

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.304/2019

This the 20th day of June, 2019

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

Shri Vijay Bhisaji Gawde,
Age about years,
Working as staff Car Driver under the
Senior Manager , Mail Motor Service,
Mumbai.
Residing at:

... 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 Manager,
Mail Motor Service,
Worli, Mumbai 400 018.

... Respondents

O R D E R

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 14.1.2019 and 13.2.2019 (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 with effect from 10.01.2004, 10.01.2010 and 10.01.2013 respectively 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. 10.01.2004, 10.01.2010 and 10.01.2013 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 in the year 2018 and pass a reasoned and speaking order which they have done in their reference no. STA/MMS/43-1/(02)/BAB/2018 dated 15.02.2019 (Exhibit A-1).

4. The applicant commenced working as Grade 'D' Employee with the respondents on 01.08.1984 and it appears from the speaking order of respondents that he was asked to drive an Inspection Vehicle belonging to the respondents at his own request and subsequent to his willingness on loan basis while continuing to draw salary as a Grade 'D' employee w.e.f. 04.02.1997 to 01.09.2001. There are no formal appointment orders covering this deputation to a different job assigned

to the applicant. Subsequently a post was created for a driver of Inspection Vehicle w.e.f. 01.08.2001 by the respondents as mentioned in their letter no. NE/B-II/Adhoc/Jeep Driver/2001 dated 22.01.2002 (Annexure A-4 Colly). This was an appointment order as a temporary driver on the newly created post and he was placed on probation with effect from the date of appointment in the order dated 22.01.2002. In order no. NE/B-III/Adhoc/Jeep Driver/2001 dated 21.02.2002 (Annexure A-4 Colly.), it is also mentioned that the applicant who is noted as possessing heavy motor vehicle license and has TBOP Grade 'D', used to drive the office Inspection Vehicle since 04.02.1997 but in the absence of a post, his appointment even on temporary basis was not made. Since this appointment was also temporary and subject to further extension, the order records that the applicant was made to understand that his posting was purely on temporary/adhoc basis and did not confer any rights of continuous appointment and further, he could be reverted at any time without giving reasons and cannot claim this temporary appointment for seniority purpose. This order has not been challenged by the applicant nor was the issue

raised at any time or pressed with respondents prior to his first representation made in the year 2018. The applicant has no documents to show that there was a specific assignment of work as driver by the Competent Authority in the year 1997 or subsequently up to the year 2001 when he gained that temporary appointment against the newly created post.

5. 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.

6. The learned counsel for the applicant relies upon the orders of the Hon'ble High Court of Bombay in a 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 said 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 employee 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.

7. 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.

8. 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 1997 and 2001, there was no permanent post of driver against which the applicant was informally appointed as admitted by the respondents 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 or in

subsequent years until the year 2018. Subsequently, a post was created in the year 2001 and he was appointed to the post for which the process followed by the respondents has been described in their orders against para-6 of their impugned reply which reads as under:

"The method of appointment to the posts in Grade-II and Grade-I of Staff Car Driver will be by promotion on Non-Selection (Seniority-cum-Fitness) basis and will be further subject to passing of a Trade Test of appropriate standard, contained in the Annexure I to ADG (PE-II) letter No.37-32/94-SPB.I dated 13.09.1994.

You were given promotion on the basis of seniority-cum-fitness as per the upgradation list prepared and issue by the Circle Office and also on passing of trade test as prescribed in the rules before awarding you promotion on the basis Circle wise roster.

Further these promotions are not time bound promotions to be awarded to all eligible drivers. They are subject to availability of vacancies in the grade as per the ratio fixed by Ministry of Personnel, PG and pensions (DOPT) No.43019/54/6 Estt (D) dated 15.02.2001, Therefore, the official was correctly awarded promotion as per the relevant rules subject to the availability of vacancies in the said grade."

9. 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 entitlements when the prescribed procedure for filling permanent vacancies of this category were not followed. Further, it is explicit that he willingly agreed to drive without any formal orders and he continued to drive when he got the regular post and did not make representation of any kind until about 20 years later.

10. 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.

11. There shall be no order as to costs.

(R. N. Singh)
Member (J)

V.

(R. Vijaykumar)
Member (A)

JD
26/6/19