

**Central Administrative Tribunal
Principal Bench**

OA No. 2371/2003

New Delhi, this the 21st day of March, 2007

**Hon'ble Mr. Justice V.K. Bali, Chairman
Hon'ble Mr. V.K. Agnihotri, Member (A)**

**Shyam Singh
S/o Sh. Chander Singh,
R/o 14, Vill. & P.O. Rajkori,
New Delhi – 110 038.**

...Applicant

(By Advocate: Shri A.K. Behera)

-Versus-

**Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110 001.**

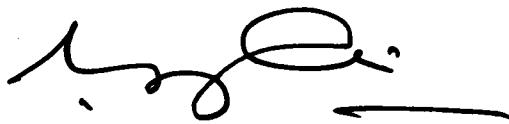
...Respondent

(By Advocate: Ms. Meenu Mainee)

O R D E R

By Mr. V.K. Agnihotri, Member (A):

In this OA the applicant has sought quashing and setting aside of impugned order dated 09.05.2000 passed by the respondent, in compliance of the order of this Tribunal in OA No. 1805/1999 dated 08.03.2000, rejecting the claim of the applicant for appointment as Staff Car Driver (SCD, for short). He has further sought direction to the respondent to appoint him as SCD





w.e.f. 12.05.1987 or 08.01.1988 or 07.02.1989, as the case may be, with all consequential benefits.

2. The basic facts of the case are that the applicant, while working as a Group 'D' employee (Despatch Rider) with the respondent, was tested for his driving ability in 1981 for the post of SCD, in terms of the Recruitment Rules for the post, which provide the method of recruitment as "by transfer failing which by direct recruitment" and, in case the post is filled 'by transfer' the grades from which the transfer has to be made are prescribed as "Despatch Riders and Group 'D' employees of the Ministry of Home Affairs possessing qualification and experience prescribed for direct recruitment." The qualifications prescribed for Direct Recruitment are:

"Essential:

1. Possession of a valid driving licence for motor cars, knowledge of motor mechanics and experience of driving for at least two years.
2. Pass in the driving test conducted by the Electrical & Mechanical workshop, Safdarjung Airport, New Delhi.

Desirable:

A pass in 8th standard."

3. The applicant qualified in the Driving Test, which was conducted by E&M Workshop.





4. The first occasion, when the applicant could be considered for appointment to the post of SCD, in his turn, arose in January, 1985. His suitability for appointment was considered but, since a penalty of reduction of pay by two stages for a period of two years w.e.f. 14.05.1984 had been imposed on him, he could not be considered for appointment during the currency of the penalty. Therefore, his next junior, Shri Muneshwar Sahoo was appointed as SCD on *ad hoc* basis.

5. Thereafter, no vacancy in the grade of SCD occurred till 12.05.1987. When a regular vacancy of SCD became available, the suitability of the applicant, along with others, was again considered for appointment to the post of SCD by the Selection Committee. The Selection Committee held that the applicant was not fit for inclusion in the panel and that his performance should be watched for a minimum of two years before he could be considered for empanelment as SCD. Since this meeting of the Selection Committee was held on 14.03.1986, the applicant was not considered for appointment as SCD before 14.03.1988. Therefore, his next juniors, who had been recommended for appointment, were appointed against available vacancies during that period.

6. The next vacancy in the grade of the said post became available in February, 1989. The Selection Committee considered



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the applicant along with other eligible candidates, but he was not approved for appointment as another penalty of withholding of two increments for a period of two years, without cumulative effect, had been, in the meanwhile, imposed on him on 14.08.1987. The Selection Committee cleared a panel for appointment against available vacancies in the post. The Selection Committee also decided that the panel approved by them shall remain operative for a period of one year from the date of the meeting and was further extendable by six months.

7. Thereafter, the applicant filed OA No. 1805/1999 before this Tribunal, *inter alia*, seeking a direction to the respondent to appoint him as SCD w.e.f. 07.01.1985 with all consequential benefits of pay and allowances and seniority. The OA was disposed of on 08.03.2000 as follows:-

"The OA was filed on 17.8.99 and despite ten opportunities given to the respondent thereafter, they have still not filed their counter. In the circumstances, this OA is disposed of with a direction to the respondent to consider applicant's claim for promotion as Staff Car Driver w.e.f. 7.1.85 in accordance with rules, instructions and judicial pronouncements on the subject and pass a detailed, speaking and reasoned order thereon within three months from the date of receipt of a copy of this order, under intimation to the applicant.

As none appears on behalf of respondent to oppose M.A.2334/99 for



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condonation of delay in filing the O.A., the same is allowed."

8. In compliance of this order of the Tribunal, the respondent issued the order dated 09.05.2000, which has been impugned in the present O.A.

9. In the meanwhile, the next clear vacancy in the said post became available in July, 1992 and pending approval of the regular Selection Committee, the applicant was given *ad hoc* appointment against the post. Later, the meeting of the Selection Committee was held on 03.02.1993, which recommended the applicant's name for regularization of service. Consequently, the applicant was regularized as SCD.

10. The applicant had filed MA NO. 2033/2003 for condonation of delay, which was contested. This Tribunal allowed the MA by a detailed order dated 10.11.2004.

11. The applicant has stated that the action of the respondent in issuing the order dated 09.05.2000 is based on erroneous facts and untenable legal position, denying him the appointment as SCD against the vacancies, which occurred in the year 1987, 1988 and 1989. The applicant had pointed out the errors apparent on the face of the record in the said order dated 09.05.2000, vide his appeal/ representation dated 04.08.2000, followed by a reminder





dated 11.01.2001 and thereafter followed by a memorial to the Hon'ble President of India on 26.11.2001. Till date no action whatsoever has been taken on the said appeal/representation/reminder/memorial thereby seriously prejudicing the legal rights of the applicant for being considered for appointment as SCD against the vacancies, which occurred in the year 1987, 1988 & 1989. The respondent was directed by this Tribunal in OA 1805/1999 to examine the matter afresh in the light of rules/instructions and judicial pronouncements on the subject. However, while passing the impugned order dated 09.05.2000 the respondent has given a total go by to the rules/instructions and judicial pronouncements on the subject. Thereafter the applicant, who is a low paid employee, pointed out the said discrepancies in the order dated 09.05.2000 by means of the aforesaid appeal/representation/memorial in the hope that he would get justice from the department without resorting to any litigation, which the applicant could ill afford with his low salary. However, the respondent has not bothered to rectify the said discrepancies and errors pointed out by the applicant and this has seriously prejudiced the right of the applicant for being considered for appointment as SCD for the vacancies of the years 1987, 1988 and 1989.





12. The applicant has further stated that in the impugned order the respondent has shown as if only one vacancy arose in the year 1987. Besides, the respondent has not said anything about the appointment of the applicant against the vacancy of the year 1988. Further, the respondent did not give any reason for non-consideration/appointment of the applicant against the vacancy of the year 1987. Moreover, the respondent has stated that the applicant was denied appointment against the vacancy of the year 1989 because of pendency of a penalty of withholding of two increments for a period of two years, which was imposed on applicant, vide order dated 14.08.1987. But the respondent did not take into consideration the fact that the said order of punishment, on a representation made by the applicant, was withdrawn by the respondent, vide order dated 10.03.1988, i.e. much before the occurrence of the vacancy in the year 1989.

13. The respondent has stated that the delay occurred while appointing the applicant in the said post because of the various penalties which were imposed upon him since 1981 and he was not found fit by the Selection Committee for appointment as SCD. The details of penalties imposed on the applicant are as follows:-

- (i) Recovery of pecuniary loss caused to the Government in September, 1981;
- (ii) A penalty of reduction of his pay by four stages (14.05.1984) which on appeal was reduced to two



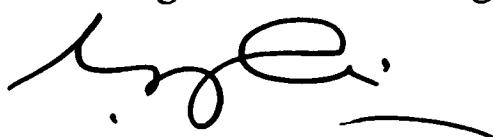
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stages without cumulative effect (30.08.1984);

- (iii) Penalty of Censure on 30.08.1985; and
- (iv) A penalty of withholding of two increments for a period of two years, without cumulative effect (14.08.1987).

14. It has been further submitted that in terms of the Recruitment Rules, the post of SCD is not a promotional post. The method of recruitment is by transfer failing which by direct recruitment. Therefore, on availability of vacancy in the category of SCD suitability of the willing officials is considered and the candidate is appointed on recommendation of the Selection Committee. The applicant could not be appointed to the post of SCD because either at the time of filling up the post he was undergoing a penalty or was not recommended for appointment by the Selection Committee. Once a post is filled up, the candidature for the next one is considered only when a vacancy arises and is filled up in accordance with the Recruitment Rules.

15. The respondent has further states that the present application is barred by limitation and though the applicant has also filed application for condonation of delay, it is submitted that not a single representation has been received by the respondent from the applicant in this regard. The applicant is praying for relief the cause of action for which arose in the year 1985. No tenable ground has been given by the applicant in the M.A. for



condonation of this inordinate delay. The OA is, therefore, liable to be dismissed on this ground alone.

16. The applicant has not filed any rejoinder.

17. During the oral arguments, Shri A.K. Behera, learned counsel for the applicant, pointed out that the penalty of reduction in pay for a period of two years was ordered w.e.f. 14.05.1984 and it was, therefore, to expire on 13.05.1986; but for a vacancy in the post of SCD that was to arise on 12.05.1987, i.e. after the period of applicant's punishment was over, a meeting of the Selection Committee was held much in advance, i.e. on 14.03.1986 itself, obviously with a view to deny the applicant the post of SCD. Moreover, the Selection Committee had no jurisdiction to order that the applicant's performance should be watched for two years before considering his empanelment. He admitted that the applicant has been appointed as SCD in 1992 and, therefore, he is only seeking notional pre-dating of his selection as SCD with effect from the year 1987 with reference to the vacancy that arose after he had undergone his period of punishment, with consequential benefits.

18. Ms. Meenu Mainee, learned counsel for the respondent, stated that the case of the applicant has been considered three times by the Selection Committee. She averred that the Tribunal



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has no jurisdiction to question the wisdom of the Selection Committee, which is competent to decide its own procedure in making the selection. She also drew attention to the Note dated 26.05.1994 in the file of the respondent bearing No. A-32017/2/93-Ad.II wherein the facts relating to the case of the applicant in the context of his representation dated 11.05.1994 was extensively summarized.

19. We have heard the learned counsel for the parties and perused the material on record as well as the departmental records in File No. A-32017/3/88-Ad.II and File No. A-32017/2/93-Ad.II relating to preparation of panel and appointment of SCD in the Ministry of Home Affairs.

20. On perusal of the pleadings and the departmental records, we are inclined to agree with the submission of the learned counsel for the applicant that the Selection Committee was not competent to effectively extend the period of punishment of the applicant by stating on 14.03.1986 (i.e. when the period of punishment of the applicant was about to be over on 13.05.1986) that the applicant was not fit for inclusion in the panel and that his performance should be watched for a minimum period of two years before he could be considered for empanelment for the post of SCD.



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21. Similarly, the Selection Committee that met on 14.04.1988 observed that after carefully going through the record of the applicant, the Committee was of the view that he is not suitable for being included in the panel for appointment as SCD. The only material on record against the applicant pertains to penalties imposed on him, three of which had run their course and the fourth one stood withdrawn by the respondent, on the date when the Selection Committee met. The respondent has not placed before us any other 'record' of the applicant (apart from the punishments aforementioned) on the basis of which the Selection Committee did not find the applicant suitable for the job. This failure on the part of the respondent, in our view, merits adverse inference against it.

22. In the course of the averments again it was revealed that the delinquencies of the applicant, for which disciplinary proceedings were initiated in the past against him, were not of a nature which would have rendered him morally or physically unfit to be considered for the post of SCD. As a matter of fact, the applicant was admittedly appointed as SCD in July, 1992, which appointment was later regularized with the approval of the Selection Committee which met on 03.02.1993.

23. Taking the totality of the facts and circumstances of the case into consideration, we come to the conclusion that there is merit



in the averments of the applicant to warrant consideration of his request by the appropriate authority. We do not find any merit in the averments of the respondent that since the post of SCD is not a promotion post, the request of the applicant for notional appointment from an earlier date cannot be considered. Admittedly, it is a post on which Group 'D' staff of the Ministry is considered for posting after screening, subject to eligibility. Of course, since the applicant has not actually worked on the post he cannot get any benefits, in real terms, with retrospective effect.

24. In the result, the OA is partly allowed and, for the reasons aforementioned, the respondent is directed to constitute a review Screening Committee to consider the request of the applicant for notional selection as SCD w.e.f. 12.05.1988 or 08.01.1988 or 07.02.1989, with consequential benefits and pass a reasoned and speaking order within a period of two months from the date of receipt of a certified copy of this order. There will be no order as to costs.



(V.K. Agnihotri)
Member (A)



(V.K. Bali)
Chairman

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