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Central Administrative Tribunal, Principal Bench

Original Application No.2721 of 2003

New Delhi. This the 2nd day of June.2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

Shri Somnath.
S/o late Shri Badlu Ram.
R/o A-123, Gali No.2.
Shakarpur, Delhi-92

....Applicant

(By Advocate: Shri P. Chakraborty)

Versus

1. Lt. Governor.
NCT of Delhi.
Through Principal Secretary(Finance)
Secretariat of the Govt. of NCT of Delhi.
ITO, New Delhi-2

2. Commissioner of Police.
Block-L, Vikas Bhawan.
New Delhi-02

....Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant joined as Excise Constable in April, 1972. In April, 1973, he was appointed as Staff Car Driver (for short SCD). His services were later on regularised to the said post. On 30.11.1993, vide OM No.22036/1/92-Estt.(D), the Government of India, Ministry of Personnel in compliance with the directions of the Central Administrative Tribunal had created three grades of the SCD: (i) Ordinary Grade (ii) Grade-II and (iii) Grade-I. The ratio of the post of three categories were fixed at 55 : 25 : 20 for the posts in various grades respectively. Subsequently, the Government of India, Ministry of Personnel on 1.6.1998 varied the ratio of SCDs in various grades. The ordinary grade was given 30%

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posts. Grade-II 30% posts. Grade-I 35% posts and Special Grade from 8.11.1996 was created with 5% of the total posts.

2. The grievance of the applicant is that he is eligible for promotion to the post of Grade-I SCD from 8.11.1996. He should be so promoted and arrears paid to him.

3. The application has been contested. It is not in dispute that a special grade has been created but in accordance with the instructions of the Government of India, recruitment rules have to be amended. The process of amendment of recruitment rules is going on. The applicant in the meanwhile has taken voluntary retirement from 1.11.2003 on health grounds. Since as yet recruitment rules have not been amended, he cannot be given the said benefit.

4. We have heard the parties counsel.

5. The sole argument on behalf of the respondent, was that since recruitment rules are yet to be amended, the applicant could not be considered for the special grade. The learned counsel strongly relied upon the Office Memorandum of 15.2.2001 in support of her contention. The said Memorandum reads:

"The undersigned is directed to say that the Principal Bench of the Central Administrative Tribunal (CAT), New Delhi in their judgement dated 5.5.2000 in the case of Central Government Staff Car Drivers Association and Bikram Singh Vs. Union of India in O.A.NO.2529/96 has directed under:-

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"... to grant the applicants the pay scale of Rs.1400-2300/- for the Master Craftsman/Head Staff Car Driver, presently existing in the Railways, from the date of filing of the O.A. and to grant arrears and to allow consequential benefits."

2. Accordingly, the matter has been examined in consultation with the Ministries of Law, Finance and Railways and it has been decided to implement, with effect from 8.11.96 (which is the date of filing of the O.A. No.2529/96), the above mentioned direction of CAT as in the succeeding paragraphs, in modification of the existing orders (Copies enclosed) on the subject:-

(i) DoP&T O.M. No.22036/1/92-Estt(D) dated 30.1.1993;

(ii) DoP&T O.M. No.22036/1/92-Estt(D) dated 27.7.1995;

(iii) DoP&T O.M. No.35034/3/97-Estt(D) dated 1.6.1998;

3. A new Grade for Staff Car Drivers to be called "Special Grade" shall be introduced in the scale of pay of Rs.5000-8000/- with effect from 8.11.1996.

4. Promotion to the Special Grade shall be by non-selection (Seniority-cum-fitness) from Grade I with 3 years regular service in Grade I of Staff Car Drivers. The revised ratio in which the posts of Staff Car Drivers shall be placed in different grades of Staff Car Drivers shall be as follows:-

S.No.	Grade	Pay Scale	percentage
1.	Ordinary Grade	Rs.3050-4590	30
2.	Grade-II	Rs.4000-6000	30
3.	Grade-I	Rs.4500-7000	35
4.	Special Grade	Rs.5000-8000	5

5. These orders shall effect from 8.11.96. Hence, the posts of Staff Car Drivers as on 8.11.96 should be apportioned among the four grades in terms of the ratio mentioned above and promotions should be made to different grades accordingly with effect from 8.11.96 to the extent of short fall in the relevant grade(s). Arrears of pay and allowances should also be allowed with effect 8.11.96 as directed by the CAT.

6. If as on the issue of this Office Memorandum there is excess regular promotion already made in any grade as compared to the revised ratio mentioned above, such promotion shall be allowed to

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the excess incumbents on personal basis from the date of their initial promotion to that grade till they are covered within the revised ratio prescribed above but the period of such promotion on personal basis shall not count towards the eligibility service for further promotion.

7 All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for immediate action including necessary amendments in the RR."

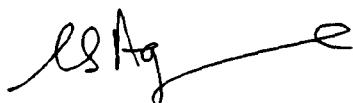
6. Bare reading of the same clearly shows that special grade of 5% has been created. It has to be made effective from 8.11.1996. From that date, the posts of SCDs have to be apportioned amongst four grades. Simultaneously, it was directed that necessary amendments should be made in the recruitment rules.

7. It is obvious from the aforesaid that recruitment rules also had to be amended but grant of special grade was not subject to the same. The letter clearly shows that immediate benefit had to be given w.e.f. 8.11.1996. Therefore, the contention of the respondents learned counsel must fail.

8. The only other argument advanced was that applicant has sought voluntary retirement from 1.11.2003. This fact is not disputed. However, if any benefit is due to the applicant for grant of special grade from 8.11.1996, it cannot be taken away from him till he superannuated or sought voluntary retirement.

9. No other argument was raised.

10. For these reasons, we allow the present




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application and direct:

a) claim of the applicant should be considered in
accordance with OM No.
F.No.43019/54/96-Estt.(D) dated 15.2.2001: and

b) if applicant is found suitable, arrears should
be paid to him within three months of the
receipt of the certified^{copy} of the present order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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