

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00558-00559/2017

DATED THIS THE 16th DAY OF JULY, 2019

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

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

1. G.Narasimhaiah
S/o Shri Gangaiah
Aged about 57 years
Working as Driver-cum-Mechanic
Central Poultry Breeding Farm
Hesarghatta
Bangalore-560088.

2. P.Udaya Suryan
S/o Shri Prumal
Aged 57 years
Working as Driver-cum-Mechanic
Central Poultry Breeding Farm
Hesarghatta
Bangalore-560088.

....Applicants

(By Advocate Sri H.R.S.Rao)

Vs.

1. Union of India
represented by Secretary
to Govt. of India
Ministry of Agriculture
Department of Animal Husbandry
and Dairying, Krishi Bhavan
New Delhi-110 001.
2. The Director
Central Poultry Development
Organisation & Training Institute
Hessaraghatta
Bangalore-560 088.
3. Shri G.Raghava
Driver (Adhoc)
Central Poultry Development
Organisation & Training Institute
Hessaraghatta
Bangalore-560 088.

...Respondents

(By Advocates Sri Vishnu Bhat for R1 & 2 & Sri Adinath Narde for R3)

ORDER

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

The factual matrix of the applicants' case is as follows:

The applicant No.1 was appointed initially as Poultry Attendant in the year 1982 in the organisation of R2 and on 26.6.1987, he was appointed as Driver-cum-Mechanic and was confirmed in the said post w.e.f. 2.2.1990. The applicant No.2 was offered the post of Driver-cum-Mechanic in the organisation of R2 on 13.12.1989.

2. The applicants submit that the 3rd respondent who was initially appointed as Mess Attendant was promoted as Driver on adhoc basis w.e.f. 24.2.1988. Thereafter no order has been issued regularising the services of R3 as Driver. The 3rd respondent approached the Tribunal in OA.No.826/2001 requesting for promotion to Staff Car Driver(SCD) Grade-II, in accordance with the promotion scheme for Staff Car Drivers as his earlier request has been rejected by R2. The said OA was disposed of by the Tribunal vide order dtd.25.10.2002(Annexure-A1) with the direction to the 1st and 2nd respondents to implement the scheme of promotion to Staff Car Drivers introduced vide OM dtd.30.11.1993(Annexure-A3) and thereafter consider R3's case for promotion under the scheme. As per the said Scheme, the method of appointment to the post of SCD Gr.II & Gr.I will be by promotion on non-selection(Seniority cum fitness) basis and will be further subject to passing of Trade Test of appropriate standard contained in the Annexure-1 to the OM, and 9 years regular service in the ordinary grade for SCD Gr.II and 6 years of regular service in SCD Gr.II for SCD Gr.I. R3 is not even regularised in service as Driver. In fact in the order dtd.25.10.2002 in OA.No.826/2001, the Tribunal have never directed the

respondents to give promotion to R3 to Gr.II. Even in Contempt Petition No.9/2016 disposed of by the Tribunal on 9.6.2017, it is seen that the Counsel for R2 has made only oral submissions that the order of the Tribunal dtd.25.10.2002 has been complied with but did not produce any documents in support of compliance. The applicants having come to know about the R3's move seeking promotion to SCD Gr.II, made representations to R2 saying that they being senior to R3, they should be considered first for promotion to SCD Gr.II and they are making representations from time to time ever since 2015. They requested for copies of documents including promotion order given to R3 and also with regard to payment of arrears to the tune of Rs.3,13,110/-. Since the same has not been supplied, they made representation dtd.7.8.2017(Annexure-A2) for which no reply is given. In the letter dtd.26.7.2017(Annexure-A4), R2 has stated that a copy of the order of promotion to R3 as SCD is enclosed. But the enclosure stated to have been enclosed has not been enclosed at all. R2 has not given the documents requested for only to ensure that real facts will not get revealed. It is clear that R3 was working as a Driver on ad-hoc basis. It is well settled law that the service on ad-hoc basis cannot be considered for seniority and therefore giving promotion to R3 is in violation of stipulation in 1993 scheme and is obviously improper and unjust. The respondents have not come forward to disclose as to the date from which the Staff Car Rules Scheme has been implemented by way of notification/publication and it is only thereafter the promotion to SCD Gr.II from amongst the drivers to be considered. R2 in his letter dtd.1.9.2017 has stated that the SCD Scheme has been implemented but he has not disclosed the date from which the scheme has been implemented and the manner in which it has been implemented. The Scheme of SCD is a policy decision and is open document and is akin to RRs. Such being the case it ought to

have been published/notified/circulated amongst the employees, so that every employee will know his duties and rights. This has not been done and so action taken in furtherance to the above is improper and irregular and it has to be struck down by the Tribunal.

3. The applicants further submit that the respondents have not produced any documents to demonstrate that the services of R3 were regularised as Driver which was necessary to consider his case for promotion to SCD Gr.II as in OA.No.826/2001, R3 has stated as 'working as SCD' which is blatantly wrong. When R3 has not even been regularised as a Car Driver, his assuming 'working as SCD' is self styled and not designated by any authority. It is not clear as to on what grounds an amount of Rs.3,13,110/- has been given to R3 as arrears. Therefore, the promotion given to R3 in an unduly haste manner though no such direction has been given by this Tribunal, is a clear breach and violation of the rules framed under OM 1993 and the actions of R1 & R2 are arbitrary and illegal. The action of R2 clearly brings to fore bias and favouritism shown to R3 and such an action in a central Govt. organisation reveals haphazard administration and requires to be condemned with and the promotion given to R3 is in violation of norms of RRs and against the stipulation prescribed in the scheme and hence requires to be set aside. The consequential huge arrears of Rs.3,13,110/- is also improper and cannot be sustained and thereby recovery of the arrears is inevitable and inescapable. Therefore, the applicants have filed the present OA seeking the following relief:

a) Call for the records leading to promotion to Shri Raghavan (R3) to the Staff Car Driver Grade-II and also in giving him huge arrears.

b) On verification of the facts, quash the order of promotion of the respondent No.3 to promotion to Staff Car Driver Grade-II, as it is arbitrary and also

payment of arrears is irregular and illegal and consequently consider the case of the applicants for promotion to Staff Car Driver Grade-II who fulfills the requirement of the scheme of staff car driver scheme, in the interest of justice and also order recovery of the arrears paid, as it is a loss to public exchequer.

4. The respondents No.1 & 2 have filed their reply statement wherein they submit that the applicants No.1 & 2 are working at Central Poultry Development Organisation & Training Institute as Drivers and both had availed the benefit of ACP/MACP Scheme whereas Sri G.Raghava, the 3rd respondent had not availed the benefit under ACP/MACP and hence he filed the OA for implementation of SCD Promotion Scheme in the office. The respondents have considered his request and rejected the same vide order dtd.7.11.2000. The 3rd respondent again filed OA pleading to quash the order dtd.7.11.2000. The Tribunal vide order dtd.25.10.2002 directed the department to implement the scheme for SCD introduced vide OM dtd.30.11.1993 and thereafter consider the claim of R3 for promotion to SCD Gr.II under the said scheme. The WP filed before the Hon'ble High Court was also dismissed as being non maintainable and hence the department had implemented the order dtd.25.10.2002 of this Tribunal and R3 was granted SCD Gr.II promotion in situ and the pay scale was revised accordingly.

5. The respondents submit that since the 1st applicant has availed the benefit of ACP/MACP, the question of Gr.II does not exist. Further CPDO&TI does not have any post of SCD. The scheme of SCD as per the OM dtd.1993 was not given, only the pay scale was revised and refixed and 3rd respondent is designated as Driver and not SCD. Since the 3rd respondent has not opted for ACP/MACP, the promotion to Gr.II was given as per Court order and the pay scale was implemented in consultation with the Ministry and not the post of SCD. Therefore, the OA being

devoid of merit is liable to be dismissed.

6. The 3rd respondent has also filed reply statement stating that he was initially appointed as Mess Attendant on 27.1.1984 and thereafter was promoted as Driver w.e.f. 24.2.1988(Annexure-R1) in the pay scale of Rs.950-1500. The DoPT vide its OM dtd.30.11.1993, introduced a promotional scheme for SCD which came into effect from 1.8.1993. Under the scheme, SCD with certain eligibility conditions were eligible for promotion from Ordinary Grade to Gr.II and from Gr.II to Gr.I. He opted for the same. After a lengthy legal battle, he succeeded in getting the benefit of the scheme vide CAT order dtd.25.10.2002(Annexure-R2). It is true that the 1st applicant is senior to him who has availed the ACP and MACP benefits(Annexures-R3 & R4). The 1st applicant did not get the benefit of regular promotion for the reason that he was given the benefit under ACP and MACP schemes. The 3rd respondent was given the benefit under SCD promotion scheme dtd.30.11.1993 as he has not availed the benefit under ACP and MACP schemes. The Tribunal in its earlier judgment has clarified that different schemes cannot run concurrently with ACP schemes and nowhere it is stated that in lieu of SCD Promotion Scheme, the ACP Scheme may be implemented. The 1st applicant did not reveal to the Tribunal about his availing the benefits under ACP and MACP schemes(Annexures-R5 & R6) and he is entirely on different pedestal and has nothing to claim on par with 3rd respondent. The 2nd applicant who has also availed the benefits under ACP and MACP schemes, is junior to the 3rd respondent and hence he cannot question the promotion granted to the 3rd respondent.

7. The 3rd respondent submits that the applicants are contemptuous as they are questioning the relief granted by this Tribunal by way of a prayer of quashing the

promotion of 3rd respondent which is an outcome of the OA filed before this Tribunal. The applicants have no right to question the benefits extended to the 3rd respondent and are trying to misuse the process of law and the Tribunal should impose cost for filing such frivolous applications by dismissing the OA.

8. The applicants have filed rejoinder wherein they submit that the 3rd respondent has claimed that he was promoted as Driver in the pay scale of Rs.950-1500, whereas in the order dtd.25.10.2002 passed in OA.826/2001, it is stated that the 3rd respondent was promoted on ad-hoc basis as driver w.e.f. 24.2.1988. The Annexure-R1 produced by R3 does not mention the name of signatory of the Director as is in the case of documents issued to the applicants which shows needle of suspicion. If the document had been produced at the time of disposal of OA.826/2001, the Tribunal would not have stated that the 3rd respondent was promoted on adhoc basis. The grant of ACP cannot deny or deprive of the regular promotion and even in para 19 of MACP scheme, it states that the MACP contemplates merely placement of personal basis in the immediate higher grade of pay/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore para-13 of OM dtd.19.5.2009 is irrelevant and not applicable to 1st applicant as the promotion is regular one. In view of which, the claim of the 1st applicant for regular promotion could not and should not have been ignored by the 2nd respondent and promoting 3rd respondent is clearly a violation of statutory rules. It is not correct that the 3rd respondent was given the benefit under OM dtd.30.11.1993, just because he did not avail the benefit under ACP and MACP. It is also incorrect to say that the 3rd respondent has succeeded in his application. It is only wrong interpretation given by 2nd & 3rd respondents. Nowhere it has been ordered by the Tribunal for giving promotion to 3rd respondent

and pay the arrears. Even the contempt proceedings has been used as a tool to ensure that 3rd respondent is promoted and given the arrears. In fact 3rd respondent has not come forth with any data as to how he got huge arrears. The 2nd respondent has also not given the documents with regard to promotion given to 3rd respondent and also details as to how huge arrears of Rs.3,13,110/- has been given to 3rd respondent. It is not clear that the scheme of SCD as per the OM was not given but only pay scale has been given to 3rd respondent. It is so then on what basis the pay scale was revised and he has been designated as Driver but not SCD. In his representation dtd.20.8.2018(Annexure-A6), the 3rd respondent admits that he was promoted as Gr.II SCD. This is absurd, as and only benefit is given under the OM of 1993, and at the same time it is stated that he is not designated as SCD. The WP filed before the Hon'ble High Court of Karnataka was dismissed on the grounds of want of prosecution but not on merits. This implies that 2nd respondent was not in favour of promoting 3rd respondent, but has succumbed due to the Contempt Petition. Hence, the action taken by 2nd respondent needs to be set aside as illegal and direction should be given for recovery of the arrears.

9. We have heard the Learned Counsel for the parties and perused the materials placed on record in detail. We have also perused the decision taken in OA.No.826/2001 vide dtd.25.10.2002 and the orders issued in CP.No.9/2016 vide dtd.31.10.2017. From the details of the case, it is very obvious that the respondents had strenuously tried to establish that the promotion scheme for Staff Car Drivers(SCD) vide OM dtd.30.11.1993 could not be implemented in their organisation since there were very few number of drivers and it was not practicably possible to adopt the ratio for promotion to the various levels of staff car drivers taking into consideration the very limited number of driver posts available in their

organisation. In fact in OA.No.826/2001, this aspect has also been covered where para 2.2 of the scheme dtd.30.11.1993 has been captured as follows:

“Where the Cadre is too small for the purpose of creation of higher grades, the possibility of combining of different cadres and operating it on a nodal basis may be considered by the concerned Ministries/Departments. In such cases, movement of personnel may not be required and the senior most driver(s) in the combined seniority/eligibility list who are assessed fit for promotion may be promoted in situ.”

10. It was also noted in the OA that the senior most staff car drivers in the respondent organisation had accepted the ACP and therefore the organisation could not implement the Special Promotion Scheme of 1993 for staff car drivers. However this Tribunal took the view that the respondents claim of adopting ACP instead of the special scheme for staff car drivers was not acceptable and therefore came to the conclusion that the respondents should implement the scheme for staff car drivers introduced vide OM dtd.30.11.1993 and thereafter consider the claim of the applicant in that OA (3rd respondent in the present OA) for promotion to Gr.II under the above said scheme. The order of this Tribunal was taken on challenge but ultimately the respondents failed to get the order modified or set aside in any manner. It is very obvious that the respondents had a very logical and correct case for not implementing the scheme for staff car drivers in view of the very less number of driver posts available in the organisation and their inability in pooling the posts from other sister organisations under the same umbrella of the department for considering the scheme as was provided in the scheme itself. Having miserably failed to convince the Tribunal as well as the Hon'ble High Court on the merits of the case, the respondents meekly implemented the decision of implementing the scheme and had also promoted the applicant therein to the post of staff car driver-2 and gave him the benefit of increased pay etc. At the same time, the 1st applicant in this case being senior to the respondent No.3 has all along been mentioned in the

various proceedings including in CP.No.9/2016 wherein in para-2 of the order, this Tribunal had also noted the seniority list of the drivers in respect of the respondent organisation which is as follows:

SENIORITY LIST OF DRIVERS IN R/O CPDO&TI, HESSARGHATTA, BANGALORE – 560 088

SL N O	NAME OF THE OFFICIAL	DATE OF BIRTH	DATE OF ENTRY INTO GOVT. SERVICE	DATE OF PROMOTION TO THE POST OF DRIVER	WHETHER AVAILED THE BENEFIT OF ACP/MACP	DATE OF RETIREMENT	REMARKS
1	Sh. Ramu	28/06/44	12/09/72	Driver since 9/12/1972	Yes Availed the Benefit	30-06-2004	
2	Sh.G. Narasimhaiah	05/05/59	04/12/82	07/01/87	Yes Availed the Benefit	31/05/2019	Appointed as Poultry Attendant w.e.f. 12/04/82
3	Sh.G.Raghava	07/01/59	27/01/1984	24/02/1988	NOT Availed the Benefit	30/06/2019	Appointed as Mess Attendant w.e.f. 27/01/84
4	Sh.P. Udayasuryan	15/05/59	20/12/1989	Driver since 20/12/1989	Yes Availed the Benefit	31/12/2019	

11. In the proceedings in the Contempt Petition, the 3rd respondent in this application had stated that the seniority list produced by the respondents was not correct and that the two people above him had already retired and he also claimed that the above two drivers who were senior to him are from a subordinate office. This Tribunal did not find it fit to go into all these questions of intricate facts in a contempt petition and left it to the discretion of the next Bench in another OA to decide all these facts. However, in the reply furnished by the 3rd respondent in the present OA, the 3rd respondent has himself admitted that the 1st applicant is senior to him and that he has availed the benefits under the ACP and MACP schemes. He has also stated that the 1st applicant did not get the benefit of regular promotion for the same reason that he was given the benefits under ACP/MACP schemes. Therefore, it is obvious that if at all the respondents have to do any justice in the

whole issue, they have to adopt the special scheme for promotion of staff car driver with respect to the 1st applicant and the 2nd applicant as well, as has been done in the case of the 3rd respondent. The 1st applicant is senior to the 3rd respondent and the 2nd applicant is admittedly junior to him. The respondents having meekly issued an order for implementation of the special scheme for staff car drivers even though they had very valid reasons for not doing so due to their inability to convince this Tribunal as well as the Hon'ble High Court of Karnataka, would be duty bound to adopt the same methodology with respect to other drivers who will be eligible to get benefits under the scheme. However, since the applicants have already availed ACP/MACP, they may be given the option of choosing the special scheme for Staff Car Drivers vide OM dtd.30.11.1993 or ACP/MACP whichever is beneficial to them but not both. The OA is allowed to that extent and orders may be issued accordingly within a period of three(3) months. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00558-559/2017

Annexure-A1: C.C of OA.826/2001 D.D.25.10.2002

Annexure-A2: Copy of representation dtd.7.8.2017

Annexure-A3: C.C. of OM dtd.30.11.1993

Annexure-A4: Copy of letter dtd.26.7.2017

Annexure-A5: Copy of letter dtd.1.9.2017

Annexures with reply statement filed by the 3rd respondent:

Annexure-R1: Copy of memorandum dtd.24.2.1988

Annexure-R2: Copy of Hon'ble CAT order dtd.25.10.2002

Annexure-R3: Copy of Office memorandum dtd.9.8.1999

Annexure-R4: Copy of Office Memorandum dtd.19.5.2009

Annexure-R5 & R6: Copy of the order dtd.15.2.2005 & 2008-09

Annexure-R7 & R8: Copy of orders 2002-03 and 2008-09

Annexures with reply statement filed by the 1st & 2nd respondents:

-NIL-

Annexures with rejoinder:

Annexure-A6: Copy of the representation dtd.20.8.2018
