

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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. Babber, 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

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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 u.s.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,

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the respondents appointed the applicant as driver on purely ad hoc and emergent basis for a period of three months or ^{till} 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^e 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. Further-more, 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 employment^{ee} and not a regular employee.

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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-^{ridden} ~~written~~ by a circular. The DPC which met on 14.2.1992 recommended

Shri Suresh Kumar for appointment against a post of driver and the DPC did not say that the appointment 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 applicant 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 circular of 13.1.1992 they invited applications from officials with two years experience. No doubt a mistake made ^{not} by design but by mischance and _h



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 lapse 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 moreso 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

moreso when the mistake was corrected during the pendency of the O.A.

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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 accommodate 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 paragraph 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
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Member (A)
16/10/92

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