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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1704/2001

NEW DELHI THIS... 28... DAY OF NOVEMBER '2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Khazan Singh,  
S/o Shri Bhupal Singh,  
O/o Deputy Chief Engineer (Const.)  
Mahavat Khan Road,  
Tilak Bridge, New Delhi

.....Applicant.

(By K.K. Patel, Advocate)

VERSUS

1. Union of India through  
The General Manager,  
Northern Railway, Baroda House,  
New Delhi
2. The Chief Administrative Officer (Const.)  
Kashmere Gate, Delhi
3. Deputy Chief Engineer (Const.)  
Mahavat Khan Road, Tilak Bridge, New Delhi.

.....Respondents

(By Shri VSR Krishna, Advocate)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Khazan Singh, the applicant seeks the following  
reliefs in this OA.

- a) call for the records of the case;
- b) direct the respondents to regularise the applicant in class III posts as clerk-cum-typist or any other relevant group C post from the respective dates the applicant is being utilized as photostat machine operator on adhoc basis as per rules along with all consequential benefits;
- c) set aside and quash the order dated 29.6.2001 respondent No.2
- d) award the costs of the proceedings;



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- e) pass such further order or orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. Heard S/Shri K K Patel and VSR Krishna appearing for the applicant and the respondents respectively.

3. The applicant a scheduled caste matriculate who joined as Bunglow Peon in Western Rly on 18.5.85, was transferred in the same capacity to Northern Rly. on 7.3.86. He was appointed a Machine Operator on ad hoc basis on 21.2.90 and qualified in the test for Photostat Machine Operator on 21.5.91. He earned good entries for his work in 90-91, 93-94, 94-2000 and 2000-2001. He has been continuing in the post since then. He was also granted special pay after the acceptance of the 5th Central Pay Commission's recommendations. He was entitled for regularisation but the respondents have by the impugned order dated 29.6.2001, ordered his reversion, leading to the filing of this OA. Grounds raised in this OA are that:

- i) impugned action is illegal and malafide, and violative of articles 14, 15, 16 & 21 of the Constitution;
- ii) respondents are violating their own orders;
- iii) IREM lays down the regularisation of those who have worked in Class III and the same have been ordered repeatedly;
- iv) the applicant was promoted as Photostat operator only after passing the trade test and he could not have been reverted after years of uninterrupted service;
- v) after a long service of over 18 months, the applicant could not have been reverted without following procedure.

4. According to Sh. Patel, learned counsel, the issues which call for determination are whether the applicant who has been working for long as photostat machine operator, could be regularised as clerk, when the earlier post was abolished and whether the applicant came within the ambit of protective provisions of Railway Board's repeated

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orders according to which after 18 months of officiating service reversion was not permissible. The decision of the Hon'ble Supreme court in the <sup>CASE</sup> ~~cases~~ of Ram Kumar Vs UOI [CWP No. 15863/84 ] and UOI Vs. S.K. Mohanti [SLP (C) No.

7493/90 are in favour of the applicants in the concerned cases and <sup>they</sup> should apply in the present OA also. Though the reversion order has been issued, the applicant is continuing in the post of machine operator, on the basis of the interim relief granted on 13.7.2001.

5. Respondents point out in their reply, duly reiterated by Sh. V S R Krishna, learned counsel, that the applicant's seeking regularisation as a Clerk in Group 'C' in the Construction organisation was not maintainable. Regularisation in the higher scale was contingent upon clearing the prescribed selection process. Construction Organisation where the applicant serves was a temporary outfit where staff from all Division come and work. They are also granted elevation on the exigency of service in the construction organisation, which does not confer any right or claim for regularisation. The staff have their lien only in their parent organisation where ~~along~~ they can claim regularisation. The applicant was only a Khallasi in the Construction Organisation and he should await his turn for promotion in accordance with law. The applicant's demand for regularisation as Clerk in Group 'C', in terms of para 2007 (3) of IREM Vol II, was not applicable, as it related to skilled category of Clerk-cum-Typist. No post of Photostat Machine Operator is available in any grade and those in Group 'D' attending to that work was given a Special pay of Rs.60/- which has since been discontinued from 29.1.2001. Applicant's request therefore cannot be

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accepted. Applicant has not been able to establish any valid ground for accepting his claim. OA therefore calls for dismissal, pleads Sh. Krishna.

6. We have carefully considered the matter. The applicant recruited originally as a Bungalow Peon / Khallasi, in 85 has been working as Photostat Machine Operator since 27.2.90 and had been working since then in that capacity uninterruptedly and was granted ad hoc promotion in the scale of Rs. 950-1500/- after qualifying in the test on 21.5.91. His position and status as Photostat Machine Operator have also been recognised by the respondents while awarding him for excellence. Still on 29.6.2001 by Office Order No. 6011 he is sought to be reverted, holding that there was no nomenclature of Photostat Machine Operator. The only defence the respondents have for their action is that construction organisation, where the applicant is posted, was a temporary organisation where everything is temporary and subject to project needs and that the applicant should await his turn for getting any elevation and regularisation <sup>in his own organisation</sup> after passing the requisite trade test. This is indeed startling as the respondents did not know for more than ten years that there was no post of photostat machine operator and have come up in 2001, with the directions to revert the applicant. This cannot at all be permitted, as Railway Board's repeated instructions over the years codified in IREM and not disputed by the respondents, make it clear that an individual who had officiated for 18 months continuously cannot be reverted in a routine manner. The applicant should get the benefit thereof. That there was no nomenclature like photostat

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Machine Operator , a discovery made after ten years, would not come in the way of his regularisation/adjustment as it could be ordered against the post of Clerk, which also carries the same scale of pay. Respondents also cannot take the plea that the post of clerk cum typist is of skilled category and even if it be described as such the applicant who is a matriculate and who was working as photostat Machine Operator would be able to acquire the requisite typing skill in a period of three to four months. Our findings in favour of the applicant also gains support from the decisions of the Hon'ble Supreme Court in the cases of Ram kumar Vs UOI and UOI Vs S K Mohanti (supra and a few decision of this Tribunal in OA No. 2241/94 filed by Sahja Prakash & Others Vs UOI, decided on 26.7.99 and O A No.2390/96 filed by Hari Gopal & Others Vs UOI & Others decided on 19.11.98, in similar circumstances.

7. In the above view of the matter the OA succeeds and is accordingly allowed. The respondents are directed to consider, regularisation of the applicant against the post of Clerk-cum-Typist, in lieu of the post of Photostat Machine Operator, carrying the same scale of pay, which nomenclature according to the respondents, does not exist now. The applicant will be entitled for all consequential benefits, in accordance with law. This exercise should be completed within three months from the date of receipt of a copy of this order. Interim relief granted on 13.7.2001 is thus made absolute.

S. Raju  
(Shanker Raju)  
Member (J)

No COB.

(Govindan S. Tampi)  
Member (A)

Patwal/