

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2137/2003

this the 12th day of March, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S. A. Singh, Member (A)

1. Prem Prakash Kharbanda,
S/o Sh. Shyam Lal,
R/o Qtr. No.265 Sec. 3 M.B.Road,
Pushp Vihar, New Delhi.

...Applicants

(By Advocate:Shri U.Srivastava)

Vs.

1. Union of India through
The Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi.

2. The Under Secretary Govt. of India,
Ministry of I&B (Admn.II Section)
Shashtri Bhawan, New Delhi.

3. The Secretary
National Commission for Safai Karmacharis
Loknayak Bhawan,
New Delhi.

4. Sh. Sunil Kumar,
Despach Rider, R&I Section,
Ministry of I&B (Shatri Bhawan)
New Delhi-110001.

... Respondents.

(By Advocate: Sh. A.K.Bhardwaj)

O R D E R (ORAL)

By Shri S.A.Singh Member(A)

The applicant was appointed as Packer on ad hoc basis in the Publication Division under the Ministry of Social Justice and Empowerment on 21.2.1980. He applied against the promotion to the post of Dispatch Rider (DR) against a Circular issued by the Ministry and was selected. Subsequently, the selection was kept in abeyance on the representation of respondent no.4. The applicant moved the Tribunal in OA 1652/2003, which had been disposed of on 01.7.2003 with a direction to the respondents to consider and pass a speaking order on the

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representation of the applicant within two months.

2. In compliance with the direction of the Tribunal, the respondents have passed an impugned order dated 14.8.2003. Operatiive part of the impugned order is as under:-

- ii) Initially applications were invited from such employee working in the Main Secretariat of the Ministry. But none from the Main Secretariat was found qualified for being considered for appointment.
- iii) With a view to expanding zone of consideration to get qualified candidate, the competent authority relaxed the condition of considering only Group 'D' employees working in the Main Secretariat of the Ministry and permitted consideration of the employees working in the Media Units of the Ministry who possessed the necessary qualifications etc., as prescribed in Recruitment Rules for appointment by promotion to the post of Dispatch Rider. Accordingly, the post was re-circulated among the Group 'D' employees working in the Media Units under the administrative control of this Ministry. In the circular it was also indicated that preference should be given to the Group 'D' employees working in the Main Secretariat.
- iv) While inviting the applications from employees of Media Units, the entire data pertaining to the service particulars of the applicants were called for Shri Perm Prakash in his application has indicated his date of appointment as packer in DPD a 25.01.80. Therefore, for the purpose of inter-se seniority between the two eligible candidates, the said date was taken into consideration. Since both the candidates had qualified driving test, therefore, with reference to the length of regular service in Group 'D' post as indicated in his application, Shri Prem Prakash was considered senior and was recommended for appointment by DPC. Accordingly, order of his appointment was
- v) But after receipt of representation from Shri Sunil Kumar, the second eligible candidate, the factual position was verified. It was found that his regular

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date of appointment, as certified now by his parent office - Publications Division, is 03.02.87. He has entered Govt. service as packer on 25.01.80 on ad-hoc basis, but was regularly appointed to the said post w.e.f. 03.02.87. On the other hand Shri Sunil Kumar, Peon joined service as an ad-hoc peon in Publications Division on 01.08.85 but was regularly appointed in the same post w.e.f. 01.09.85. Thus, Shri Sunil Kumar was regularly appointed from a date earlier than Shri Prem Prakash Kharbanda and hence he is senior to Shri Prem Prakash. But for wrong information furnished by Shri Prem Prakash Kharbanda about his date of regular appointment in his application form, as per provisions of recruitment rules, other things being equal in the matter of eligibility, Shri Sunil Kumar would have been selected for the post of Despatch Rider by the Departmental Promotion Committee (DPC) held on 13.05.2003, ab-initio.

3. Aggrieved by the impugned order wherein applicant's representation for selection as DR has been rejected, he has filed the present OA.

4. The main grounds of the applicant are that he was appointed as Packer w.e.f. 21.2.1980 although on temporary basis but against a permanent post and that subsequently he was appointed regularly on this post. Hence his seniority has been counted from the date of initial appointment and not from the date of his regularisation. He is, therefore, senior to the applicant and fulfils the requirement for the post of DR, his selection should not be set aside. Further, the appointment of DR was not subjected to seniority-cum-fitness and he was appointed to the said post vide order dated 13.12.2002 and it was not correct for the Departmental Promotion Committee (DPC) for reviewing its decision after issuing of the orders.

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Moreover, the DPC had erred because the respondent no.4 did not fulfil the minimum stipulated driving experience of two years and as such his appointment was not maintainable.

5. The respondents have contested the averments of the applicant and have basically reiterated the arguments given in the impugned order. They have pleaded that as per Recruitment Rules (RRs) the post of DR was filled up 100% by promotion and as such a person, who is senior cannot be ignored if he is otherwise qualified. Four persons had applied for this post and the applicant and respondent no.4 fulfilled the eligibility criteria and they were subjected to driving test. Both were declared successful. Thereafter, a DPC meeting was convened on 15.5.2003. Based on the information furnished by the applicant that his date of regular appointment was 25.1.1980 the applicant was placed above the respondent no.4 and offer the appointment on 21.5.2003. However before the order could be implemented, respondent no.4 submitted a representation stating that the date of regular appointment of the applicant was 3.2.1987 whereas that of the respondent no.4 was on 1.9.1985 and in support he submitted documentary proof. The parent department confirmed that the regular appointment of the applicant was in fact 3.2.87 and that the date 25.1.80 was the date he was appointed on adhoc basis as Packer. Thus respondent no.4 was senior to the applicant. The case was therefore re-submitted to the DPC for reviewing its

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recommendations. Accordingly the DPC meeting was held on 25.6.2003 and earlier order was modified recommending that respondent no.4 should be offered to the post of DR. Consequently, after approval of the competent authority, the offer of appointment was made to the respondent no.4 on 1.7.2003 and he took up his duty in the main Secretariat of the Ministry on 8.7.2003.

6. We have heard the learned counsel for the parties and gone through the documents on record.

7. We find that the question of date of regular appointment of the applicant and respondent no.4 are not disputed. The applicant was appointed on adhoc basis as Packer on 23.1.1980 and regularised on the post w.e.f. 3.2.1980 when respondent no.4 joined on adhoc basis as Peon on 1.8.1985 and was regularly appointed in the same post w.e.f. 1.9.1985. From the above, it is clear that the respondent no.4 was regularised earlier than the applicant and as such he would stand senior to the applicant.

8. As per the Recruitment Rules, the appointment of DR is a promotion. Applications are called from eligible candidates and they are subjected a driving test. The senior-most out of those, found suitable is to be promoted. In the present case,

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respondents have followed this procedure. They offered the appointment to the applicant on the thinking that he was the senior-most. On verification when it was found that the respondent no.4 was in fact regularised earlier than the applicant they have correctly rectified their mistake.

10. In view of above, we find no infirmity in the order dated 14.8.2003. The OA must fail and the same is dismissed. No costs.



(S.A. Singh)
Member(A)



S. Raju
(Shanker Raju)
Member(J)

/kdr/