

(1)

Central Administrative Tribunal, Principal Bench

O.A. No. 2900/2003

New Delhi this the 7<sup>th</sup> August, 2006

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. V.K. Agnihotri, Member (A)**

Shri Laxmi Narain Pawar  
Aged 38 years  
S/o Late Shri Ram Bhaj,  
R/o 325, Village Siraspur,  
Delhi-110042.

Working as Despatch Rider in  
Indian Council of Medical Research,  
Ansari Nagar,  
New Delhi.

...Applicant

By Advocate: Shri R.N. Singh.

Versus

1. Union of India  
Through Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.
2. Indian Council of Medical Research,  
Ansari Nagar,  
New Delhi.
3. Shri Lato Tapo Driver,  
ICMR,  
Ansari Nagar,  
New Delhi.
4. Shri Jaipal Singh  
Driver,  
ICMR,  
Ansari Nagar,  
New Delhi.

.....Respondents

By Advocate: Ms. Nidhi Bisaria.

**ORDER (ORAL)**

**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The applicant has prayed for issue of a direction to the respondents to consider him for appointment to the regular post of Driver.

2. The applicant had filed a Writ Petition bearing No. 3938/1997 before the Hon'ble Delhi High Court on 12.9.1997. The case of the applicant was that he was working as Daftry in Indian Council of Medical Research and in addition had also been deployed for driving staff cars on payment of honorarium of Rs.2/- . He applied for his appointment to

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the regular post of Driver but it was not considered and some other persons were appointed. The provision of Administrative Tribunals Act was extended to Indian Council of Medical Research. Thereafter, the Writ Petition was transferred to this Bench for consideration.

3. The respondents filed counter reply rebutting the claim of the applicant and it was submitted that the applicant was eligible for consideration on seniority-cum-fitness basis so he was not appointed earlier, but he has now been appointed as Driver on regular basis with effect from 12.8.1999.

4. In the rejoinder the applicant has reiterated his own case.

5. We have given due consideration to the submissions made at the bar and the relevant documents on the file.

6. During the course of hearing, the learned counsel for the applicant has fairly admitted that the applicant ~~has~~<sup>is</sup>, during the pendency of this OA, has been appointed as Driver on regular basis. In the present case the relief claimed by the applicant was that the respondents should be directed to consider him for appointment on a regular post of Driver. The applicant has already been considered and appointed as regular Driver so the present OA has become infructuous.

7. In the case of **U.O.I. and Others Vs. N.R. Banerjee and Others, 1997 (1) SLR**

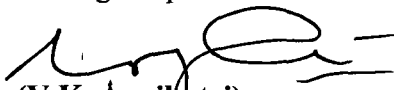
**751** the Hon'ble Supreme Court has held as under:-

12. Considered from that perspective, the question arises: whether the view taken by the Tribunal is justified in law? It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In *Shankarsan Dash V. Union of India* [(1999 2 SCR 567) : [1991 (2) SLR 779 (SC)], the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In *Babita Prasad and Ors. V. State of Bihar and Ors.* [(1993) Supp. 3 SCC 2681] it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalize the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In *Union Territory of Chandigarh v. Dilbagh Singh and Ors.*, [(1993) 1 SCC 154]: [1993 (1) SLR 451 (SC)] it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In *State of Bihar and Ors. Vs.*

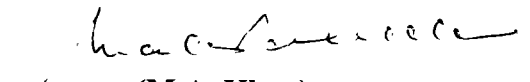
Secretariat Assistant Successful Examinees Union 1986 and Ors., [(1994) 1 SCC 126] : [1993 (5) SLR 598 (SC)] it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary.”

8. It is clear from the principle of law laid down in the judgment that only right of the applicant was for consideration for appointment and it cannot be said that this right has been denied to the applicant. He did not have indefeasible right of appointment to the applicant. Furthermore, the appointment is to take effect from the date of the appointment, i.e., it is prospective in nature and the Government servant does not have any right to retrospective appointment. In fact, no such plea has been raised in the OA nor had been submitted during the hearing that the applicant should have been appointed from back date, i.e., prior to the date from which he has not been appointed as Driver.

9. The result of the above discussion is that the OA is dismissed as infructuous leaving the parties to bear their own costs.

  
(V.K. Agnihotri)  
Member (A)

Rakesh

  
(M.A. Khan)  
Vice Chairman (J)