

NATIONAL COMMISSION FOR SCHEDULED TRIBES

PROCEEDINGS of the hearing held in the National Commission for Scheduled Tribes on 26/10/2009 at 11:30 hrs. in the case of Shri K.L. Meena, Assistant Director (Air Safety) regarding cancellation of his transfer from Delhi to Hyderabad.

Shri Maurice Kujur, Hon'ble Vice-Chairman, National Commission for Scheduled Tribes presided over the hearing. The following were present.

I. National Commission for Scheduled Tribes

1. Shri Maurice Kujur, Hon'ble Vice-Chairman
2. Shri Aditya Mishra, Joint Secretary
3. Smt. K.D. Bhansor, Dy. Director
4. Shri N.K. Maran, Research Officer

II. Ministry of Civil Aviation, New Delhi

1. Shri M. Madhawan Nambiar, Secretary
2. Dr. Balmiki Prasad, Dy. Secretary and Liaison Officer

III. Directorate General of Civil Aviation

1. Shri Nasim Zaidi, Director General of Civil Aviation,
2. Shri R.K. Maheshwari, Jt. Director General
3. Shri Charan Das, Dy. Director General and Liaison Officer

ISSUE

2. Representation of Shri K. L. Meena, Assistant Director, Air Safety, DGCA Headquarters, New Delhi for cancellation of his transfer from Delhi to Hyderabad.

BACKGROUND

3. A representation was received in the Commission in July 2007 from Shri K. L. Meena, Assistant Director, Air safety, DGCA Hqrs. New Delhi to get his transfer order to Hyderabad cancelled on the basis of his domestic circumstances. He mentioned that his transfer order has been issued by way of discrimination and with a view to harass him and not as per the practice prevalent in the DGCA Organisation.

4. The Commission took up the matter with Director General of Civil Aviation. The Commission was informed that Shri Meena happened to be the seniormost Assistant Director (Air Safety) and that he had been posted at Delhi (Hqrs.) for the last 18 years (which is not correct as per the records) and further that he had not done any field posting which was desirable for an officer of his level to acquire exposure in every sphere of job. The Commission, however, found that the officers belonging to general category were all along retained at the same station even after promotion including those who had joined the Hqrs. of Director General of Civil

Aviation/ Delhi Region. Therefore, transfer of Shri Meena was an exception as Shri Meena was transferred to Kolkata in July 2004 (which was cancelled on the intervention of this Commission) without any promotion and again he had been transferred, without any promotion to Hyderabad. The Commission further noted that about one week prior to Shri Meena transfer order, Shri Maneesh Kumar, AD(AS) was promoted as Dy. Director of Air Safety and retained at the same place i.e. Delhi, although the posts of Regional Controller of Air Safety/ Dy. Director of Air Safety were vacant since August 2003 and January 2007 at Kolkata and Hyderabad respectively.

5. To resolve the issue, the case was discussed in a hearing held by Secretary, National Commission for Scheduled Tribes with DGCA on 16/10/2007. In the said meeting, DGCA had agreed to consider favorably the suggestion of the Commission either to retain Shri Meena at New Delhi by transferring him from the Hqrs. to Delhi region and making some other arrangements for Hyderabad office by posting some other Assistant Director of Air Safety/ Sr. Air Safety officer or transferring Shri Meena from the Hqrs. to Delhi region and assigning him the additional charge of the Hyderabad office. The suggestions of the Commission, however, were not implemented by the DGCA later on.

6. In view of the position stated in the preceding para, the matter was discussed again by the Hon'ble Chairperson, National Commission for Scheduled Tribes with the DGCA in a hearing held in her chamber on 21.11.2007. DGCA had agreed in that meeting to reconsider his decision either by transferring one Shri Mayukh Maitra (who was stated to be willing for posting/ transfer) from Delhi region to Hyderabad and transferring Shri K.L. Meena in his vacancy to Delhi region or by working out some other solution to retain Shri Meena in view of his family problems. This workable recommendation was also finally not implemented by DGCA.

7. As the matter continued to drag on without any solution, the Chairperson, NCST again discussed the matter with Secretary, Civil Aviation and DGCA on 22 January 2008. It was decided in this meeting **to keep the order transferring Shri Meena to Hyderabad in abeyance till 30 June 2008** to enable him to have the education of his son completed without any interruption and orders to that effect were issued by DGCA on 22 January 2008.

8. In the meanwhile, Shri K.L. Meena vide his representation dated 07.05.2008 pointed out several discrepancies in the submission of facts to the Commission during the course of three hearings held to discuss his case. These discrepancies were brought to the notice of DGCA vide the Commission's letter of even No. dated 17.06.2008. As desired by the Chairperson, DGCA was requested in the same letter to furnish the facts on **an affidavit under oath** within a week based on which the decision was taken to relieve Shri Meena on 30.06.2008. The Commission found that in response to its letter, DGCA had supplied certain information on plain paper without any supporting documents. The Commission, accordingly, requested DGCA on 15.10.2008 to furnish the documents/ references related to the information furnished in the affidavit on a plain paper. The Commission also noted that Shri Meena had been relieved of his duty on 20.10.2008 without providing the statutory information sought by the Commission as enshrined in the Constitution. **The Commission, accordingly, requested DGCA to reconsider his decision.** It was noted that the facts submitted by the DGCA later through the affidavit was at variance with the position indicated by the DGCA in earlier deliberations on the basis

of which it was decided in the meeting held on 22 January, 2008 to ask DGCA to consider keeping the order transferring Shri Meena to Hyderabad in abeyance.

9. The Office of the DCGA vide its letter dated 30 October 2008 informed the Commission that it needed more time for compiling the documents/ references related to the information furnished in the Affidavit as this required taking out old files and scrutinizing them minutely for selecting the correct papers.

10. The Commission vide its letter dated 05.11.2008 addressed to DGCA requested him to consider maintaining the status quo as on 30.06.2008 in the case of posting of Shri K.L. Meena till such time the information already furnished before the Commission by DGCA was verified after the receipt of documents/ references from DGCA and after conformation whether the facts presented by the DGCA to justify the transfer of Shri Meena to Hyderabad were in order or otherwise., The Commission, however, came to know that notwithstanding the above recommendation, Shri Meena had been directed to report for duty at Hyderabad.

11. The requisite information along with supporting documents/ references were furnished to the Commission on 11.11.2008. The Commission came across a number of facts from the documents received from DGCA. Hon'ble Chairperson, National Commission for Scheduled Tribes also held discussions with the Secretary, Ministry of Civil Aviation and DGCA on 10.12.2008 in the Commission. As the implementation of the recommendation of the Commission regarding the cancellation of the unjustified order of DGCA transferring Shri Meena to Hyderabad continued to hang fire, it was decided to call for relevant records and hold another sitting on 10/06/2009 (after examination of the records). The Ministry of Civil Aviation sought 4 weeks time for submission of requisite records and files. While doing so, Ministry also requested the Commission to close the case. This defied the Commission's understanding and reflected a closed mindset of DGCA authorities on the Commission's advice for cancellation of the transfer order of Shri K.L. Meena. How the case could be closed without examination of records and conduct of hearing on the basis of the findings from the record. The requisite records were later received on 30/06/2009.

12. After examination of the records a hearing with Secretary, Ministry of Civil Aviation, Director General of Civil Aviation and Chief Liaison Officer (SC/ ST)/ Liaison Officer of Ministry of Civil Aviation & DGCA was fixed for 25/08/2009. The hearing was postponed to 16/09/2009 on the request received from the Secretary, Ministry of Civil Aviation. The hearing was further rescheduled for 23/09/2009 and again for 26/10/2009 on the basis of communications received from the Office of DGCA intimating the inability of the Secretary, MCA and DGCA to attend the hearing on the scheduled date(s).

Discussion

13. The background development of the case and the observations made and points relating to discrimination and manipulations noticed from the files of the Director General of Civil Aviation called by the Commission for examination from Office of DGCA were highlighted by the Commission. The Secretary, MCA stated that it will not be possible for him and his officers to make any comments on the spur of the moment as the points made by the Commission will need to be examined. He, therefore, stated that it would be appropriate if the Commission could send their

views/ observations. Secretary, MCA stated that he and any of the officers from MCA and DGCA would not respond to any of the issue/ observation during the hearing. He further stated that he would not like the petitioner Shri K.L. Meena to be present during the hearing. It was clarified by the Commission that the hearing had been scheduled under the power of the Civil Court vested with the Commission, while investigating into the complaints, and as per the procedure it is wrong to dis-allow the petitioner either to be present or narrate his grievance during the hearing. Commission informed the Secretary, MCA that the purpose of holding hearing in a case is to resolve the pending issues over discussion instead of prolonging the same through correspondence. It was further informed that in the present case also, the correspondence has not yielded any desired result although Commission has been highlighting the discrimination and other shortcomings in the handling of the matter in DGCA. Therefore, as there was no positive consideration by the DGCA, Commission decided to invoke its power under Article 338A (8) of the Constitution and discuss the matter in the hearing with the Secretary, MCA and Director General of Civil Aviation. The hearing originally planned to be held on 10/06/2009 was rescheduled 4 times, over a period of 4 months. The participation of Secretary, MCA and DGCA in the discussion during the hearing was, therefore, sought to find a solution to the grievance of Shri K.L. Meena and other related issues. Secretary, however, reiterated his stand not to have any direct discussion with the aggrieved petitioner (Shri K.L. Meena) in his presence. He also stated that he would not like Shri Meena to be present in the hearing and indicated that the Commission should send its views/ recommendations based on the scrutiny of records/ files made available to it by Director General of Civil Aviation which would be looked into.

14. In view of above, the observations and recommendations of the Commission are being given in detail in the following para.

OBSERVATIONS

15. The Commission would like to make the following observations on perusal of the files and records received from the office of the Director General of Civil Aviation as mentioned below:

- (i) Shri K.L. Meena represented to the Commission allaying fear about spoiling of his ACR. In the context of that representation of Shri K.L. Meena, the office of DGCA, vide letter dated 19/6/2007, in reply to the Commission's letter, **wrongly stated** that **Shri Meena was earlier transferred to Kolkata on promotion as no exercise for his promotion had ever taken place, although he was eligible for promotion since 2001.** During the earlier hearings held in the Commission, it was made clear that if Shri K.L. Meena had been transferred on promotion, there would have been no objection to either Shri Meena or to the Commission. In fact, reading of the files relating to the present case indicates that while Shri K.L. Meena and his family was disturbed, other officers who had been allowed to perform their duties at one/ same place since the joining of their duty in DGCA remained at same place with minor break periods.
- (ii) No sooner than information was called by the Commission in the context of representation of Shri Meena regarding his ACR, a proposal was mooted by Joint DG favouring transfer of Shri Sanjay Bramhane, Sr. ASO from Hyderabad to Mumbai alongwith his post and transfer of Shri K. L. Meena, ADAS to Hyderabad alongwith his post in place of Shri Bramhane. Shri Bramhane had been transferred from Mumbai to Hyderabad in the previous year only and yet Shri Bramhane was transferred back alongwith his post to Mumbai in public interest (although the note from Jt. DG mentioned about his health and family grounds for transfer to Mumbai and not any

public interest) and Shri K.L. Meena was transferred to Hyderabad vice Shri Bramhane. The Commission, in fact, has no objection to DGCA considering the problem of Shri Bramhane, who has been sent back to his place of choice. What anguishes the Commission is that DGCA has not been willing to extend similar sympathetic gestures to consider the issues in the case of Shri K.L. Meena in spite of various communications from the National Commission for Scheduled Tribes highlighting the discrimination meted out to Shri K.L. Meena and consider the needs and problems of Shri K.L. Meena and his family.

- (iii) One post of DDAS was vacated on 20/3/2007 by promotion of Shri Bir Singh Rai (ST) who had been appointed to the post of DDAS on Direct Recruitment basis and, therefore, as per the Post Based Roster system, the vacant point should be filled by Direct Recruitment (ST) and not by promotion. However, the post has been filled by promoting Shri Maneesh Kumar, initially on adhoc basis and subsequently, on regular basis through UPSC. In the same manner the posts vacated earlier by the promotee incumbents should have been filled by promotion. Had those posts been filled by promotion, Shri Maneesh Kumar would have got promotion in 2004 and Shri K.L. Meena in either 2004 or in 2006. Therefore, the Commission cannot help but expressing the view that the right of Shri K.L. Meena for promotion to the post of DDAS has been denied to him and to that extent he has been discriminated against.
- (iv) Although vacancies in the post of DDAS occurred on 1/11/2004, 1/12/2004, 15/6/2006 and again on 20/3/2007, steps should have been taken immediately to fill the posts on ad-hoc basis till availability of the regular incumbents, whether by Direct Recruitment or DP, **as has been done while giving promotion to Shri Maneesh Kumar in July,2007 on ad-hoc basis w.r.t. the post which fell vacant on 20/3/2007.** It is worth mentioning that the importance of the duties attached to the post of DDAS and urgency to fill the post on ad-hoc basis (as quoted later on) was highlighted time and again by DGCA as well as Ministry of Civil Aviation at the time of moving/ processing the proposal for promotion of Shri Maneesh Kumar while the same was never stated when the vacancies occurred on the earlier occasions and the vacancies have been allowed to remain unfilled. Had steps been taken to fill all the vacant posts of DDAS on ad-hoc basis till the regular incumbent joins, with the same importance and urgency, on the earlier occasions also, Shri K.L. Meena would have been benefited in the year 2004 itself. As per records made available to the Commission two posts of DDAS are still vacant (a few more posts of DDAS are reported to have been created recently) and Shri K.L. Meena, being senior most ADAS, deserves to be promoted against one of the posts of DDAS vacant since 1st November, 2004 and 1st December, 2004 respectively.
- (v) It is noted that Ministry of Civil Aviation had called for DP-DR Roster in respect of the post of DD when proposal for promotion of Shri Maneesh Kumar on ad-hoc basis was sent to the Ministry for approval of Minister for Civil Aviation. The Rosters were not made available on the ground that it was not traceable as the concerned Section was undergoing renovation and the same will be presented for scrutiny of the Ministry subsequently. The records do not show whether the rosters were shown to the Ministry later on. The scrutiny of the roster register now received from the office of DGCA indicate that the rosters have not been maintained correctly and properly as most of entries are in pencil and do not have signature of any officer or even Liaison Officer (SC/ST)
- (vi) It is also noted that, on receipt of proposal for holding DPC meeting for filling the post of DD(AS) by promotion on regular basis, UPSC had called for requisite details relating to earmarking of the vacancy against promotion quota. The file records show that there is no roster/ basis to show that the vacancy arising due to promotion of Shri Bir Singh Rai (DR) to the post of Director was earmarked for promotion. UPSC was informed that the earlier two vacancies were earmarked against DR point and therefore, the present vacancy in the post of DD(AS) was earmarked against DP

point. By no means, two consecutive vacancies in a post (vacated by promotees) could be earmarked against DR quota. The fact was, therefore, suppressed before the UPSC and also before the Ministry of Civil Aviation. The Commission is strongly of the view that this action on the part of DGCA authorities calls for scrutiny of the procedure adopted in giving promotion to Shri Maneesh Kumar and consequently, quashing/ recall of the promotion of Shri Maneesh Kumar and also action against erring officers/ officials, who were responsible for such action despite objection by UPSC as well as Ministry of Civil Aviation. **The Commission, however, would not suggest any step,** which would be harsh on Shri Maneesh Kumar, who was also eligible for promotion since 2001 and deserved promotion in November, 2004 when first vacancy under promotion quota occurred, but waited till actual promotion in 2007, **at the same it must add that DGCA should take corrective steps to undo the injustice done to Shri Meena by promoting him to the post of DD(AS) against the vacancy available since 2004 but granting him promotion to the post of DD(AS) retrospectively against the vacancy available since 2004.**

- (vii) Shri Bramhane was posted back to Mumbai on account of his personal problems. However, it was stated that he was transferred in public interest. The policy adopted while transferring Shri Sanjay Bramhane to Mumbai with regard to consideration of the personal problems should also have been followed before transferring Shri Meena, and particularly after NCST made certain recommendations on his representation.
- (viii) The post of DDAS at Hyderabad is stated to have already been transferred to Delhi, and some more vacancies in the post of DD(AS) are stated to have occurred at Delhi Hq./ Delhi Region.
- (ix) In the context of the proposal regarding promotion of Shri Maneesh Kumar ADAS to the post of DDAS it has been stated at several places that

Dte. of Air Safety is responsible for investigation of accidents/ incidents to Indian Civil registered aircraft and foreign registered aircraft, which constitute hazards to safe aircraft operation in the country. It assists the various Courts and Committees of Inquiry set up the Govt. for conducting investigation into aircraft accidents by providing expertise in such investigations in India and abroad in respect of Indian civil registered aircraft and in India in respect of foreign registered aircraft. Collection and dissemination of safety related information from world over including International Civil Aviations Organisations and implementation of recommendations emanating from various accidents/ safety audits/ surveillance checks/ cabin crew and ramp inspection of the airlines and decisions of the High level Bird Strike Committees etc. to combat the bird menace are also carried out by the Air Safety Directorate.

- (x) It is noticed that the emergency and exigency shown in filling the post of DDAS while promoting Shri Maneesh Kumar was not shown earlier when the posts of DDAS fell vacant on 01-11-2004, 01-12-2004 and 15-06-2006. **As per the Post Based Roster system the posts vacated by promotee has to be filled by promotion while the post vacated by Direct Recruitment appointee has to be filled by Direct Recruitment. However, the vacancies which occurred in 2004 are stated to have been allocated under DR quota and, therefore, same have not been filled and are still vacant.** But these posts could have been filled on adhoc basis in view of the importance of the duties attached to the post of DDAS. Had the same process been adopted on the earlier occasions Shri Maneesh Kumar as well as Shri K.L. Meena would have been promoted, at least on adhoc basis about 5 years ago and giving an opportunity of gaining experience of higher responsibility by Shri K.L. Meena also. But this was not done ostensibly to avoid transfer of Shri Maneesh Kumar after promotion and prevent grant of timely promotion to Shri K.L. Meena. The benefit of experience beside financial upgradation on promotion certainly helps the officer in performing better in the next higher post.

- (xi) The post of DDAS had fallen vacant at Hyderabad due to promotion and transfer of Shri Bir Singh Rai (ST) to Delhi against the post of office of Director of Air Safety. **Although, the post of DDAS vacated by DR was to be filled by DR, Shri Maneesh Kumar was promoted against this post and posted in Delhi by transferring the post to Delhi stating that the Hyderabad Office has only limited activities.** Simultaneously, posting of Shri K.L. Meena, ADAS to Hyderabad was recommended stating that he is the senior most ADAS and, therefore, his services are needed at the Regional Office at Hyderabad. It clearly implies that the situation had been twisted time and again keeping in view the person in mind and not the need of the station.

- (xii) **Special attention is also invited to the notings of DGCA at page 46/N of the personal file of Shri Meena which reads as follows:**

"Indicates shunning of responsibility by the Jt. DG who had earlier generated the issue and now avoid legal processes on behalf of the Deptt. particularly when the officer is heading the AS Dte. and its personnel.

Director (Fin. & Admn.) please speak w.r.t. the Affidavit content. I will take the responsibility of signing the Affidavit".

The above noting of DGCA confirmed the view of the Commission that the transfer of Shri K.L. Meena to Hyderabad was managed by the then Jt. DG, who had simultaneously advocated for transfer of one post of DD(AS) from Hyderabad to Delhi to facilitate posting of Shri Maneesh Kumar at the same (Delhi) station after promotion.

RECOMMENDATIONS

16. In view of the foregoing observations, the Commission makes the following recommendations:

- (i) The recommendations made by the Commission in this case earlier have not been taken in correct perspective, which has led to their non-implementation and consequent reported harassment and mental torture of Shri Meena. The perusal of notings in the files of DGCA produced before the Commission bear testimony to the stand taken by the Commission. Had the grievances of Shri K.L. Meena been properly understood and redressed by the authorities, the need for Shri Meena to represent his grievance before the Commission and for the Commission to investigate into the grievance and make necessary recommendations to DGCA would not have arisen. The above mentioned harassment and discrimination need to be made good by the DGCA authorities and, therefore, in the interest of justice, it is advised that the transfer order of Shri K.L. Meena should be immediately cancelled and his salary from the date it has been stopped is also given by the DGCA taking into account background of the case.
- (ii) As per roster policies, separate rosters were required to be prepared for promotion quota and the Direct Recruitment quota and accordingly, the post vacated due to promotion of the incumbent from the promotion roster should have been filled by promotion and similarly a post on the Direct Recruitment roster was required to be filled by Direct Recruitment process. In other words, the post vacated by an employee was required to be filled from the person from the same category to which the vacating employee belonged. This is necessary to maintain the level of reservation in respect of each of the reserved category and also for proper maintenance of the Post-based Roster relating to DP and DR. These requirements were completely disregarded by

the DGCA authorities. Two posts of DDAS vacated on 01/11/2004 and 01/12/2004 by retirement of the promotee employee should have been processed for filling the posts by promotion. Instead both these posts were earmarked as DR posts, thereby denying the opportunity for promotion to Shri Maneesh Kumar and Shri Meena, both seniormost ADs on these dates. Although one of the communications from DGCA mentions that Shri Meena was earlier transferred to Kolkata on promotion but the actual records and orders do not support this statement. The importance of duties attached to the post of DD and urgency shown while promoting Shri Maneesh Kumar was never shown earlier, when two vacancies occurred in November, 2004 and December, 2004. In fact while granting promotion to Shri Maneesh Kumar, one post of DDAS was also transferred from Hyderabad to New Delhi. If the requirement at Hyderabad was necessary, Shri Maneesh Kumar could have been posted at Hyderabad against the post of AD or on promotion to the post of DD. The clarifications sought by UPSC as well as Ministry of Civil Aviation during the process of promotion of Shri Maneesh Kumar have also not been replied correctly and the matter was pushed through to ensure the promotion of Shri Maneesh Kumar to the post of DD and subsequent posting at Delhi. Since the posts of DD vacated on 01/11/2004 and 01/12/2004 respectively are still vacant and Shri K.L. Meena was eligible for promotion against one of these vacancies, the Commission, therefore, strongly feels that in order to undo the injustice done to Shri Meena by way of his non-promotion, he should be promoted retrospectively, at least on adhoc basis against one of these posts, after occurrence of vacancy. Moreover, 5 more posts of DD(AS) are stated to have been sanctioned for Directorate of Air Safety. If this is true, Shri Meena should be promoted against one of these posts on regular basis at Delhi.

- (iii) On promotion, Shri K.L. Meena may be considered for being accommodated at Headquarters at New Delhi having regard to his family problems and also to compensate him to some extent for the harassment and discrimination meted out to him resulting from the unsympathetic attitude of DGCA authorities in as much as they did not accede to his request and the Commission's recommendations for cancellation of his transfer order, and his non-promotion even though there were clear vacancies in the post of DD(AS).
- (iv) Based on the examination of the position indicated in para 16(ii) above and related records, DGCA should take appropriate action against the erring officials in the event of procedural lapses on this part are noticed in handling the case and resultant harassment to a ST officer.

17. The Commission may be apprised of the action taken/ proposed to be taken on the Commission's above recommendations within a fortnight of the receipt of these proceedings.