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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1742/2003

This the 20th day of July 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Baljit Singh,
Driver Grade-I (Group 'C'),
Central Store Sub Division,
CSMRS Campus, Hauz Khas,
New Delhi.

... Applicant

(By Shri Brijender S. Dhall, Advocate)

versus

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110011.
2. Chairman,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-110010.
3. Superintending Engineer,
Planning Circle,
CWC, NH-4,
Faridabad (Haryana).

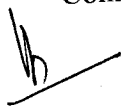
... Respondents

(By Shri S. Mohd. Arif, Advocate)

ORDER (ORAL)

By Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant has challenged Annexure A-1 dated 26.3.2003 whereby he has been denied promotion in Special Grade as Driver (Rs.5000-8000) on the ground that he was not found fit for promotion by the Departmental Promotion Committee (DPC).



2. The learned counsel of applicant contended that applicant is shown at Sl. No.33 in seniority list of work charged Motor Vehicle Driver grade of subordinate offices (Annexure A-2). Vide Annexure A-3 dated 1.1.2003 respondents had promoted 16 work charged Motor Vehicle Drivers of subordinate offices on the basis of the recommendations of the DPC meeting held on 27.12.2002. Out of these, persons mentioned at Sl. Nos. 11 to 16 are junior to applicant as per Annexure A-2 but have been promoted as per Annexure A-3. The learned counsel pointed out that applicant had made representation vide Annexure A-4 dated 24.1.2003 against his non-promotion in the Special Grade, which was not responded to by respondents. The learned counsel further pointed out that neither applicant was communicated any adverse remarks in his ACRs nor were any disciplinary proceedings pending against him. He has also been cleared from vigilance angle. The learned counsel maintained that seniority-cum-fitness is the criterion for promotion to the non-selection Special Grade. Despite being senior and absence of any adverse circumstances against him, applicant has been bypassed in promotion. As such, his claim for promotion in the Special Grade w.e.f. 1.8.2001 be allowed as his junior Shri Kameshwar Sinha was granted such promotion w.e.f. 1.10.2001.

3. The learned counsel of respondents produced the relevant DPC and ACR records of applicant, which we have perused. He pointed out that applicant had himself informed the Chief Medical Officer vide his representation dated 19.2.2003 that his eye sight was weak and that he should not be assigned duty for driving vehicles during night time. The learned counsel maintained that as such the DPC has been in the right in holding that applicant was unfit for promotion.

4. In rebuttal, the learned counsel of applicant stated that while the DPC meeting was held on 27.12.2002 and applicant's juniors were promoted vide Annexure A-3 on 1.1.2003, applicant's representation regarding his inability to drive the vehicle during night time is 19.2.2003. This letter could not have

formed the basis for denial of promotion to applicant as the DPC meeting had taken place earlier than the date of this letter. Moreover, on medical examination after applicant's letter dated 19.2.2003, he was granted medical fitness certificate on 25.4.2003 vide Annexure A-6.

5. We have considered the rival contentions as also perused DPC and ACR records of applicant.

6. Admittedly, applicant has been senior to persons promoted at Sl. Nos. 11 to 16 vide Annexure A-3 dated 1.1.2003. The criterion for promotion to the Special Grade is non-selection (seniority-cum-fitness). As per the records produced by respondents, no adverse remarks have been communicated to applicant. Applicant is clear from vigilance angle as well. Applicant's letter dated 19.2.2003 in which he sought for day duty was submitted by applicant later in time and the DPC meeting and promotions had already taken place. This letter regarding weak eyesight could not form the basis for denial of promotion in question. Moreover, applicant has been granted medical fitness certificate by the Civil Surgeon, Faridabad on 25.4.2003, i.e., after applicant's letter dated 19.2.2003. The records relating to the DPC meeting do not disclose any grounds for declaring the applicant unfit for promotion. In the absence of any adverse remarks in the ACRs and applicant being clear from vigilance angle, he could not have been denied the claimed promotion when the criterion for such promotion is seniority-cum-fitness.

7. In the facts and circumstances of the case, we find that respondents have arbitrarily denied promotion to applicant to Special Grade. Respondents had no good grounds to deny promotion to applicant from the date his junior Shri Kameshwar Sinha was granted promotion. Thus, in our considered view, applicant is entitled to be promoted to Special Grade in pay scale Rs.5000-8000 w.e.f. 1.10.2001 when his junior Shri Kameshwar Sinha was promoted.

Consequently, this OA is allowed directing respondents to promote applicant in the Special Grade Rs.5000-8000 w.e.f. 1.10.2001 expeditiously and preferably within a period of three months from the date of communication of these orders. Applicant is also held entitled to all consequential benefits.

8. OA is allowed in the above terms.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

20.7.05

(V. K. Majotra)
Vice-Chairman (A)

/as/