

OA.No.170/00899/2016/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00899/2016

DATED THIS THE 24th DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri P.Ravi
S/o Late.Paramashivam
Aged 56 years
R/a: Flat # 7, Sri Nilaya
Kengeri Upanagara
Near Church Road
Bangalore-560 060.

....Applicant

(By Advocate Sri N.Amaresh)

Vs.

1. Union of India represented
by the Secretary
Ministry of Youth Affairs and Sports
New Delhi-110 001.

2. The Director General of
Sports Authority of India
J.N.Stadium Complex
(East Gate), Lodhi Road
New Delhi: 110 003.

3. The Regional Director
Sports Authority of India
Netaji Subhash Southern Centre
Mysore Road
Bengaluru: 560 056.

4. Deputy Director (Personal)
Sports Authority of India
Netaji Subhash Southern Centre
Mysore Road
Bengaluru: 560 056.

...Respondents

(By Advocate M/s.J.Hudson Samuel & Partners for R2-4)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a. *Call for the records pertaining the order
No.SAI/Pers/2217/2014/Vol.IV/Bangalore 220 dated 08.06.2016*

as Annexure-A1 and on perusal quash and set aside the same as arbitrary and discriminatory in the interest of justice and equity.

- b. Consequently direct the respondents to grant him Grade-I promotion w.e.f. the year 2002 in the pay scale of Rs.4500-7000 on par with his counterparts Sri.Barun Kr.Ghosh and Manohar Lal and further direct to consider the case of the applicant for grant of Special Grade in the pay scale of Rs.5000-8000 (9300-34800 with GP 4200 revised) with all consequential benefits such as arrears of pay etc., in the interest of justice.*

2. The applicant was appointed as a Staff Car Driver at the Southern Center of the respondent's Organization in the Southern region in the pay scale of Rs.775-1025/- during the year 1987 and was regularized w.e.f. 01.01.1989 as Staff Car Driver in the pay scale of Rs.950-1500/-. The applicant has completed 29 years of service as Staff Car Driver. He submits that as Staff Car Driver he is entitled for Grade-II promotion after completion of 9 years of service in the ordinary grade and he is entitled for Grade-I promotion in the pay scale of Rs.1320-2040 on completion of 15 years of combined service including 6 years in grade-II as per the office OM dtd.27.7.1995(Annexure-A1) issued by the DoPT. As per the subsequent OM dtd.13.02.2002(Annexure-A2), the senior most Staff Car Driver is also entitled for special Grade in the pay scale of Rs.5000-8000, revised grade in PB-2 i.e. 9300-34800 with GP of Rs.4200.
3. The applicant submits that the respondents have issued an Office Order No.98/2006 dtd.22.2.2006(Annexure-A3) to effect the promotions as per the above stated OMs according to which the scheme shall be implemented on Regional/Headquarters' basis. Applicant made several applications under RTI and sought the information as to how, when and what basis his counterparts namely Sri Barun Kumar Ghosh from Eastern Region, SAI and Sri Manohar Lal, the senior most driver at SAI, HO Delhi were promoted. The respondents have furnished the information as per the letter dtd.5.6.2015(Annexure-A4)

OA.No.170/00899/2016/CAT/Bangalore Bench and 30.09.2015(Annexure-A5). He submits that Sri Barun Kumar Ghosh who was appointed in the year 1985 was promoted as Grade-I Driver by order dtd.30.8.2006(Annexure-A6) w.e.f. 8.11.1996 itself i.e. after completion of only 10 years of service. It is clear from Annexure-A5 that Sri Manohar Lal whose initial appointment was in the year 1984 was promoted to Grade I exactly on completion of 15 years of service. On 12.11.2015(Annexure-A7). The applicant submitted representation requesting the respondents to grant him the pay scale in PB-II i.e., 9300-34800 with GP Rs.4200 w.e.f. 1.1.2007 on par with his counterparts. The 4th respondent has recommended the case of the applicant by his letter dtd.15.12.2015 (Annexure-A8) seeking the approval from the Head Office, the 2nd respondent. The applicant has made another representation on 16.12.015(Annexure-A9) to consider his case for grant of GP Rs.4200 to which the respondents have issued the impugned endorsement dtd.8.6.2016(Annexure-A10) stating that his case has been examined on the basis of Office Order dtd.22.6.2006 and he is not found in merit. The said order, according to the applicant, is cryptic and non-speaking one. He submits that the respondents have not examined his case properly in comparison with his counterparts indicated above. The respondents have also not provided the information as to how and on what basis his counterparts were promoted to Grade-I earlier than the applicant and further promoted to special grade and receiving GP of Rs.4200. In the meanwhile the 2nd respondent sent a letter to the respondent No.4 on 24.2.2016(Annexure-A11) seeking the details of promotion/financial upgradation given to drivers working in Southern Center along with service details and seniority list of drivers(Annexure-A12 & 13). Applicant submits that non-consideration of his case on par with his counterparts is arbitrary, discriminatory and in violation of the Rules governing the promotional prospects of the Staff Car Drivers. The

applicant being the senior most driver in the Southern Region is also entitled for special grade and to be placed in GP Rs.4200 and there cannot be any discrimination between the drivers working in Head office and Regional Office.

4. The applicant further submits that the OM dtd.13.2.2002 provides that Ministries and Departments should explore the possibilities of combination of different cadres of Staff Car Drivers in Central Government Organisations under their control to implement the promotion scheme as provided in OM dtd.15.2.2001 introducing special grade in the offices where the strength of the Staff Car Driver is less than 10. However, this exercise has not been taken up by the respondents so far. That apart, para-5 of Office Order No.98/2006 provides that the scheme shall be implemented on Regional/Headquarters basis. The applicant was given MACP on 1.9.2008 and he would get 3rd MACP in the year 2018 but he was denied timely promotions as per his eligibility and entitlements on par with his counterparts. Therefore, the impugned order is liable to be set aside and he may be declared as entitled for promotions.
5. The respondents have filed their reply statement wherein they submit that the OA is barred by limitation as the applicant has approached the Tribunal claiming reliefs to be granted to him 16 years prior to his approaching this Tribunal. On this ground alone the OA is liable to be dismissed and the applicant has also not filed an application for condonation of delay in filing the OA. They submit that the representations submitted by the applicant are only in respect of granting of Special Grade Driver Scale which he is not entitled to as per Office Order No.98/2006 dtd.22.6.2006. But he sought for a direction to grant him Grade-I promotion with effect from the year 2002 in the pay scale of Rs.4500-7000 for which he has admittedly not submitted any representation to the respondents. Hence, on this ground also the OA is liable to be

dismissed.

6. The respondents submit that the applicant was appointed as Three Wheeler Driver in the pay scale of Rs.775-1025 and joined his duties at the 3rd respondent on 4.2.1987. The applicant was promoted as Driver in the pay scale of Rs.950-1500 w.e.f. 1.1.1989. He was confirmed in the post w.e.f. 4.2.1989. The pay scale was revised to Rs.3050-4590 w.e.f. 1.1.1996 as per V CPC. The applicant was granted 1st ACP in the pay scale of Rs.4000-6000 w.e.f. 1.1.2001. In the year 2002, he was granted Time Bound Promotion w.e.f. 1.1.1997 in the pay scale of Rs.4000-6000 by withdrawing the 1st ACP granted to him. On 1.9.2008, the applicant was granted 2nd MACP in the pay scale Rs.5200-20200 which has also been challenged by the applicant. On 7.9.1999(Annexure-R1), a provisional seniority list of the post of Drivers was prepared for the Southern Region and objections were called for with documentary proof. Since there were no objections to the same, the seniority list was finalized. Copy of the statement prepared on 30.9.2000 is at Annexure-R2. The Staff Inspection Unit(SIU) has sanctioned 5 posts of drivers for the Southern Region. Copy of the SIU report pertaining to drivers is produced at Annexure-R3. In the year 2011-12 in view of the bi-furcation of the Southern Region Centres, one post of Driver was allocated to SAI Kerala at Trivandrum where Mr.Shaji P Mathai has been working right from the beginning and 4 sanctioned posts of Drivers remained at the 3rd respondent centre at Bangalore. As per Annexure-A2, the Special Grade of Rs.5000-8000 is to be introduced only to the extent of 5% of the total strength in the cadre of Staff Car Drivers in a Ministry/Department/Organisation concerned. Therefore, the minimum strength in the cadre of Staff Car Drivers required for placing one post of Staff Car Driver in the special grade would be 20. However, in respect of cadres where the strength of Staff Car Drivers is between 10 and

19, this DOPT OM agrees, as a special case, to allow placement of one post of Staff Car Driver in the special grade as the percentage fraction of post computed at 5% of the total strength comes to 0.5 and above which may be rounded off to one. However, where the strength of Staff Car Drivers in a cadre/organization is below 10 and thus the percentage fraction is below 0.5, there can be no case for introducing the special grade. In such cases, only 3 grades (Ordinary Grade, Grade-II and Grade-I) can be introduced in the ratio of 30:30:40, by adding the quota of 5% to the Grade-I. The applicant in this case was appointed as a Three Wheeler Driver in 1987 and not as Staff Car Driver. The contention of the applicant that he was regularized w.e.f. 1.1.1989 as he was promoted as Driver in the pay scale of Rs.950-1500 w.e.f. 1.1.1989 and was confirmed in the post w.e.f. 4.2.1989 thereby he has completed 29 years of service as Staff Car Driver is denied as false. Further he was not the senior most driver in the year 2002 to be entitled for Grade-I promotion as he was third in the seniority list as on 2002. He is also not entitled for promotion to the special grade in GP Rs.4200 as the same pertains to Special Grade Staff Car Driver, which is not in existence in the Southern Region as per Office Memorandum dtd.13.2.2002(Annexure-A2) and as per Office Order No.98/2006 dtd.22.6.2006(Annexure-A3). The averment of the applicant that the respondents have not examined his case properly in comparison to his counterparts are denied as false as the applicant himself has produced documents at Annexure-A11, A12 and A13 which clearly show that the respondents have considered all aspects before issuing reply dtd.8.6.2016 to the representations of the applicant. Hence, the applicant is not entitled to any relief.

7. The applicant has filed rejoinder reiterating the submissions already made in the OA and submits that vide order dtd.8.1.1990(Annexure-A14) he was

OA.No.170/00899/2016/CAT/Bangalore Bench regularized w.e.f. 2.2.1987 and hence the contention of the respondents that the applicant was promoted and confirmed as driver only w.e.f. 4.2.1989 is incorrect. The respondents have to follow the Office Order No.98/2006 which says that scheme shall be implemented on regional/headquarters basis by exploring the possibilities of combination of different cadres of car drivers in Central Govt. organizations under their control. But this exercise has not been done by the respondents.

8. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. The applicant has also filed written argument notes.
9. We have gone through the main contentions of the applicant and replies of the respondents in detail. From the facts of the case, it is clear that the applicant was appointed as Staff Car Driver in the pay scale of Rs.950-1500 w.e.f. 1.1.1989. As per the promotion scheme for Staff Car Driver, he should have been promoted as Grade-II Driver after 9 years of regular service and as Grade-I Driver with additional 6 years of regular service or with the combined service of 15 years in Grade-II and ordinary grade. Therefore, the applicant is entitled to be promoted to Grade-I on completion of 15 years from 1989 i.e. in the year 2004. He has been granted TBOP w.e.f. 1.1.1997 and 2nd financial upgradation under MACP w.e.f. 01.09.2008. According to the respondents, he had not objected to the earlier promotions except for seeking special grade and now in this application only, he has sought for a direction to grant him Grade-I promotion w.e.f. 2002. As already noted, he is entitled for Grade-I only w.e.f. 2004. As per Annexure-A2, if the number of posts of Drivers is less than 10 unless a combination of different cadres of Staff Car Drivers is undertaken, the special grade cannot be given. However, as rightly pointed

out by the applicant, two persons namely Sri. Barun Kumar Ghosh appointed on 1.5.1985 and Sri Manohar Lal appointed on 1.4.1984 have been given this special grade w.e.f. 1.1.2007. In the case of Barun Kumar Ghosh, he had been promoted to Grade-I after service of only 11 years whereas the promotion scheme for Drivers stipulates 15 years for the same. Secondly, as per Annexure-A3, the special grade is stated to be applicable only for Staff Car Drivers working at SAI Headquarters. If that is correct, Sri Barun Kumar Ghosh working in SAI, Eastern Region, should not have been given the special grade. Therefore, the respondents' contention that they are acting strictly as per their office order No.98/2006 dtd.22.6.2006 does not appear to be correct. As the applicant is eligible for Grade-I at least from the year 2004, the respondents are directed to consider granting him special grade on par with Sri Barun Kumar Ghosh and Sri Manohar Lal who have been given this special grade. It is not clear as to how the respondents are stating as per Annexure-A11 that Sri Barun Kumar Ghosh was not promoted to Special Grade since as per Annexure-A4 it has been clearly stated that he is in the basic pay of Rs.15,340 with Grade Pay of Rs.4200 which is the special grade pay.

10. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00899/2016

Annexure A1: Copy of the OM dtd.27.07.1995
Annexure A2: Copy of the OM dtd.13.02.2002
Annexure A3: Copy of the Office Order dtd.22.06.2006
Annexure A4: Copy of the letter dtd.05.06.2015
Annexure A5: Copy of the letter dtd.30.9.2015
Annexure A6: Copy of the order dtd.30.08.2006
Annexure A7: Copy of the representation dtd.12.11.2015
Annexure A8: Copy of the letter dtd.15.12.2015

OA.No.170/00899/2016/CAT/Bangalore Bench

Annexure A9: Copy of the representation dtd.16.12.2015

Annexure A10: Copy of the impugned order dtd.08.06.2016

Annexure A11: Copy of the letter dtd.24.02.2016

Annexure A12: Copy of the letter dtd.10.03.2016

Annexure A13: Copy of the seniority list as on 21.01.2014

Annexures with reply statement:

Annexure-R1: Copy of the provisional seniority list dtd.07.09.1999

Annexure-R2: Copy of the statement dtd.30.09.2000

Annexure-R3: Copy of the SIU report pertaining to Southern Centre Bangalore
in respect of Drivers

Annexures with rejoinder:

Annexure-A14: Copy of the order dtd.08.01.1990

Annexures with MA.489/2018 filed by the respondents:

Annexure-R4: Copies of Appointment Letter of the applicant as Auto Driver
dtd.02.02.1987 and his joining report dtd.04.02.1987

Annexure-R5: Copy of the letter dtd.30.12.1988 regarding promotion to the
post of Driver

Annexure-R6: Copy of Office Order No.77 dtd.06.07.1990 regarding
confirmation against regular post of driver

Annexure-R7: Copy of Office Order No.104/98 dtd.04.05.1998

Annexure-R8: Copy of consent dtd.15.12.2003 given by the applicant to
switch over to Time Bound Promotion Scheme

Annexure-R9: Copy of relevant page of Office Order No.59/04 dtd.18.03.2004

Annexure-R10: Copy of letter dtd.07.10.2008 regarding implementation of VI
pay commission recommendation

Annexure-R11: Copy of Office Order No.019/2012 dtd.13.02.2012
