

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No.2397/90

~~EXX~~

199

DATE OF DECISION 6.1.1992.Shri Girish KumarPetitionerShri Rajinder Singhvi,Advocate for the Petitioner(s)

Versus

Union of India & Ors.RespondentShri O.N. Moolri,Advocate for the Respondent(s)**CORAM**

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

*I.K. Rasgotra*  
(I.K. Rasgotra)  
Member (A)

*T.S. Oberoi*  
(T.S. Oberoi)  
Member (J)

6.1.1992.

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Judgment - Remand in open Court  
today.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. 2397/90

Date of decision: 6.1.1992.

Shri Girish Kumar

.. Applicant.

Versus

Union of India & others

.. Respondents.

**CORAM:**

The Hon'ble Sh.T.S.Oberoi, Member(J).

The Hon'ble Sh.I.K.Rasgotra, Member(A).

For the applicant

Sh.Rajinder Singhvi,  
counsel.

For the respondents

Sh.O.N.Moolri, counsel.

**J U D G E M E N T**

(Delivered by Hon'ble Sh.I.K.Rasgotra, Member(A) ).

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant Shri Girish Kumar has challenged the respondents' order No.EM-1-25/8/10(L) dated 14.11.1990, deleting his name from the select list for the post of Chargeman (Rs.1400-2300).

2. The issue raised for our adjudication is whether the deletion of the name of the applicant from the select list after its inclusion initially after he had qualified in the relevant examination is illegal.

3. When the matter came up for hearing, the Tribunal passed ad-interim order on 22.11.1990 to the effect that:-

"In view of this, we direct that the status-quo as of today as regards the continuance of the applicant in the post of Chargeman, Gr., B be maintained."

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The interim relief was modified after hearing the respondents vide order dated 12.12.90 as under:-

"....., we are of the view that though the interim relief prayed for by the applicant in the O.A., which in fact is the same as the O.A., cannot be granted to him, yet on the basis of his seniority as Mistri in the scale of Rs.1400-2300, he should be allowed to continue in the scale as an interim measure pending disposal of the O.A. We direct accordingly."

Thereafter the applicant filed an M.P. No.78/91 seeking amendment of the observations made in our order dated 12.12.90. The M.P. was allowed vide order dt. 5.2.91.

4. In the amended application the applicant has challenged the order dated 19.11.90, according to which his name has been deleted from the panel of Chargeman 'B', resulting in the issue of order of reversion of the applicant from the said post (Rs.1400-2300) to the post of skilled Gr. I (Rs.1320-2040), by the Shop Superintendent.

5. The facts of the case in brief are that while the applicant was working as Mistri (Rs.1400-2300) w.e.f. 8.2.1989 the respondents asked for the willingness of the 12 personnel listed in notice dated 27.7.1989 for appearing in the written examination for the post of Chargeman 'B'. The name of the applicant is at S.No.8 of the said list. The applicant appeared in the selection test and was declared successful in the written examination and was called for vica voce test alongwith other four successful candidates. The applicant is at S.No.5 of the list of successful candidates pertaining to Tin and

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Copper trade vide order dated 15.9.1989. He contends that there were five vacancies for the post of Chargeman 'B' and however, only four persons were placed in the Select List published vide office order dated 20.10.1989. Later, however, on 5.12.1989 the respondents issued another office order stating that there were in fact five vacancies of Chargeman 'B' in Tin and Copper trade and accordingly the name of the applicant was added below the name of Sh.Govind Ram to the list of selected candidates. Consequent, to this addition an amended Select List was issued vide office order dated 6.12.1989 wherein the applicant is placed at S.no.5. This order was said to have been issued after obtaining the approval of the competent authority. The applicant accordingly was working as Chargeman 'B' since 6.12.1989 till he was reverted to the post of skilled Grade I on 19.11.1990 in pursuance of C.W.E. Churchgate, Bombay order dated 14.11.1990. The said order reads as under:-

"..... Once a selection is conducted for a specific number of posts and panel is also declared, no rule permits to change the assessment and addition of name. In view of the above, your office letter quoted above is not in order and the name of Sh.Girish Kumar is required to be deleted from the panel.

This has the approval of C.W.E."

The applicant further contends that the order dated 19.11.1990 of the Shop Superintendent, Ajmer passed in pursuance of those of the Chief Works Manager, could not have been passed on

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same date. He, therefore, alleges back-dating of the order, with a view to frustrate the ad-interim order dated 22.11.1990 passed by the Tribunal. In support of this, he has filed a photo copy of the Railway Privilege Pass issued on 24.1.1990 which shows his designation as Chargeman 'B'.

6. The stand of the respondents in the counter-affidavit is that the applicant was not promoted regularly as a Mistri (Rs.1400-2300) on 8.2.1989. He was promoted only on adhoc basis w.e.f. 7.2.1989, as is apparent from the notice issued by the respondents on 21.2.1989, inviting the names of the personnel willing to appear in the written examination for the post of Chargeman 'B'. The applicant has been clearly shown as adhoc Mistri in the said notice. Again in the order dated 13.7.1989 (Annexure A-2 of the OA) the applicant was clearly promoted as adhoc Chargeman 'b' in the same pay scale as that of Mistri. The respondents urge that the selection was held only for four vacancies, as is substantiated by the restriction of the zone of consideration to 12 candidates. The question whether there were five vacancies is, therefore, not valid. They also deny that there were five clear cut vacancies, as alleged by the applicant. While the respondents deny that the selection board had approved the name of the applicant. They further assert that the addition of the 5th name in the select list to the panel after the issue of the select list on 20.10.1989 was illegal and had neither the approval



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nor the consent of the selection board. They further submit that the name of the applicant was deleted from the panel in terms of C.W.E's order dated 14.11.1990 and "consequently he was de-notified and posted to his substantive post of highly skilled grade I (Rs.1320-2040) w.e.f. 19.11.1990". Regarding the applicant's contention that he in fact continued to be Chargeman 'B', as is indicated in the Railway Privilege Pass issued to him, the respondents' submit that the pass is issued by the concerned section as per the particulars given in the pass requisition form, which again is filled by the applicant himself. The respondents further contend that the name of the applicant was added to the panel under pressure from the union (WRMS) which was illegal and irregular.

7. We have heard Shri Rajinder Singhvi and Shri O.N.Moolri, learned counsel for the applicant and respondents respectively. After carefully considering their submissions and perusing the material before us, we are of the view that the selection was held for four vacancies and four persons were kept on the panel in accordance with the recommendation of the selection board. Had there been five vacancies the number of persons to be considered for selection would have been 15 and not 12.

8. If indeed there were five vacancies, it was incumbent on the respondents to either cancel the selection earlier held or to hold a supplementary selection to fill up the 5th vacancy. The addition of name of the applicant to the select list after the panel containing four names was notified is irregular as it artificially restricts the zone of consideration, and prejudices

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the right of others who would have been in the zone of consideration, had the selection been notified for five vacancies. Addition of the fifth name to the select list was, thus, an arbitrary action and cannot be legally sustained. Accordingly, the O.A. is dismissed.

9. There will be no order as to costs.

*I.K. Rasgotra*  
( I.K.RASGOTRA )  
MEMBER(A) 6/1/1992

6.1.1992.

*T.S. Oberoi* 6.1.92  
( T.S.OBEROI )  
MEMBER(J)