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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1492/90

New Delhi; Dated 19th September, 1994

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

A.K. Srivastava, s/o Late Shri Asharfi Lal,
Console Operator,
EDP Central, Northern Railway Headquarters,
Baroda House, New Delhi Applicant

By Shri R.C. Toor, Advocate.

Versus

1. Union of India, through General Manager,
Northern Railway Headquarters Office,
Baroda House, New Delhi.
2. F.A. & CAO, Northern Railway Headquarters Office,
Baroda House, New Delhi.
3. Shri K.C. Verma, s/o not known,
Sr. Data Entry Operator,
EDP Centre, Northern Railway,
Baroda House, New Delhi Respondents.

By Advocate Shri O.P. Kshatriya for official respondents and Shri D.S. Mahendru for respondent No. 3.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member (A)

In this application, Shri A.K. Srivastava, Console Operator, EDP Centre, Northern Railway, has prayed that the respondents be restrained from reverting him from the post of Console Operator (Rs. 1600-2300) and regularise him as a selected candidate for that post instead of respondent No. 3 who had allegedly not qualified in the selection test.

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2. From the materials on record, it appears that the promotion to the post of Console Operator is made on the basis of aptitude test and interview. The applicant's case is that the respondent No.2, with whom he was working, held an aptitude test for filling up four posts of Console Operators in which the applicant appeared and secured grade 'B', which was the minimum qualifying grade for selection. Thereafter, respondent No.2 called the candidates including the applicant for interview and thereafter regularly promoted four persons as Console Operators but excluded the applicant vide order dated 30.3.1987 (Ann.-A). It appears that the applicant was not successful in interview and, therefore, was promoted as Console Operator only on ad hoc basis w.e.f. 24.2.87. The applicant contends that the respondent No. 3 who had secured only grade 'C', was, however, regularly appointed against one of the four posts of Console Operators in violation of the rules. Upon a complaint made, the name of respondent No.3 was subsequently deleted from the panel of successful appointees w.e.f. 13.2.89 vide order dated 17.3.89 (Ann.-1). The applicant states that meanwhile, he and another aspirant protested against that illegal selection of respondent No.3 and prayed for their own selection, but the same was rejected without reason vide order dated 29.2.88 (Ann.-B). After deletion of respondent No.3 name from the panel w.e.f. 13.2.89, the applicant states, he again represented on 13.4.89 for his own inclusion, but no action was taken, and instead the respondent No.3 was again empanelled and was regularised as Console Operator

w.e.f. 23.2.87 vide order dated 6.11.89 (Ann.-J), while the applicant himself was only being continued from 24.2.87 (Ann.-H) as Console Operator on ad hoc basis and even being threatened with reversion.

3. The official respondents as well as the respondent No.3 have filed their replies. From Dy. Director CAO, Northern Railway's letter dated 10.4.89 (Ann. A-4) annexed to respondent No.3's reply, it is clear that at the point of time, the aptitude test was held, the eligibility criteria for promotion was grade 'A' & 'B' only vide Railway Board's letter 26/28.3.70 referred to in their letter dated 30.12.87 (Ann.-C), and admittedly respondent No.3 had secured only grade 'C' in the aptitude test. However, before finalising the selection the Dy. Director, CCA, Railway Board appears to have been consulted by the Senior E.D.P.M., Northern Railway on the subject for recommending passing grade. His attention was drawn towards the letter dated 27.1.86 (Ann. A-2) of the Computer Maintenance Corporation which was the authorised agency for conducting the aptitude test, and it was stated that the grade 'A' to 'C' may be considered as 'pass'. Furthermore, it appears from that letter that the Dy. Director, CCA, had considered to issue a letter very soon for considering the grade 'C' as pass and the Railway Board had also issued a letter dated 2.3.87 to this effect for the higher category of posts of Assistant Programmers and a few months later for Console Operators too (letter dated 30.12.87 at Ann. -C). Thus, the official respondents

state that although the respondent No.3 who was admittedly senior to the applicant was reverted by the order dated 17.3.89, he filed a representation upon which the matter was re-considered and having regard to the above facts as well as the satisfactory record of service, it was decided as a special case, not to be quoted as a precedent, to cancel the reversion order and retain him on the panel of Console Operators notified on 20.3.87 and regularise him w.e.f. 23.2.87.

4. We have given this matter our anxious consideration. The respondents also admit that at the time of holding the aptitude test, the respondent no.3 had secured grade 'C' only while the qualifying grade was 'B'. The respondent No.3 was not eligible for being called for interview based on that aptitude test and subsequently regularisation. However, we cannot lose sight of the fact that the CMC which was an authorised agency for conducting the aptitude test, in their letter dated 21.1.86 (Annexure-A2) recommended that the persons securing grades 'A' to 'C' be considered for selection/promotion and on that basis, the applicant was called for interview. Vide letter dated 2.3.87 which was issued before respondent No.3 was regularised w.e.f. 24.3.87, for the higher category of post of Asstt. Programmer, the qualifying level was made grade 'C'. Later on by letter dated 30.12.87, this relaxation was extended to the lower category of Console Operators too. Admittedly, also the respondent No.3 was senior to the applicant and it is not denied that his work was all along satisfactory and keeping all these facts in view and after careful consideration

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of the matter and after full application of mind, the respondents took a considered view to set aside their earlier reversion order and restored respondent No.3 as Console Operator w.e.f 23.2.87 and under the circumstances, we cannot categorise their action as perverse, arbitrary and discriminatory and hence violative of Articles 14 and 16 of the Constitution. Further more, from M.P.No.352/93 filed by the respondents for early hearing, it appears that the applicant though qualified in the aptitude test held on 4.11.86, failed in the interview held on 23.2.87 and lost his right to hold the post of Console Operator on adhoc basis, but by the Tribunal's interim order dated 23.3.90 was directed to be continued and hence his apprehension of being reverted, did not materialise.

5. Having regard to all the facts and circumstances of this case, therefore, we are of the view that we would not be justified in directing the reversion of respondent No.3 to make room for the applicant as prayed for by him because having failed in interview he has no enforceable right to that post of Console Operator. However, ^{as} ~~as~~ he has worked as Console Operator on adhoc basis since early 1987, and there is nothing on record to show that his work was unsatisfactory. What would be just and fair under the circumstances is to direct the respondents to reconsider the applicant's case for regularisation in accordance with extant rules after holding a fresh interview, with the utmost expedition and till that date, to continue him as Console Operator in his existing capacity.

We dispose of this O.A. with the above directions.
No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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