed to the 2nd respondent by the office first respondent.
15. **Annexure A-15** – A true copy of the letter dated 15.5.2015 addressed to the 2nd respondent by the office first respondent.

- 16. Annexure A-16** – A true copy of the order dated 26.10.2016 issued by the Deputy Director.
- 17. Annexure R-1** – A true copy of the letter of undertaking from the applicant dated 30.1.2013.
- 18. Annexure R-2** – A true copy of the Letter No.:13014/12/2017-Ad.IV dated 14.7.2017 of the Office of the Registrar General, India.
