

OFFICE MEMORANDUM

DATE: FEBRUARY 09, 2016

Sri Min Prasad Sharma, presently working as ad-hoc Driver, who had been regularized as Peon vide order dated 21.03.2012 under Regularization Niymawali 2011 had moved an application to the Government to change his cadre from Peon to Driver. After going through the entire matter the Government has communicated its decision vide letter dated 17.12.2015 which is quoted below:-

“ उपर्युक्त विषयक आपके पत्र सं० -314/उ०लो०से०अधि०प्रशा०/V दिनांक 11.09.2015 के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि “कार्मिक विभाग के परामर्शानुसार एक संवर्ग से दूसरे संवर्ग में तदर्थ रूप से नियुक्त कार्मिक का स्थानान्तरण सम्भव नहीं है, जिस हेतु आपके उक्त पत्र पर अनुमति दिया जाना सम्भव नहीं है, किन्तु यदि अधिकरण के सम्बन्धित कर्मचारी को कार्मिक विभाग की नियमावली, 2013 के अन्तर्गत चालक पद पर विनियमित करना चाहता है, तो पूर्व विनियमितीकरण दिनांक 21.03.2012 को निरस्त करते हुए विनियमित करने पर स्वयं विचार कर सकता है।”

Perusal of the said letter clearly reveals that the prayer of Sri Min Prasad Sharma had been rejected to transfer the cadre from Peon to Driver. However, the Government has permitted the Tribunal to consider his case for regularization after rescinding the earlier regularization.

It is also pertinent to mention here that Sri Min Prasad Sharma was regularized as Peon on 21.03.2012 and as such he will be deemed to have been appointed to the cadre of the Peon under The Uttar Pradesh State Public Services (Tribunal) Group 'D' Employees Service Rules, 1999. The said rules would be applicable from the date of his regularization because he became the member of the said cadre. By virtue of the Rule 26 of the Rules, 1999, the Government has been authorized to relax the operation of any rule regulating the condition of service of the Peon appointed to the cadre which causes undue hardship in a particular case. The State Government had no power of relaxation in the Regularization Niymawali, 2011 as well as Regularization Niymawali, 2013 but the service condition rule, which is applicable in the case of Sri Min Prasad



Sharma, empowers the Government to relax any of the rule made thereunder. The said Rule is as under:-

“Rule-26- Where the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the rules applicable to the case, by order, dispense with or relax the requirements of that rule such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.”

The Uttar Pradesh State Public Services Tribunal Driver’s Services Rules, 1998 also prescribes a Rule regarding power of relaxation in the service condition of Driver. The said Rule 26 is also quoted below:-

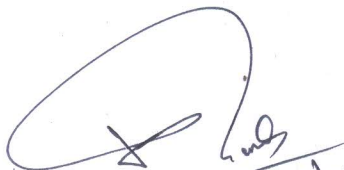
“Rule-26- Where the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the rules applicable to the case, by order, dispense with or relax the requirements of that rule such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.”

By virtue of both the Rules it seems that the State Government has issued the above letter.

Sri Min Prasad Sharma had been appointed as Driver from 30.09 2004 and he had been working as such on the date when his regularization had been made under the Regularization Niymawali, 2011. Regularization Rules, 2011 provide if any employee is working continuously on the said post, he can be regularized by the Committee. It was also provided that ad-hoc employee should have completed at least 10 years of service on the date of enforcement of the Rules on such post. Thus, Sri Min Prasad Sharma, in nutshell, has impliedly stated in the application that he was a Peon only for a period of 4 years. Regularization Rules, 2013 also provide a person, who has completed a period of 5 years of ad-hoc service, can be regularized by virtue of the said rules. He also possesses the



qualification of Driver as per Rule -10 of the Uttar Pradesh State Public Services Tribunal Driver's Services Rules, 1998. He has also filed copy of his commercial driving license in the Registry. Thus, Sri Min Prasad Sharma had completed 5 years of service as ad-hoc Driver on the date of enforcement of Regularization Rules, 2013 as such, he fulfills the criteria working as Driver for 5 years on the date of enforcement of the Rules. It is also noteworthy that the regularization cannot be a source of employment. By virtue of the Government letter dated 17.12.2015 referred above, as we have pointed out earlier that it relaxes the service Rules of Driver as well as of the Peon, and his case seeks a further review of his regularization by a competent committee. In such case, if the committee finds him fit, his seniority may fall from the date of his earlier regularization had taken place or as it is determined by the resolution. Let a list of Drivers showing his seniority from 30.9.2004 be annexed with this order and be also published on the website of the Tribunal and the copy of the order be served upon them so that the person, if any, who may be aggrieved by the regularization, may be given an opportunity to submit their representation within 15 days from the date of the order.


(Justice J.C.S. Rawat)
Chairman

वाहन चालक संवर्ग

कम सं०	कर्मचारी का नाम	मौलिक पद पर विनियमितकरण की तिथि एवं पद	प्रस्तावित विनियमितकरण हेतु
1.	श्री देवेन्द्र सिंह	21.03.2012 (चालक)	पूर्व में विनियमित
2.	श्री गिन प्रसाद शर्मा	21.03.2012 (चपरासी)	चालक (प्रस्तावित)
3.	श्री महेन्द्र सिंह	31.10.2015 (चालक)	पूर्व में विनियमित
4.	श्री श्रद्धाराम	31.10.2015 (चालक)	पूर्व में विनियमित
5.	श्री मनोज कुमार	31.10.2015 (चालक)	पूर्व में विनियमित