

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA NO. 961/2003

This the 22nd day of March, 2004

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HON'BLE SH. KULDIP SINGH, MEMBER (J)

HON'BLE SH. S.A. SINGH, MEMBER (A)

1. Mahesh Chand,
S/o Sh. Som Nath,
R/o 11/151, D.M.S. Colony,
Amrit Kunj, Hari Nagar,
New Delhi-110064.
2. Hans Raj,
S/o Sh. Jaswant Singh,
R/o 11/163, DMS Colony,
Amrit Kunj, Hari Nagar,
New Delhi-110064.
3. Krishan Kumar,
S/o Sh. Raj Karan,
R/o F-5/95, Sultanpuri,
Delhi-110041.
4. Mahinder,
S/o Sh. Khublal Singh,
R/o 2132/A/128, Prem Nagar(West),
Patel Nagar,
New Delhi-110008.
5. Gajender Singh,
S/o Sh. Kalu Ram,
R/o H.No.54, Rampura,
Gali Mali Wati,
Delhi-110035.

..... Applicants

(By Advocate: Sh. S.M.Garg)

Versus

1. Union of India through
the Secretary,
Ministry of Agriculture,
Government of India,
Deptt. of Dairying and Animal
Husbandry, Krishi Bhawan,
New Delhi-110 001.
2. The General Manager,
Delhi Milk Scheme,
Government of India,
West Patel Nagar,
New Delhi-110 008.

..... Respondents

(By Advocate: Sh. Rajeev Bansal proxy for
Sh. B.K.Aggarwal)

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O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicants who were 5 in number have filed this OA as they have a common grievance of being reverted from the post of Heavy Vehicle Driver to the post of Mate vide impugned order dated 11.7.2002 (Annexure A-1). Applicants have challenged the said order also.

2. Facts in brief are that all these applicants were working as Mate in Delhi Milk Scheme and were holding the post substantively on permanent basis with effect from different dates as indicated in para 4.1. to 4.5. The department issued a notice inviting applications for the post of Heavy Vehicle Driver vide a circular dated 3.6.97 (Annexure R-1). The circular was also sent to Employment Exchange calling upon them to nominate candidates for the said post. It was also displayed on the notice board for calling upon the departmental employees to apply for the same against direct recruit quota.

3. Applicants participated in the said selection and were appointed as Heavy Vehicle Driver vide Annexure R-2 and R-3. The appointment order mentioned that in accordance with the interim order of this Tribunal in OA-2987/97 titled as Vijay Pal Singh and others vs. Union of India and another OA No.748/98 titled as Bans Raj and others, equal number of posts have been kept aside for the applicants. However, we are informed that the said OAs had been dismissed and while these persons had continued to work as Heavy Vehicle Driver on ad hoc basis after the dismissal of the OA instead of being

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regularised, they have been reverted back by impugned order without assigning any reason as to why they have been reverted back. Applicants challenged this on the ground that they had been reverted whereas their juniors have been retained though sources and process of selection is the same for applicants and their juniors who have been retained in service. It is pointed out that 22 candidates had applied directly who were appointed by same process they were subjected to trade test and interview and thus reverting all senior drivers and retaining juniors in service is arbitrary and violative of Articles 14 & 16 of the Constitution of India. Applicant further submitted that respondents have acted unfairly and unjustly in reverting the applicants. Thus, it is submitted that they are being vicitimised.

4. Respondents are contesting the OA. They filed their counter affidavit. They admit that these applicants who had applied for the post of Heavy Vehicle Driver (HVD, for short) which was notified to the Employment Exchange on 5.1.97 and circular was also issued for departmental candidates in the DMS to appeal for the said post vide circular dated 30.5.97/3.6.97 for filling up the vacancy. But in the meantime certain persons have filed OA before this Tribunal and Tribunal directed vide interim order that respondents may not fill up 6 posts against promotion quota till the next date of hearing. Another OA was also filed wherein respondents were directed to keep 10 posts vacant in the promotion quota of HVD. Applicants were also parties in the said OA. So these applicants were appointed on ad hoc basis.

5. It is further submitted that as per Recruitment Rules the post of HVD can be filled up 50% by direct recruitment and 50% by promotion failing which by direct recruitment. For promotion feeder grade is Driver (miscellaneous duty) with 3 years service subject to passing the test. It is further stated that normal duty of Mates in DMS is loading and unloading of Milk and other labour related work. Therefore, Mates cannot be treated as departmental candidates for the benefits of age relaxation as departmental candidates.

6. It is further pointed out that Ministry of Agriculture vide its order dated 5.6.97 (Annexure R-8) stated that there is no provision existing in the notified recruitment rules for allowing the departmental candidates alongwith nominations of Employment Exchange against direct quota. Therefore, the prevailing practice in DMS to allow departmental candidate against direct recruitment without a specific provision in the recruitment rules is not in conformity of the recruitment rules. Rather it is in violation of recruitment rules. It is also stated that allegation about malpractices were levelled that the recruitment procedure was in favour of departmental candidates. Therefore, Ministry of Agriculture in June 2002 directed the DMS that only those drivers appointed on the basis of nomination made by the Employment Exchange be regularised from the date of their appointment who fulfill the educational qualifications, age etc. and all the Group 'D' employees appointed against the provision of recruitment rules should be reverted forthwith to their respective cadre/post. Thus the stand of the respondents that since Group 'D' employees could not be recruited as direct recruits so they are to be reverted back.

7. We have heard the learned counsel for the parties and have gone through the record.

8. Learned counsel for applicant pointed out that though the recruitment rules provide that 50% of the posts of HVD can be filled by direct recruitment and 50% by promotion but the applicants have competed alongwith direct recruit candidates as they were subjected to same selection, same test etc. and applications had also been called from the employees of the DMS vide circular Annexure R-1 issued on 3.6.97. Annexure R-3 which prescribes that there is no provision existing in the notified Recruitment Rules for allowing the departmental candidates alongwith the nominees of Employment Exchange was issued on 5.6.97 as stated by the department itself. So by that time even the departmental candidates had not applied. Respondents should have denied the applicants consideration on the basis of the letter dated 5.6.97 itself at the very threshold instead of asking the applicants to undergo the selection and then giving them appointment on ad hoc basis. Counsel for respondents further submitted that this circular dated 5.6.97 does not apply in view of the judgment given by the Hon'ble Suprme Court in case of Excise Superintendent Malkapatnam vs. K.B.N.Visweshwara Rao reported in 1996 (6) SCC 216 wherein the Hon'ble Court had observed as under:

"Restricting the selection only to the candidates sponsored by employment exchange - Held not proper - In addition to requisitioning the names from employment exchange, names should also be called for by publication in newspapers, having wide circulation, and

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display on office notice boards or announcement on radio, television and employment news bulletin."

9. Court further observed that -

"In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

10. Counsel for applicants further submitted that where the reversion order does not give any reason except stating that the promotion was provisional and therefore they had no right to hold the post and thus order reverting the applicants is illegal. For this applicants had relied upon a judgment 2003 Labour and Industrial Cases 519 titled as Davender Prasad Verma and another vs. Union of India and others.

11. In response to this, counsel for respondents submitted that since the rules do not permit the clubbing of the candidates from the department with candidates who are to be appointed as direct recruits, so the appointment given to the applicants was bad in law that is why they have been reverted. In our view this contention of the counsel for respondents have no merits because the recruitment rules only show that there are only two sources of appointment; 50% by direct recruitment and 50% by promotion and in case the applicants who are otherwise eligible to be appointed as direct recruits, department cannot of its own place any restriction on the

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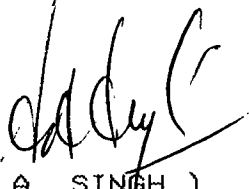
applicants to apply for the post which has occurred under the direct recruit quota, unless there is specific prohibition in the Recruitment Rules Applicants may be working in department they too have a right to appear and compete for the post available under the sources of direct recruitment, if they are otherwise eligible.

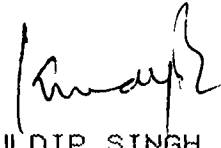
12. In this case since applicants have been permitted to compete for the post with direct recruits and their eligibility have been tested and only thereafter they have been given appointment, but it was given on ad hoc basis because of the pendency of some other OA and not because of any shortfall in the qualifications or otherwise eligibility conditions of the applicants. The recruitment rules also do not prohibit the departmental candidates to compete for the direct recruit vacancies specifically. Thus, we find that the applicants had been rightly considered and had been given job rightly. So they cannot be reverted back to the post of Mate and as such the impugned order reverting the applicants back to the post of Mate suffers from arbitrariness and unequal treatment being meted out to them vis-a-vis the nominees of the Employment Exchange merely because the applicants names were not sponsored by the employment exchange.

13. Moreover, there is also no explanation when the department had received a circular two days after the notice was circulated by the department inviting applications from the employees of the DMS, then why did they continue with the process of selection since circular Annexure R-8 received by

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department on 5.6.97 whereas the application inviting the applicants to apply was issued on 3.6.97. So now the department cannot take somersault and revert the applicants. Thus impugned order of reversion is quashed. Respondents are directed to take back the applicants on the post of Heavy Vehicle Drivers. This should be done within a period of one month from the date of receipt of a copy of this order. No costs.


(S.A. SINGH)
Member (A)


(KULDIP SINGH)
Member (J)

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