

Central Administrative Tribunal
Principal Bench

OA No. 595/2002

New Delhi this the 12th day of May, 2003

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

Giridhar Gopal
S/o Late Shri Ram Pershal Suyal,
Sr. Concole Operator,
P.R.S. Office,
Central Reservation Office,
I.R.C.A. Building,
Estate Entry Road,
New Delhi.

-Applicant

(By Advocate: Shri S.K. Sinha)

Versus

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Commercial Manager (PM),
Passenger Reservation System,
Central Reservation Office,
I.R.C.A. Building,
Estate Entry Road,
New Delhi.
3. Senior Personnel Officer (T&C)
Northern Railway,
Baroda House,
New Delhi.

-Respondents

(By Advocate: Shri Rajinder Khatter)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Member (A)

Applicant has challenged the following orders:-

- 1) Annexure A-1, Colly dated 3.8.2000 and 4.8.2000 which have purportedly been issued by respondents in compliance of directions of this Tribunal made in order dated 7.10.1999 in OA-2093/1995 whereby applicant has been placed in the panel of Console Operator grade Rs.1600-2660(RPS)/5500-9000 (RSRP) w.e.f. 10.1.1996 with all benefits and placed at serial No.20 at the bottom of the revised panel of Console Operators.
- 2) Annexure A-2 dated 12.2.2001 whereby applicant's representation dated 23.11.2000 against order dated 4.8.2000 has been rejected.

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2. The facts of the case briefly stated ¹⁸ that the applicant, a Typist Grade Rs.260-400 was posted in CPM/OIS w.e.f. 15.10.1985 in Grade Rs.330-560 by down grading the post of Console Operator Grade Rs.550-750 (RS) and operated in Rs.330-560. The post of Console Operator was upgraded to Grade Rs.425-640 and the applicant has continued in the post of Console Operator in the said grade. Applicant has claimed that even though he had been permanently absorbed as Console Operator and his lien in the post of Typist had been terminated, respondents have not accorded him due seniority and denied him opportunity for placement in Console Operator Grade Rs.550-750 (now revised to Rs.1600-2660). The project of computerisation of passenger seat/birth reservation in Delhi area' was established in 1985. According to the applicant, he has been absorbed in the project as Console Operator vide letter dated 17.10.1985 (Annexure A-5). According to him, applicant's claim had been allowed in OA-2093/1995 decided on 7.10.1999 but the respondents have not implemented the directions of the Tribunal correctly and treated him as absorbed as Console Operator w.e.f.: 10.1.1996.

3. Learned counsel of the applicant has contended that respondents have issued correspondance regarding absorption of the applicant as Console Operator w.e.f.: 15.10.1985 against the post of Console Operator which had been created ¹⁸ vide order of 17.10.1985 and that the respondents have erroneously treated the date of absorption of the applicant as Console Operator w.e.f. 10.1.1996 which has

adversely affected his seniority and further chances of promotion.

4. On the other hand, respondents have stated that it had been clearly stated in the order of absorption of the applicant as Console Operator dated 20.11.1985 that his promotion as Console Operator is 'purely on adhoc basis and will not confer any prescriptive right of similar promotion over his seniors in future'. It was also stated that he will retain his lien in Delhi Division. Thereafter the applicant had resumed his duties as Console Operator in Grade Rs.1600-2660/5500-9000 on 8.8.2000 vide Annexure R-V. Learned counsel further stated that applicant does not meet the essential qualification of graduation for appointment as Console Operator as per instructions dated 15.2.1993.

5. We have considered the rival contentions.

6. OA-2093/1995 was allowed vide order dated 7.10.1999 with the following directions:-

"In the result, the OA is allowed. The respondents will consider the applicant for appointment as Console Operator in the pay scale of Rs.1600-2600 from the due date and he will be entitled to all consequential benefits except payment of arrears of pay for the period upto 6.11.95, the date of filing the OA. No orders as to costs".

7. Respondents were required to consider the applicant for appointment as Console Operator from the due date with consequential benefits. Respondents vide the impugned orders have absorbed the applicant w.e.f.

1.1.1996 and allocated him seniority at the bottom of
(A-1 Colly) 16
dt. 3.8.2000. It has been stated on behalf of the applicant
that applicant had been absorbed w.e.f. 15.10.1985 and
as such his name should be interpolated as Console
Operator treating his date of absorption as 15.10.1985.

8. Annexure A-5 dated 18.10.1985 has been issued by
the respondents to the effect that among others applicant
has been absorbed against the 'newly created posts of
Console Operators Grade Rs.550-750 by down grading in
Grade Rs.330-560 w.e.f. 15.10.1985. However, it has
been stated that his promotion on the post of Console
Operator grade is purely on ad hoc basis and does not
confer any prescriptive right of similar promotion over
his seniors in future. In Tribunal's order dated
7.10.1999, it has been stated that respondents had taken
a decision to absorb the applicant in the post of Console
Operator in the intermediate pay scale of Rs.425-640
which was revised to Rs.1400-2300. It had been observed
that retention of applicant's lien in the Typist grade
could not have continued for a long period of several
years. "Thus, for all purposes the applicant became
permanently deployed in the Computer Wing and had been
working in a grade which made him eligible for
consideration for further promotion to the grade of
Rs.1600-2660". It has also been observed that "the
applicant having joined the project since its very
inception and having worked satisfactorily, cannot be
denied his right to be permanently absorbed as Console
Operator in the pay scale of Rs.1600-2660. As regards
the requirement of graduation, it has been observed that

no Recruitment Rules had been indicated to show that the applicant lacked in qualification. Respondents had themselves selected the applicant as Console Operator despite his lower educational qualification, which cannot be held against him at the time when opportunity arrived for appointment against a regular post. It was held that instructions of 1993 regarding qualification of graduation in the post of Console Operator was not applicable to the staff which had already been absorbed as the applicant. Vide Annexure R-XV, respondents have shown the applicant as Console Operator (Grade 1600-2660) w.e.f. 17.2.1987 continuously officiating on a regular basis. Respondents' own documents show the applicant as having been absorbed in the post of Console Operator. Annexure R-1 dated 20.11.1985 indicates that applicant had been absorbed in the post of Console Operator w.e.f. 15.10.1985. This Tribunal has already held that retention of lien for a very long period is meaningless and that applicant could not be denied his right of permanent absorption as Console Operator in the pay scale of Rs.1600-2660 despite the fact that he was not a graduate and that he was eligible for consideration for further promotions.

9. Having regard to the documents issued by the respondents themselves which have been described above as also the order dated 7.10.1999 in OA-2093/1995, we find merit in the OA and hold that respondents have issued arbitrary orders (Annexure A-1 and Annexure A-2) unmindful of the conclusions reached by the court in the

aforestated order as also their own documents. As such, OA must succeed and is allowed in the following terms:

1) Annexure A-1 dated 4.8.2000 is quashed and

set aside.

2) Annexure A-1 dated 3.8.2000 is also

quashed and set aside and directing the respondents to interpolate the applicant's name after serial No.7, i.e., between serial No.7 (Sunita Sharma) and serial No.8 (A.K. Bhattacharya), deeming that applicant had been absorbed on the post of Console Operator on 17.10.1985.

3) Annexure A-2 dated 5.3.2001 is also

quashed and set aside.

4) It is declared that 1993 instructions as

already made clear in Tribunal's order dated 7.10.1999 (Annexure A-3) are not applicable to the case of the applicant.

5) Applicant is held entitled to get notional

increments from the date of his absorption on the post of Console Operator w.e.f. 17.10.1985, till he filed OA-2093/95, i.e., 6.11.1995. Thereafter, he will be entitled for arrears of pay and increments in actual terms.

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6) The above directions shall be complied by the respondents within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.