

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A. No. 1589/92

Date of decision 16/10/92

Shri Bhopal Singh ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM:

1. Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

2. Hon'ble Mr. I.P. Singh, Member (A)

For the applicant ... Shri B.L. Babbar, counsel

For the respondents ... Shri M.C. Garg, counsel.

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Delivered by Shri I.P. Gupta, Member (A) 7

In this application filed under Section 19  
of the Administrative Tribunal Act, 1985, the  
applicant has prayed that the minutes of the DPC  
meeting held on 14.2.1992 be declared null and void  
and the respondents be directed to regularise the  
applicant in the post of Driver by absorption  
straightway. The applicant has further stated  
that the respondents be directed to fill up all  
regular vacancies simultaneously by a review DPC  
and not to terminate the services of the applicant

though retaining his juniors.

2. The Learned Counsel for the applicant drew attention to the judgement dated 8.11.1991 and O.A. No. 234/91 wherein the following directions were given by the Bench in respect of the same applicant :-

"(1) The impugned order terminating the ad hoc service of the applicant w.e.f. 31.12.90 issued on 27.12.90 is hereby set aside and quashed.

(2) The applicant shall be reinstated on the post of driver. In the circumstances of the case, we do not order payment of back wages.

(3) The applicant be considered for regularisation by the DPC along with other class IV employees. His case for regularisation shall be considered and final orders issued within a period of 3 months from the date of communication of this order."

3. The Learned Counsel for the applicant further contended that in pursuance of the aforesaid order,



the respondents appointed the applicant as driver on purely ad hoc and emergent basis for a period of three months or <sup>till</sup> to such time as a regular incumbent becomes available. A circular was issued on 13.1.1992 inviting applications from regular class IV employees for one post of driver and it was mentioned in the circular that all interested officials having driving licence of light motor vehicles with two years unblemished experience in the line should submit their applications. A DPC was held on 14.2.1992 wherein one Shri Suresh Kumar was recommended though he did not have experience of driving. Furthermore, the order of appointment of Shri Suresh Kumar, as would be evident from Annexure IX was only on ad hoc basis and, therefore, the applicant was replaced by an ad hoc <sup>employment</sup> and not a regular employee.

4. The Learned Counsel for the respondents drew attention to the recruitment rules for the post of driver, light motor vehicles as notified on 29.10.1986. According to the rules, the post is a non-selection one.

and for promotees from class IV employees, only  
~~for which~~ the possession of driving licence is  
is the requirement. He further contended that  
the appointment of Shri Suresh Kumar was on a  
regular basis and this position has been clarified  
in the order dated 12.10.1992 issued in modification  
of the earlier order. The Learned Counsel further  
argued that the officers who sat in the DPC of  
14.2.1992 were authorised members of the DPC.

5. Analysing the facts and arguments of the  
case, we find that the directions given in the  
judgement dated 8.11.1991 was for considering the  
applicant for regularisation by the DPC along with  
other class IV employees. His name was so considered  
by the DPC of 14.2.1992 but another candidate was  
selected and the applicant was not. Though the  
circular at Annexure VIII mentioned that interested  
officials with two years unblemished experience  
should submit their applications the recruitment  
rules do not insist on requirement of two years  
experience. The recruitment rules are statutory  
in nature and they cannot be over-written by a  
circular. The DPC which met on 14.2.1992 recommended

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Shri Suresh Kumar for appointment against a post

of driver and the DPC did not say that the appoint-

ment should be on ad hoc basis. It was by mistake

that the respondents in the first instance issued

an appointment letter to Shri Suresh Kumar on

ad hoc basis and later after a lapse of about

8 months corrected the appointment by saying that

it was on regular basis from retrospective date.

In the circumstances we cannot find fault with the

appointment of a regular incumbent (Shri Suresh

Kumar) on the basis of recommendations of a duly

constituted DPC, when Shri Suresh Kumar possessed

the requisite qualifications as mentioned in the

recruitment rules.

6. However, the fact remains that the appli-

cant was replaced in the first instance by an

ad hoc arrangement and it was after 8 months

it was corrected that it was not an ad hoc

arrangement but a regular one. It was also a

mistake of the respondents that in their circu-

lar of 13.1.1992 they invited applications from

officials with two years experience. No doubt

<sup>not</sup>  
a mistake made by design but by mischance and  
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a mistake apparent which is a mistake that is manifest can be corrected, yet the fact remains that making the employee suffer adversely on account of lapses on the part of the Government itself would not be just. In the first instance the applicant was replaced by an ad hoc arrangement only. This cannot be said to be in accordance with law. Nothing prevents the respondents from correcting the mistake to give benefit to the duly selected person (Shri Suresh Kumar) from a retrospective date but such a correction should not make the applicant suffer. In this view of the matter the applicant should be deemed to have continued as a driver, light motor vehicle, upto 11.10.1992, whereafter it was clear that a regular incumbent was being appointed against the post to which an ad hoc employee cannot have a claim. more so when he was considered for regularisation along with others. This continuance of the applicant as driver till 11.10.1992 should not be to the detriment of the duly selected incumbent Shri Suresh Kumar, who started working as a driver consequent upon his appointment by order dated 25.2.1992. This

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should also not prejudice the regularisation of  
Shri Suresh Kumar from a retrospective date. To  
enable the applicant to continue in the post of  
driver upto 11.10.1992, a supernumerary post may  
be created, if no vacancy is available to accommo-  
date the applicant for the said period. The  
request for issue of a direction to the respondents  
that all the vacant posts should be filled at a  
time cannot be issued since it is for the executive  
to decide how many posts to fill and how many not.

7. With the direction in the preceding para-  
graphs the case is disposed of with no order as to  
costs. Since the case is finally decided by this  
order, the MPs filed in the case stand disposed of.

*I.P. Gupta*  
I.P. Gupta  
Member (A) 16/10/92

*Landlly 16.10.92.*  
Ram Pal Singh  
Vice-Chairman (J)