

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A. NO.166 of 2004

IN

O.A. NO.2200 of 2003

And

O.A. No.2200 of 2003

New Delhi, this the 31st day of January 2005

**Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)**

R.A. NO.161 of 2004 IN O.A. NO.2200 of 2003

1. Ashok Kumar Atri
S/o B K Atri, C.M. II,
Personal No. 14691580
J-162, Vikas Puri,
New Delhi.
2. Manohar Lal
s/o Late Shri Sardari Lal
C.M. II, P.No.3950,
R/o RZ 26/P. No.131-A,
Gali No. 7, Indra Park Ext., Palam Colony,
Delhi –110 045.
3. Avtar Singh
s/o Late S. Sudurer Singh
C.M. II, P.No.3953,
48/6, C.V.D. Line,
Delhi Cantt. 110010.
4. Bhoop Singh
S/o Late Shri Nathu Ram,
C.M. II, P.No.14691581
H. No.505,
Village Kaithwa, Seelampur,
Delhi- 110053.
5. Jai Karan
S/o Shri Bhagwan Dass,
C.M.-II, P.No.340,
R/o Village Sultanpur,
Dabas, Delhi-110039.
6. Ajeet Singh
s/o Late Shri Tulsi Ram
C.M.-II, P.No. 3955,
R/o CB-21, Narayana, Ring Road,
New Delhi.
7. Chaman Lal
s/o Late Rangi Ram,
CM-II, P.No. 1469152,
R/o Village and PO : Shahhabad,
Mohd. Pur,
New Delhi-110061

8. Vishambar Dayal
 s/o Shri Mansha Ram,
 C.M.-II, P.No.14691623,
 R/o : H.No.537,
 Darya Pur,
 Delhi-110039.

9. Ramsewak
 S/o Shri Chandra Hans
 C.M.-II, P.No.14691657
 R/o : 47/7, C.V.D. Lines,
 Delhi Cantt. – 110010.

10. R.K. Budbola,
 S/o Late Shri Gugan Ram,
 C.M.-II, P.No.14691593,
 R/o : Village Mazri,
 PO : Gubhana,
 Distt. : Jhajjar,
 Haryana.

..... Original Applicants

(By Advocate : Shri Naresh Kaushik)

Versus

1. Union of India, through
 The Secretary,
 Ministry of Finance,
 North Block, Central Secretariat,
 New Delhi.

2. Chief of Army Staff
 Sena Bhawan,
 New Delhi.

3. Officer-in-Charge Records,
 EME Records,
 Secunderabad – 500021.

4. Radhye Shyam Aggarwal,
 T-2505, Inst. Mech (E),
 509, Army Base Workshop,
 Agra.

5. Vijay Singh Yadav,
 T-3814, TCM,
 505, Army Base Workshop,
 Delhi Cantt.

6. Anup Singh
 T-6186, Radar Mech,
 509, Army Base Workshop,
 Agra.

7. G.B. Mishra,
 T-6231, Radar Mech.,
 509, Army Base Workshop,
 Agra.

8. K.D. Thakur
 T-3617, Inst. Mech.,
 505, Army Base Workshop,
 Delhi Cantt.

9. Vinod Kumar Singh
T-6068, Radar Mech,
509, Army Base Workshop
Agra.
10. B.A. Srinivasa Rao,
T-3817, Inst. Mech (IT),
509, Army Base Workshop
Agra.
11. Vir Mohindra Singh
T-2861, TCM (R),
509, Army Base Workshop
Agra.
12. Ram Prasad Sone
T-178, TCM,
509, Army Base Workshop
Agra.
13. Sukhdev Singh Jassal
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14. Kuldip Singh Aleg
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15. Kailash Kumar
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16. Sarvesh Kumar Jarath
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17. Krishna Kumar Soni,
T-248, TCM,
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Agra.
18. Hure
T-2550, Armt. Mech,
506, Army Base Workshop,
Jabalpur.
19. A.H. Jagdale
T-5580, Veh (AFV),
512, Army Base Workshop,
Pune.
20. R. B. Gidde
T-892, Veh (AFV),
512, Army Base Workshop,
Pune.

21. Virendra Prasad Saxena,
T-2083, Inst. Mech (OPT),
509, Army Base Workshop,
Agra.
22. A.P. Sethe (SC),
T-5925, Inst. Mech (OPT),
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23. C.M. Bansode (SC)
T-5954, VM (AFVO)
512, Army Base Workshop,
Pune.
24. Suraj Bhan Meena (ST)
T-6138, Tool Maker,
509, Army Base Workshop,
Agra.
25. D.R. Patil
T-5856, Veh (AFV)
512, Army Base Workshop,
Pune.
26. S.V. Salunkhe
T-5926, Veh (AFV),
512, Army Base Workshop,
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27. K.V. Chavan,
T-5942, VM/AFV
512, Army Base Workshop,
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28. Ashok Kumar Sharma
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29. Narinder Singh
T-1842, Elect (AFV)
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Delhi Cantt.
30. R.B. Bhosale,
T-5952, VM AFV,
512, Army Base Workshop,
Pune.
31. B.K. Satras
T-5964, VM AFV
512, Army Base Workshop,
Pune.
32. S.B. Kakhile
T-5971, VM AFV,
512, Army Base Workshop,
Pune.

33. M.V. Ayachit
 T-5972, VM AFV,
 512, Army Base Workshop,
 Pune. Respondents.

(REVIEW APPLICATION ON BEHALF OF RESPONDENT
 NOS.5, 8, 19, 20, 22, 23, 25, 26, 27, 31 FOR REVIEW OF THE
 JUDGMENT DATED 6.5.2004)

(By Advocate : Shri Vijay Singh Yadav and Shri K.D. Thakur)

OA No.2200 of 2003

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.... Respondents.
(By Advocate : Shri Vijay Singh Yadav and Shri K.D. Thakur)

O R D E R

HON'BLE SHRI SHANKER RAJU, MEMBER (J) :

RA No.161/2004 in OA No.2200/2003

Applicants in OA 2200/2003 had challenged select panel of private respondents for the post of Assistant Foremen and have sought quashing of the same with a direction to prepare a fresh list placing the applicants at an appropriate position in the seniority.

2. In the aforesaid OA despite an opportunity to the private respondents and also the fact that service was effected on the private respondents through official respondents, they have not availed of the opportunity. While proceeded them ex parte, OA was allowed quashing the select list and with a direction to the official respondents to prepare the fresh list after considering the applicants in the light of their due seniority.

3. Being aggrieved thereof, the private respondents filed the RA contending that conclusion of the Tribunal that "we find that the recruitment rules do not bring its ambit MCM as a feeder cadre for promotion to CM-I as well as Assistant Foreman" is not correct inasmuch as recruitment rules promulgated on 1.7.2002 vide SRO 149 wherein in Clause 12, it has been provided that these are two feeder categories for promotion to the post of Chargeman-I and Clause 12 (ii) provides that Master Craftsman with 4 years regular service in grade and who have qualified supervisory test prior to 1.1.1996 are eligible for promotion to Chargeman-I. As such these MCMs would be promoted as Chargeman-I. Accordingly, it is contended that the aforesaid observations of the Tribunal is de hors the statutory rules and as such there is an error apparent on the face of the record. It is further stated that the observations of the Tribunal that letter dated 20.5.2003 by which revised conditions, which have been approved by the Union Public Service Commission, inter alia, includes in clause 'D' MCMs, who have become Chargeman-I with 8 years of regular combined service, are eligible for promotion to the post of Assistant Foreman. As the post of Assistant Foreman, which was newly restructured post, for want of recruitment rules, the principle

that the old rules shall be in vogue is an erroneous observation as the same is dehors the factual position and as such constitutes an error apparent on the face of record. On these grounds, it is stated that the private respondents, i.e., review petitioners are seniors to the applicants in OA with combined regular service and as per rules having been put in the panel, panel does not suffer from any legal infirmity.

4. On the other hand respondents in RA (original applicants) contended that the decision of the Vth Central Pay Commission was forwarded by the Ministry of Defence in their letter dated 20.5.2003 whereby post of MCM and its incumbent's placement in the grade has not to be treated as promotion in higher skilled grade. The order does not suffer from any legal infirmity.

5. We have considered the rival contentions of the parties and perused the material placed on record.

6. It is trite law that if a factual error is committed by the Tribunal, it is graceful to rectify the aforesaid mistake being duty bound as held by the Apex Court in the case of *Surjit Singh and others Vs. Union of India and others*, 1997 (10) SCC 592. As we have decided the OA without considering the recruitment rules of 1.7.2002 and also decided the issue on the premises that there existed recruitment rules for the post of Assistant Foremen, we have no hesitation to recall our order passed in OA 2200/2003 dated 6.5.2004. Accordingly, OA is restored to its original position.

OA 2200/2003

We have also considered the rival contentions of the parties on the merits of the OA.

2. Vth Central Pay Commission in its recommendations in paras 54.45 and 63.302 to 63.202 recommended four grade structure for technical supervisory cadre in Defence Establishment in the ratio of 35:25:25:15 for Chargeman-I, Chargeman-II, Assistant Foreman and Forman respectively. Recruitment Rules for the new grades introduced have to be formed and only then the incumbents should be placed in their grades after fulfilling the criteria prescribed in the rules.

Accordingly, vide order dated 20.5.2003 on restructuring of subordinate staff in

Defence Establishment in implementation of the Vth Central Pay Commission's recommendations, it has been decided by the Ministry that post of MCM shall not be part of the hierarchy and placement in the grade would not be treated as promotion. However, we find that vide SRO No.149/2002, recruitment rules for Chargeman-I have been promulgated whereby apart from Chargeman-II as a feeder cadre MCMs as one time measure who have completed 4 years of regular service in the grade and who have qualified supervisory test prior to 1.1.1996 has to be promoted as Chargeman-I. Accordingly, private respondents were promoted in 2003 as Chargeman-I.

3. Moreover, in the reply, the official respondents in OA have satisfied the eligibility criteria for Assistant Foremen, which is the combined service of Chargeman-I and Chargeman-II but there is no reference to MCM as a feeder cadre. However, as one-time measure, revised eligibility condition was prescribed. According to which, if Chargeman-I, who has been promoted among MCM, and has a combined regular service of 8 years would be considered for promotion as Assistant Foreman. In this view of the matter, it is stated that the action of the official respondents was in accordance with law.

4. On the other hand, respondents counsel relied upon the decision of the Apex Court in the case of ***Parmeshwar Prasad Vs. U.O.I.***, 2002 (2) SCC 145 to contend that administrative instructions can be issued only to fill up the gap in the rules and it is only the authority having competence to make the rules has power to issue revised rules.

5. In this view of the matter, SRO 149 of 2002 has brought into being the recruitment rules for the post of Chargeman-I. As such promotion of private respondents as Chargeman-I cannot be found fault with. However, for the next promotion whereas qualifications were combined service as Chargeman-II and Chargeman-I. However, as Chargeman-I minimum regular service of 3 years is required, the applicants had not completed 3 years of regular service.

6. At this stage, it is relevant to highlight that the respondents themselves while excepting the recommendations of Vth Central Pay Commission decided vide letter dated 26.12.2001 that recruitment rules are to be introduced with

eligibility conditions and only after it one has to be placed in the grade. However, placement of the applicants in the select panel of Assistant Foreman is not in compliance with the decision of the Vth Central Pay Commission in the wake of decision of the respondents not to include MCM as a feeder cadre for the post.

Above conclusion gains support from letter dated 20.5.2003.

7. It is not disputed that recruitment rules for the post of Assistant Foreman are yet to be promulgated on the declaration by the President of India being the competent authority. Accordingly, when the recruitment rules for the post of Assistant Foreman were not in vogue which, *inter alia*, included the eligibility conditions and qualifications, the action of the respondents to get approved from UPSC the revised conditions vide order dated 20.5.2003 is contrary to their own letter of even date. It can not be given effect to as the UPSC is only the approving authority and is not competent to frame any rules or regulations. As the rules for the post of Assistant Foreman have not come into being and declared vide SRO by the President of India, revised conditions cannot be adhered to for promotion by select panel for want of recruitment rules. It is also trite law that the Govt. has power to issue administrative instruction in absence of statutory rules governing the field – such instructions cease to operate as soon as statutory rules came into force as held by the Apex Court in the case of ***M.M. Dolichan and others Vs. State of Kerala and others***, 2001 SCC (L&S) 174.

8. To substantiate the above inference, decision of the Apex Court in **Parmeshwar Prasad** (*supra*), clearly ruled that it is only the authority, having competence to make the rules, has power to issue revised rules. As the revision of rules has not been issued by the competent authority but approved by the UPSC has no sanctity in law. Accordingly, such placement cannot be done unless the recruitment rules are framed in consultation with the Department of Personnel and Training and Union Public Service Commission. Also in the wake of the fact that when the statutory rules for the post of Assistant Foreman are yet to be approved and came into being, the action of the respondents to give effect to the revised eligibility condition as Chargeman-I where MCMs with Chargeman-I combined regular service of 8 years in the grade are eligible for consideration is de hors the

rules. To this extent, no such stand was taken in the earlier counter reply filed in the OA. Though Govt. has every right to amend the qualifications and requirement of the rules, but this should have been done in an appropriate legal manner and by a competent authority.

9. In this view of the matter, select panel prepared by the respondents is not in accordance with law. Thus brings us to the issue of seniority of the applicants in the OA vis-à-vis private respondents and eligibility of the private respondents for promotion, the respondents shall have to examine it. Learned counsel of the applicants has relied upon the decision of the Apex Court in the case of *Ashwani Kumar Singh Vs. U.P. Public Service Commission and others*, (2003) 11 SCC 584, to contend that in the matter of seniority, one who has been appointed to the higher post earlier would be senior. The respondents shall take care the above aspect while complying with the directions.

10. In the result, for the foregoing reasons, we set aside the select panel and direct the respondents to finalise the recruitment rules with eligibility conditions and thereafter to consider the case of the applicants as well as private respondents for promotion as Assistant Foreman with due regards to the seniority as per Rules.

No costs.

S. Raju
(SHANKER RAJU)

MEMBER (J)

31/1/05

/ravi/

V.K. Majotra
(V.K. MAJOTRA)
VICE CHAIRMAN (A)

31.1.05