

1

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.302/2019
This the 20th day of June, 2019

CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

Shri Liyakat Muzafer Shaikh,
Age about 65 years,
Retired as staff Car Driver under the
Senior Supdt of Post Offices Mumbai,
East Dn.Mumbai-400 014.

Residing at Room No.15,
MAHDA Building, Near Ram Mandir,
MAHDA Colony Goregaon Eslt,
Mumbai-400086.

... **Applicant.**

(By Advocate Shri S. S. Karkera)

VERSUS.

1. The Union of India
Through the Chief Post Master General,
Maharashtra Circle, GPO, Mumbai-01.
2. The Senior Supdt. of Post Officers,
Mumbai East Division Dadar West,
Mumbai 400 014.

... **Respondents**

ORDER (ORAL)

Per: R. Vijaykumar, Member (A)

1. When the case is called out, heard Shri S. S. Karkera, learned counsel appeared for the applicant.
2. This application has been filed on 19.03.2019 and has been heard for the second time during admission. The applicant has filed this OA under

Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(A) This Honorable Tribunal be pleased to call for the entire records and proceedings of the case and after examining its legality and propriety be pleased to quash and set aside the impugned order dated 21.01.019 and 22.2.2019 (A-1 and A-2) respectively.

(B) This Honorable Tribunal be further pleased to hold and declare that the applicant is eligible and entitled for counting of his jeep driver casual service for promotion to Jeep driver grade II, Grade-I and special grade and further for pensionary purpose.

(C) This Honorable Tribunal be further pleased to direct respondents to grant promotion to the post of jeep driver grade II, Grade I and special grade from due and eligible dates by counting his casual service as Jeep Driver, w.e.f. 07.05.1987 to 01.01.2002 and further counting his service for pension purposes.

(D) Cost of the O.A. Be provided for.

(E) Any appropriate order as this honorable tribunal may deem fit and proper in the facts and circumstances of the case."

3. This is a second stage litigation following the previous round in OA No.600/2018 in which the

respondents were directed to consider the representation already filed by the applicant on 02.04.2018 and pass a reasoned and speaking order which they have done in their reference no. East Dn/CAT/L.M.Shaikh/2018-19 dated 31.01.2019 (Exhibit A-1).

4. The applicant commenced working as Grade 'D' Employee with the respondents on 01.08.1976 at Versova and on transfer at Mumbai City East Dn from 09.05.1987. The speaking order of respondents refers to his service record by which he rendered service as Jeep Driver in North West Division from 16.02.1987 and 01.04.1987 and 14.04.1987 to 06.05.1987. They deny the claims that he was pressurised to receive grade-D salary while working as Driver and that he had actually received two months of salary as Driver in this period given that no details are mentioned by him. They confirm that he was appointed as Driver w.e.f. 18.01.2002 and also cite the option dated 13.02.2002 given by him in his Service Book: "to fix my pay from the date of promotion and then refixed from the date of next increment in lower cadre in respect of my promotion to Jeep driver w.e.f. 18.01.2002." They confirm that he received his promotions as per rules and superannuated on 30.03.2012.

5. As against this, the applicant seeks to

include the period from 01.05.1987 to 01.01.2002 when he worked as Driver for his later upgradations, promotions and pension for which he filed his representation six years after retirement on 02.04.2018. In particular, the applicant admits at para 4.2 of his OA that "he was paid the salary of Group-D Staff till 01.01.2002 due to non existing of vacancy though Jeep was available and he was driving the Jeep Till 01.01.2002."

6. The learned counsel for the applicant was heard in this matter and he has argued that since the applicant has worked on this post, the respondents were obliged to treat him as having served as a driver and count these services for the purposes of seniority, promotion and also for pension. He argues that since the respondents had purchased the vehicle, it implied that the post had been created and since the applicant had occupied the said post, it entitles him to benefits claimed.

7. The learned counsel for the applicant relies upon the orders of the Hon'ble High Court of Bombay in batch of writ petitions led by WP No.9051/2013 decided on 28.04.2016 in which the respondent employees had been appointed on temporary basis on various posts like clerk and typists etc (Grade 'C') and it was not in dispute that the same appointments were against

permanent, clear, 13/50, substantive and sanctioned posts. The learned counsel for the applicant invites our attention to the decision of the Hon'ble Apex Court that the plea of the employer for TBPS and ACP was well grounded since although they were appointed on temporary basis, their appointments were against permanent, clear, substantive and sanctioned vacancies.

8. The learned counsel for the applicant has been heard at length and the pleadings available on record have been carefully examined. The precedents and laws in this matter have been studied carefully.

9. At the outset, it is apparent that the facts of this case are distinct from the case decided by the Hon'ble High Court of Bombay. In the present case, between the years 1987 and 2002, there was no permanent post of driver against which the applicant was informally appointed as also admitted by the applicant and their arrangement was evidently based on his willingness and continued receipt of salary in the Group 'D' substantive scale and to which, he never objected or raised any representation at that period of time until retirement on 31.03.2012 or in subsequent years until the year 2018. Subsequently, a post was created in the year 2002 and he was appointed to the post in orders of SSPOs, Mumbai City East dn memo no BII/15/Jeep Driver/2002 dated 24.01.2002 in the pay

scale of Rs.3050-75-1950-80-4590 and pay fixed accordingly."

10. The learned counsel for the applicant would contend that having purchased a vehicle, the respondents had impliedly acknowledged the creation of the post but this is not the method by which posts are created in the Government nor can the applicant claim any legitimate expectation from his having willingly agreed to drive without any formal promotion / appointment orders and he continued to drive while he got the regular post and did not make representation of any kind till about 20 years. Later, six years after retirement.

11. In the above circumstances, the applicant is clearly not entitled to make any claim or to assert any rights in the manner that he has made out in his original application and the OA is accordingly dismissed as lacking merits. MA also stands disposed of accordingly.

12. There shall be no order as to costs.

~
(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)