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Central Administrative Tribunal, Principal Bench

Original Application No.2093 of 1995

New Delhi, this the 7th day of October, 1999

Hon'ble Mr.R.K.Ahooja, Member(Admnv)
Hon'ble Mr.Rafiq Uddin, Member(Judl)

1. Girdhar Gopal
S/o Late Shri Ram Parshad Suyal,
Sr.Console Operator,
P.R.S. Office,
Central Reservation Office
I.R.C.A. Building, State Entry Road,
New Delhi

Residential Address:

Quarter No.WZ-1127, Rani Bagh,
New Delhi

....Applicant

(By Advocate - Shri G.D.Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Chief Commercial Manager(C.R.)
Passenger Reservation System,
Central Reservation Office, I.R.C.A.Bldg.,
State Entry Road, New Delhi

....Respondents

(By Advocate - Shri R.L.Dhawan)

O R D E R (ORAL)

By Hon'ble Mr.R.K.Ahooja, Member(Admnv)

The applicant submits that he was initially appointed as Typist on daily wages in 1978 and with effect from 2.4.80, he was regularly appointed as Typist in the grade of Rs.260-400 in the Delhi Division of Northern Railway. The respondents invited applications for selection of suitable personnel for appointment in the Project for computer reservation in New Delhi. The applicant claims that after a screening test, he was duly selected for the post of Console Operator and he has been working as such since

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1985. He further submits that his appointment was against the post of Console Operator in the grade of Rs.550-750 but as persons of sufficient seniority were not available, the said post was down graded to the pay scale of Rs.330-560 and it was against the down graded post that the applicant had been adjusted. Subsequently with effect from 27.11.85, the posts of Console Operator were upgraded to the intermediate scale of Rs.425-640 and the applicant ever since 27.11.85, has continued in the post of Console Operator in the said grade. The applicant states that even though he has been permanently absorbed as Console Operator and his lien in the post of Typist has been severed and he has no longer been shown in the seniority list of typists, the respondents have denied him the opportunity of consideration for the post of Console Operator in the grade of Rs.550-750 (now revised to Rs.1600-2660). He alleges that while the respondents have ignored his claim, they have allowed a number of outsiders who have neither worked earlier in the computer reservation wing nor had been absorbed therein leaving out the applicant who had been working in the computer reservation wing from its very inception and is thus the seniormost console operator.

2. The respondents controvert the claim of the applicant. According to them, the applicant's services were taken on loan from the cadre of typists and the applicant still continues to be borne on the strength of the typists cadre. They further state that the posts of console operator have been declared to be ex-cadre posts and it was decided to make a

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regular selection to such posts as per viva voce test convened on 15/16.11.96. One of the requirement laid down was that the candidates should be graduate. Another requirement was that the applicants' should be in the next below grade. According to the respondents, the applicant was not eligible for consideration for regular selection to the post of console operator in the pay scale of Rs.1600-2660 since he belonged to the typists cadre. He also lacked the essential educational qualification being only a higher secondary pass and further because he did not belong to the next below grade, the substantive grade being Rs.1200-2040.

3. We have heard both the learned counsel and also gone through the records.

4. As rightly pointed out by the learned counsel for the applicant, the letter issued by the CPM/OIS, Northern Railway addressed to the Divisional Railway Manager, Northern Railway (copy at annexure A-1), clearly states that the staff taken on loan for training from the Office of D.R.M. for the computer reservation had shown interest and it had been decided in the interest of continuance of the project to absorb them in the project group against the existing vacancies. The name of the applicant figures at serial no.4 and it is shown that he is being absorbed against the post of console operator. This letter is dated 30.9.85. Annexure A-8 is also a copy of the notice from the office of Chief Project Manager/OIS, Tilak Bridge, New Delhi wherein it has been stated that

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the officials mentioned therein have been absorbed in the organisation against the newly created posts sanctioned vide order dated 17.10.85. The applicant's name also appears therein at serial no.4. It has been stated in the remarks column against the applicant that the post was being down graded from the pay scale of Rs.550-750 to that of Rs.330-560. The concluding part of the notice reads as follows:-

"Their promotion is purely on adhoc basis and will not confer any prescriptive right of similar promotion over his seniors in future".

5. In view of these two letters/notices, it is clear that the applicant's services have been absorbed in the computer wing and he was appointed in the down graded post of console operator. The applicant admittedly has continued to work for the last 11 years in the computer organisation. The respondents themselves stated that they have declared the posts in the computer wing to be ex-cadre posts. The applicant has undergone all the requisite training/courses successfully. The respondents themselves have since adjusted him albeit on adhoc basis in the higher pay scale of Rs.425-640 (now revised to Rs.1400-2300). The scale of Rs.1400-2300 is next below to Rs.1600-2660. The applicant has been working in this pay scale also since 1985.

6. We have been unable to find any mention about the letters at Annexure A-1 and Annexure A-8 in the reply of the respondents. They have merely stated that the dispute regarding absorption of the applicant is under consideration. In other words, they did not

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deny that the decision had been taken to absorb the applicant in the computer wing. We have already noted that not only the applicant was absorbed but was also adjusted in the intermediate pay scale of Rs.425-640 which has since been revised to Rs.1400-2300. Even if the applicant's lien was being maintained in the typist grade, this ~~should~~ not continue for a period of 10 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. We do note that the decision regarding promotion of the applicant to the grade of Rs.330-560 and later to the grade of Rs.425-640 were on adhoc basis. The posts are regularly in the pay scale of Rs.550-750 (now revised to Rs.1600-2660). The posts are considered as ex-cadre posts. As per the statement of the respondents themselves, the project of computer reservation was started on experimental basis but has since come to stay on permanent footing. 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. The only drawback that he has is that he is not a graduate. However, no recruitment rules have been indicated to show that the applicant lacked in qualification and it appears that this requirement is based only on an administrative instruction. Since the respondents themselves have selected the applicant as console operator, even though in the down graded scale despite

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his lower educational qualification, this cannot be held against him at the time when opportunity arrived for appointment against a regular post.

7. Shri Dhawan, learned counsel for the respondents submits that the posts were initially sanctioned on the project side and had since been transferred ~~from~~ the open line and, therefore, these had to be filled in as per the Railway Board instructions dated 15.2.93 whereby the selection was confined only to graduate enquiry-cum-reservation clerks. Further requirement is that only those who are in similar pay scale or those who have rendered two years service in the next below grade, would be eligible for the post. We do not consider that this materially changes the situation so far as the applicant is concerned. As per Annexures A-1 and A-8, the applicant had already been absorbed as console operator way back in 1985. If the posts were being transferred from the project to open line, the staff would also be transferred alongwith the post on "as is where is basis". The instructions cited by the learned counsel for the respondents are of 1993 and would therefore not apply to the staff which have already been absorbed. As already noted by us, the applicant has also rendered nearly ten years service, even though on adhoc basis, in the next scale of Rs.1400-2300. We do not, therefore, find merit in the contention of the respondents that the applicant was ineligible for consideration as console operator.

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25

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8. In the result, the OA is allowed. The respondents will consider the applicant for appointment as console operator in the pay scale of Rs.1600-2660 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 order as to costs.

Rafiq Uddin
(Rafiq Uddin)
Member(Judl)

R.K. Ahooja
(R.K. Ahooja)
Member(Admnv)

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