

Central Administrative Tribunal, Principal Bench

Original Application No. 645 of 1994

New Delhi, this the 9th day of August, 1999

(9)

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

1. Mrs. Charanjit Ghai
2. Mrs. Sunita Sharma
3. Mrs. Anita Kapoor
4. Mrs. Manju Arora
5. Mrs. Usha Sibal
all working as Console Operators
under Chief Commercial Manager
(Computerised Reservation)
Northern Railway, IRCA Building
State Entry Raod, New Delhi

....Applicants

(By Advocate - Shri B.S. Mainee)

Versus

Union of India: through

1. The Secretary,
Ministry of Railways
Rail Bhawan, New Delhi.

2. The General Manager,
Northern Railway,
Baroda House, New Delhi

3. The Chief Commercial Manager,
(Computerised Reservation)
Northern Railway,
IRCA Building,
New Delhi

....Respondents

(By Advocate: Sh. B.K. Aggarwal with Sh. Rajeev Bansal)

O R D E R

By Mr. N. Sahu, Member (Admnv) :-

The applicant is aggrieved by the action of the respondents in regularising the services of unqualified junior staff as Console Operators in the grade of 1600-2660, ignoring the qualifications and seniority of the applicants.

2. The applicants were appointed as Enquiry-cum-Reservation Clerks (in short "ECR") in 1979 and were promoted as Grade-I ECRs in the scale of

1400-2300 with effect from 1.1.84. When the question of filling up the posts of Console Operator in computerised reservation came up for consideration, the respondents took up the ad-hoc workers from different streams because it was a project organisation and the posts were work charged. At the same time, they asked for option of other staff in response to which the applicants had given their option to work as Console Operators. To accommodate the lower level of random pick-up of the staff to man the posts of Console Operators in the pay-scale of 1600-2660, some of the posts were required to be down-graded. However, in the year 1990, eligible candidates were invited to apply for aptitude test for the posts of Console Operators. The applicants applied, appeared in the test and qualified for the same. Such qualified candidates were 10 in number. At para 4.11 of the O.A., it is stated that the ad-hoc persons did not apply for the aptitude test except one Mrs. Meera who appeared and failed in the test. In 1992, these qualified applicants were invited to work as Console Operators. The Railway Administration decided in its meeting on 20.10.92 to fill up the posts of Console Operator on the basis of the selection from amongst all enquiry-cum-reservation clerks only by way of an aptitude test and viva voce test. It was further decided to retain the selected persons as Console Operators and would not allow them to go back to their parent cadre of ECR. On 14.12.92 respondent no.2 invited applications from the staff working on

regular basis from Enquiry and Reservation Clerks for filling up 16 posts of Console Operator and 7 posts of Senior Console Operator. The applicants again opted for this. In the letter dated 4.6.87 at page 43 of the paper book, a new scheme had come into being for the Computerised Passenger Reservation System, Delhi Area providing for five posts of Asstt. Programmers in the grade of 2000-3200 and 13 posts of Console Operators in the grade of 1650-2600. Out of this, five posts of Asstt. Programmers and six posts of Console Operators were required to be filled from the eligible ECRs. M/s CMC, a reputed computer company was asked to conduct a test for the same. The minimum qualification prescribed was graduate preferably with Science and Maths and below the age of 45 years. On 2.3.94, it was decided to make these posts ex-cadre and applications were invited from the eligible candidates for the posts of Console Operators with two years service.

3. As things stood thus, in 1994, the vacancy shown was declared to be only one. When the applicants enquired about their fate and what happened to 15 other posts, they were informed that persons who had been appointed against work charged posts are being regularised and the applicants would not be considered against these posts.

4. The respondents, after notice, submitted that those who had put in long years of service in the project were decided to be continued against the work charged posts till they get the promotions in their

cadre. It is urged that by an order dated 5.1.96, 18 persons were placed in the panel of Console Operator in the grade of 1600-2660 as a result of *viva voce* test held on 16.11.95. Out of the 18 persons, the names of five applicants are found in the list. By an order dated 5.3.97, the applicants were relieved and were directed to report to their parent cadre because they were promoted as Reservation Supervisors in that cadre in the substantive grade of Rs.1600-2660.

5. Learned counsel for the applicant states that the applicants are aggrieved by the order of repatriation. According to him, these applicants should have been absorbed and continued as Console Operators.

6. We have carefully considered the submissions of rival counsel. We notice that the applicants had been promoted as Console Operators in the grade of 1600-2660 by an order dated 5.1.96. They were repatriated as Reservation Supervisors in their substantive cadre on their promotion. The grievance of Shri Maine is that besides 18 persons, people who were retained as Console Operators were unqualified and were not selected by any aptitude test or *viva voce* test which had been done in the applicants' case by M/s C.M.C.

7. It is not understood as to why the applicants had been repatriated back and persons who were selected at random, were retained. Shri Maine articulated very vehemently that the persons who were

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retained were not only unqualified but they had not gone through the aptitude test as well as viva voce test. We will not consider passing order against these people because they are not impleaded as respondents in the O.A. We are only to decide the claims of the applicants. Shri Mainee perhaps was not aware when he argued his case that the Console Operators are ex-cadre posts. These ex-cadre posts have their own limitations and even qualified persons are not attracted to such ex-cadre posts. We dispose of this O.A. by giving the following directions to respondents 2 and 3.

8. As the applicants were qualified and selected and also had experience as Console Operators, there should be no difficulty to continue them as console operators on a permanent basis in the grade of 1600-2660. We direct that the applicants be invited to make a clear option as to whether they would stick on to their repatriated post as Reservation Supervisor or would like to go back to the post of console operator. Two weeks clear time be allowed for exercising the option. At any rate, the option should be exercised within four weeks from the date of receipt of a copy of this order. If they so exercise their option, they shall be allowed and continued as Console Operators in the grade of 1600-2660 and for this purpose the junior most of those unqualified random selectees should yield their places for those regularly appointed and qualified persons. We would do no better than state the law on the subject as held by the Constitution Bench of the Supreme Court in the

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case of State of Haryana & ors. vs. Piara Singh and ors. - JT 1992(5) S.C. 179. Relevant portion of that judgement reads as under:-

"If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

9. In the result, the O.A. is disposed of as above. No costs.

Narasingh Sahu

(N. Sahu)
Member(Admnv)



(D.N. Baruah)
Vice Chairman

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