

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 4528/2014

Reserved on: 30.10.2019
Pronounced on: 14.11.2019

**Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)**

Shri Amarjeet Singh Anand,
Aged 49 Yrs.
S/o Late P.P.Singh,
Working as Driver Gr.II,
Under Directorate of Economics & Statistics,
Vikas Bhawan- IInd, Bela Road,
Delhi-110052 ... Applicant

(By Advocate: Mr. M.S.Reen)

VERSUS

Govt. of NCT of Delhi & Others: Through

1. The Chief Secretary,
Govt. of NCT of Delhi, Delhi Secretariat,
I.P. Estate, New Delhi.
2. The Director,
Directorate of Economics & Statistics,
Govt. of Delhi, Vikas Bhawan- II
3rd Floor, 'B' Wing, Upper Bela Road,
Near Metcalf House,
Delhi-110 054
3. The Secretary (Planning),
Planning Department,
Government of India, Delhi Sachivalaya,
6th Floor, B-Wing, Delhi-02

(By Advocate: Mr. Pradeep Kumar)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. M.S.Reen, counsel for applicant and Mr. Pradeep Kumar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “8.1 That this Hon’ble Tribunal may graciously be pleased to allow this original application and set aside the impugned orders dt. 02.8.2011 & 4.12.2014 passed by the respondents with all consequential benefits.
- 8.2 That the Hon’ble Tribunal may graciously be pleased to allow this Original Application and direct the respondents to grant the regular promotion to the applicant from the date regular promotion of Mr. Jaipal Singh i.e. 30.6.2002, or from the date of the occurrence of the actual regular vacancy for the post of Staff Car driver Grade-II i.e. 24.9.2002 with all consequential benefits.
- 8.3 That any other or further relief which this Hon’ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicant.
- 8.4 That the cost of the proceedings may also be awarded in the favour of the applicant.”

3. The relevant facts of the case are that the applicant was appointed as Staff Car Driver on 02.04.1990 and as per Recruitment Rules (RRs) after 9 years of continuous service, he was eligible to be considered for Grade-II Staff Car Driver and the counsel for the applicant submits, that in 2002 two posts fell vacant and no DPC was held and subsequently when the DPC was held in 2007 he was not promoted on the ground of adverse ACR for the year 2005-2006. On the basis of the above facts the counsel for the applicant vehemently submitted that the reliefs prayed for in the OA be granted and in support of his contention he has relied upon the order of the Central Administrative Tribunal, Bangalore Bench in the case of **Smt. Lakshmi Hande Puri, IRS Vs. UOI and Others** (OA No.170/00328/2017) and the order of the Central Administrative Tribunal, Mumbai Bench, Mumbai in the case of **Smt. Neelima Arun Dighe Vs. UOI & Ors** (OA N. 625/2012). The counsel for the applicant

further submitted that though the one Shri Jaipal Singh was considered and given promotional benefits from 2002 but the same was denied to applicant.

4. The respondents in their counter affidavit have disputed some of the above facts and they have stated that vacancies in Grade II Staff Car Driver arose only in 2005 and the DPC for the said posts was held in 2007 and as the applicant had adverse entries in his ACR for the year 2005-06, as such he was not promoted, whereas the said Jaipal Singh had no such adverse entries as such he was promoted. The respondents, giving the entire background, stated that two posts in Grade-1 Drivers fell vacant in 2002 and after the promotion of S.C.Saxena and Kunwar Pal Singh from Grade II Drivers to the post of Grade-1 Driver on the basis of recommendation held in 2005, two vacancies in Grade II arose only in 2005 and the applicant along with Jaipal Singh was considered in the DPC held in 2007. They have further stated though the said S.C.Saxena, Kunwar Pal Singh and Mr. Jaipal Singh were promoted w.e.f. 2002, but, however, the said retrospective promotion was not as per the applicable OM and the applicant was not considered, as stated above because of adverse entries in the ACR for the year 2005-2006. The averments made by the respondents are extracted below:-

"1. That it is submitted that the summary of promotions granted to Staff Car Drivers of DES as per office record is as under:-

1. No of posts: Summary

S.no.	Name of post	Pay Scale	No. of sanctioned posts.
1.	Ordinary Grade (Entry Grade)	Pre-revised:Rs.3050-4590 Revised: PB 1 (GP-1900)	02
2.	Grade-II	Pre-revised:Rs.4000-6000 Rev:PB 1 (GP-2400)	02

3.	Grade-I	Pre-revised:Rs.4500-7000 Rev: PB 1(GP-2800)	02
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Two posts of Grade 1 Drivers became vacant on 30.06.2002 and 24.09.2002.

Sh. S.C.Saxena and Sh. Kunwar Pal Singh, Grade II Drivers were promoted to the post of Grade-1 Driver on the recommendation of the DPC held on 27/11/2005. The promotion was granted retrospectively w.e.f. 30.06.2002 and 24.09.2002 i.e. irrespective of the date of DPC (vide order dated 23/12/05).

Thus, the vacancy of Staff Car Driver Grade-II became available only after 23/12/2005.

For these two vacancies of Staff Car Driver Grade-II, the DPC was held on 02.11.2007 and considered the names of Sh.Jaipal Singh and Sh. Amar Jeet Singh. Sh. Jaipal Singh, ordinary Grade driver was promoted to the post of Grade-II driver view the recommendation of the said DPC held on 02.11.2007 and promotion was again granted retrospectively w.e.f. 30.06.2002 vide order dated 14/11/07. But the name of Sh. Amarjeet Singh was not recommended by the DPC due to the adverse entries in the ACR for the year 2005-06.

Since in all the cases, the promotions were given retrospectively, the matter was clarified with the Service Department to remove the confusion regarding the date of promotion and it was clarified that the Promotion Scheme of Staff Car Drivers is not a time bound promotion like ACP.MACP and will always become effective prospectively.

This extended to all DPCs held in the past for promotion of Staff Car Drivers in this Directorate and services Department was a party to all such decisions in the past.

This issue was further brought to the notice of Pr. Secy. (Planning) that recovery need to be made from Salaries of many drivers if present status of promotion already granted is disturbed and date of grant of promotion is revised to prospective effect, therefore, it was decided to close the matter and look ahead with the advice that in future DPC should follow the OM in letter spirit.

Keeping in view the advice, the date of promotion of the three drivers viz. S.C.Saxena, Sh.Kunwar Pal Singh and Sh. Jaipal Singh was kept same i.e. retrospectively w.e.f. 30.06.2002, 24.09. 2002 and 30.06.2002 respectively, instead from the date on which the DPC was actually conveyed (i.e. 27/11/2005 and 02/11/07) or with immediate effect.

The DPC held on 07.06.2011 recommended the name of Sh. Amareet Singh for promotion w.e.f. the date of DPC (i.e. 07/06/2011) vide order dated 09.06.11 rather than 2002 or 2005 on the basis that as on 2002 the post of grade II driver was not vacant it became vacant due to the promotion of Sh. S.C.Saxena & Sh. Kunwar Pal Singh, both Grade II drivers to the post of grade I driver vide recommendations of the DPC held on December 2005, further, he cannot be promoted w.e.f 2005 as the DPC could be convened in the year 2007 (on the completion of codal formalities like IC/VC/WC/ACR/TRADE TEST etc.).

5. From the facts and circumstances narrated above by the respondents and in view of the facts of this case not being similar to the facts in the above referred orders passed by the Bangalore Bench and Mumbai Bench of this Tribunal produced by the applicant, we are of the view that there is no arbitrariness or illegality in not promoting the applicant. Accordingly, OA is dismissed. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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