

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1141 of 2002

New Delhi, this the 24th day of June, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Uday Shanker Ghosh,
S/o Shri R.B.Ghosh,
Console Operator,
P.R.S.Office,
Northern Railway,
I.R.C.A. Building,
State Entry Road,
New Delhi

....Applicant

(By Advocate : Shri B.S.Mahee)

Versus

Union of India through
1. The General Manager,
Northern Railway,

Baroda House,
New Delhi

2. The Chief Commercial Manager,
Northern Railway,
I.R.C.A. Building,
State Entry Road,
New Delhi

....Respondents

(By Advocate : Shri V.S.R. Krishna with
Shri Rajender Khatter)

ORDER (ORAL)

Shri R.K.Upadhyaya, Member (A)

This application has been filed claiming the
following reliefs:

8.1. That this Hon'ble Tribunal may
be graciously pleased to allow this
application and direct the respondents
to consider the case of the applicant
also for appointment as Console
Operator pay scale Rs.1600-2660 with
all consequential benefits as has been
done in case of his junior Shri Girdhar
Gopal.

8.2. That this Hon'ble Tribunal may be
further pleased to direct the
respondents to give consequential
benefits.

R.K. Upadhyaya

3.3. That any other or further relief which this Hon'ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicant."

2. The applicant states that he had been working as Typist but as he was well versed with the computer operation, he was appointed as Computer Operator when reservation work on the Northern Railway was computerised. It is pointed out by the learned counsel for the applicant that the applicant vide order dated 18.10.85 (Annexure-A3) was absorbed as a typist against the post of Console Operator grade Rs.550-750/- by downgrading it in the grade of Rs.330-560/- as per sanction order dated 17.10.85. Learned counsel for the applicant submits that the applicant's name finds place at Serial No.3 whereas his junior Shri Girdhar Gopal who had joined the same post one day later has been shown at Serial No.4 vide Office Order dated 18.10.85 (Annexure-A3). It is further pointed out by the learned counsel for the applicant that Girdhar Gopal had filed O.A. No.2093/95 in this Tribunal which was decided by an order dated 7.10.99 (Annexure-A7). After considering the claim of that applicant Girdhar Gopal, this Tribunal allowed the O.A. and directed the respondents to consider his case for appointment as Console Operator in the pay scale of Rs.1600-2660/- from the due date. The learned counsel further pointed out that the reliefs to said Girdhar Gopal who was junior to the applicant were based on the same order i.e. 18.10.85 (Annexure-A3) in which applicant has been shown senior to Girdhar Gopal. It is the claim of the applicant that the respondents as a model employer should have given the benefits to the senior

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of Girdhar Gopal also following the decision of this Tribunal. However, since it had not been done, the applicant made representation claiming similar reliefs as granted to said Girdhar Gopal, as per his representation dated 29.11.2000.

3. The respondents by their letter dated 10.4.2001 (Annexure- R-xi) have now stated in their counter reply that the benefits have not been given to the applicant because he was not a party in the O.A. No.2093/95 decided on 7.10.99.

4. Learned counsel for the applicant has, however, after consulting the applicant who was present in the court, stated that the letter dated 10.4.2001 (Annexure- R-xi) has not been received by the applicant.

5. The applicant has also filed M.A. No.1050/2002 praying for condonation of the delay, if any. It is stated by the applicant in this application that he filed the O.A. to consider his case for appointment as Console Operator in the pay scale of Rs.1600-2660/- with all consequential benefits as has been done in the case of his junior Girdhar Gopal. It is further stated that as soon as he came to know about the benefits given to his junior Girdhar Gopal, he submitted a representation on 29.11.2000 to the respondents for extending all the benefits given to his junior Girdhar Gopal. The applicant has stated that the respondents neither gave reply to the same nor extended the benefits to him. After waiting for quite sometime, he filed this O.A.

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claiming similar reliefs. There may be some delay in filing the O.A. and the same be condoned and the O.A. be admitted on merits. An affidavit dated 7.5.2002 has been filed in support of the claim for condonation of the delay. The respondents have filed reply in which it has been stated that the applicant had earlier filed an application in this Tribunal vide O.A.No.2554/2000 claiming for promotion to the post of Sr.Console Operator in the grade of Rs.6500-10500/-. This application was disposed of vide order dated 2.4.2002 as withdrawn. In this O.A. No.2554/2000, the applicant as well as Girdhar Gopal were the applicants. Learned counsel for the respondents stated that the applicants having filed an O.A. and having withdrawn, they cannot contest for the same reliefs in the present O.A. He also stated that the present application is barred by limitation as the case of Girdhar Gopal was decided on 7.10.99 and this application has been filed only on 29.4.2002 which is beyond the period prescribed under the Central Administrative Tribunals Act, 1985. However, the learned counsel for the respondents fairly stated that there is no dispute that the applicant was senior to Girdhar Gopal.

5. We have heard the learned counsel for the parties and have perused the record placed before us. In our opinion, the admitted fact is that the applicant is senior to Girdhar Gopal and the same is reflected from the Office order dated 18.10.85 (Annexure-A3) which has also been considered by the Tribunal in its order dated 7.10.99 while deciding the O.A.No.2093/95 filed by Shri Girdhar Gopal.

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7. Considering the fact that the applicant has not been sleeping over his right and has been vigilant, the claim of the applicant cannot be rejected merely on technical ground of delay. Even it cannot be definitely said that there is some delay. In so far as rejection of representation vide order dated 10.4.2001 (Annexure-R-xi) is concerned, it is noticed that the same has been rejected only because the applicant was not a party in O.A.No.2093/95. That ground cannot be accepted as a sufficient reason to deny the applicant's assertion that similar reliefs should be given to him as have been granted to his junior Girdhar Gopal and the same is the main claim of the applicant in this O.A. In this view of the matter, M.A.No.1050/2002 for condonation of delay is allowed and the delay, if any, is condoned.

8. The contention of Shri V.S.R. Krishna, learned counsel for the respondents is that the applicant had filed O.A.No.2554/2000 alongwith Girdhar Gopal for promotion for the post of Sr.Console Operator. The applicant alongwith Shri Girdhar Gopal had withdrawn that O.A. That withdrawal as per respondents disentitles any relief to the applicant in this O.A. Such an argument has to be rejected as the present O.A. is for absorption as Console Operator and not for promotion as Sr.Console Operator. The applicant's claim has been rejected on the sole ground that he was not a party in O.A.No.2093/95. In our view, if the junior person is allowed absorption as a Console Operator, similar benefit should be allowed to his senior on the facts of this case even though he

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was not a party in O.A.No.2093/95. The claim of the applicant is that he should be given the same benefits as have been granted by the Tribunal in O.A.No.2093/95 vide order dated 7.10.99 to his junior Girdhar Gopal.

9. In view of facts and reason stated in the preceding paragraphs, the O.A. is allowed and the respondents are directed to grant the applicant similar benefit of appointment as Console Operator notionally from the date his junior Shri Girdhar Gopal has been so appointed, with all consequential benefits except payment of arrears of pay for the period upto the date of filing this O.A. on 29.4.2002. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.



(R.K. UPADHYAYA)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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