

Central Administrative Tribunal
Mumbai Bench

OA No.785/1998

Mumbai this the 17th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

Sham Sunder Vasant Desai,
R/o 19/Shiv-om Society,
Near Rajshree Theatre,
S.V. Road, Dahisar (E),
Mumbai-400 068.

-Applicant

(By Advocate Shri C.M. Jha)

-Versus-

Union of India & Others

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER

Mr. Shanker Raju, Member (J):

Applicant a retired Senior Console Operator impugns respondents' order dated 29.6.98, whereby his request for stepping up of pay under NBR in comparison to the immediate junior working on ad hoc basis in the pay scale of Rs.6500-10500 has been rejected. Applicant seeks alternate relief of proforma fixation w.e.f. 1.3.93 as well as upgradation in the pay scale of Rs.2000-3200 w.e.f. 1.4.93 and promotion as Senior Console Operator with consequential benefits.

2. At the outset, learned counsel for the applicant made a statement at the Bar that he is not pressing the relief regarding steeping up of pay and proforma promotion w.e.f. 1.3.93, but has sought upgradation w.e.f. 1.4.93.

3. Applicant was appointed as a Console Operator in the pay scale of Rs.1600-2660 after selection and was transferred on deputation to Konkan Railway Corporation in the pay scale of Rs.1600-2660 on 6.12.90. He was promoted as Office Superintendent on 30.5.1991. On 19.6.91 his willingness was sought to work on ad hoc basis as Senior Console Operator in the

pay scale of Rs.2000-3200. He tendered his willingness and sought for proforma fixation and has not shown willingness to come back as he would have lost deputation allowance.

4. One A.D. Chitre, junior to the applicant was promoted on ad hoc basis and was subsequently regularised on 10.1.94 with the result the junior continued to draw more salary than the applicant. Applicant was repatriated from Konkan Railway on 16.12.97 and was ultimately promoted w.e.f. 10.1.94 and pay was fixed in the scale of Rs.2000-3200 from the date of regularisation.

5. Learned counsel stated that by their letter dated 22.3.94 Railway Board have granted upgradation as per the cadre strength w.e.f. 1.3.93 and circulated this through a letter dated 17.4.94. As per the letter the restructuring was made effective upon EDP staff, which inter alia, includes Console Operator as per the Annexure annexed to the Board's letter dated 17.4.94. In this back drop it is stated that the applicant ought to have been upgraded w.e.f. 1.3.93 as Senior Console Operator.

6. In so far as the limitation is concerned, the learned counsel of the applicant stated that as soon as he was repatriated in 1997 due to his ailing condition he sought for voluntary retirement and ultimately stood retired on 14.4.98. It is only after his repatriation in 1997 he had come to know about the upgradation not made effective to his case, he filed the present OA which is not barred by limitation, as by upgradation the applicant would have been promoted w.e.f. 1.3.93 and this would have accrued to him as a right to receive revised pay and allowances and further retiral benefits.

7. On the other hand, respondents denied the contentions of the applicant and stated that in so far as his ad hoc promotion to the post of Senior Console Operator is concerned, though being second seniormost his willingness was asked, but as he was not willing to join and has not foregone his deputation allowance he is not entitled to the proforma fixation without actually joining the post and this is not permissible for ad hoc promotions.

8. Learned counsel for the respondents Shri Masurkar, in so far as the claim of the applicant for upgradation is concerned, contended that in none of the representations he has ever asked the respondents to accord him the benefit of restructuring/upgradation and the impugned order assailed pertains to only stepping up of pay which cannot extend the period of limitation of the applicant and the OA is barred in so far as his relief of upgradation is concerned, as the upgradation having been made effective from 1.3.93 the applicant despite in service till 1998 has not assailed his grievance and rather after retirement challenged the same which is not permissible in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985.

9. It is further stated that the present cadre and the staff position of console stream as per letter dated 25.2.95 no upgradation was available in the console stream but has been made effective only in the data entry stream and as such the applicant who belongs to console stream is not entitled for upgradation.

10. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the statement of the learned counsel for the applicant to forego the

relief of stepping up of the pay, the only issue to be determined is whether the applicant is entitled for upgradation as Senior Console Operator w.e.f. 1.3.93?

11. In so far as limitation is concerned and the objection of the respondents that the applicant has not made any representation seeking accord of upgradation is concerned, we find from the pleadings that after being repatriated the applicant in 1997 had come to know about the upgradation and accordingly he filed this OA on 28.7.98 whereas he retired on 30.4.98. As this upgradation has been denied to the applicant despite Railway Board's letter, which is a continuous cause of action entitling the applicant to pay and allowance and also affecting his retiral benefits in view of the decision of the Apex Court in M.R. Gupta v. Union of India, 1995 (5) SCALE 29 limitation is not attracted. The preliminary objection is, therefore, over-ruled.

12. The contention of the respondents that the upgradation has not been made available to the console stream is concerned, EDP staff as per the letter of the respondents dated 25.2.95 has been made eligible for upgradation and in the Board's letter dated 17.4.94 where cadre review of restructuring of Group 'C' and Group 'D' cadre had taken place one of the beneficiaries is EDP staff and as per Annexure A attached with this upgrdation Scheme EDP staff includes Console Operator. This belies the contention that the upgradation has not been made applicable to the console stream. As the respondents have not upgraded the applicant to the post of Senior Console Operator w.e.f. 1.3.93 as per their own order the same cannot be countenanced.

13. In our considered view applicant is entitled to be upgraded as Senior Console Operator w.e.f. 1.3.93 - the date from which the restructuring and upgradation was made effective with all consequential benefits.

14. In the result and having regard to the reasons recorded above the OA is allowed to the extent, directing the respondents to upgrade the applicant to the post of Senior Console Operator w.e.f. 1.3.93 and in that event he shall also be entitled to difference of pay and allowances and revision of his pensionary benefits accordingly. The respondents are directed to comply with these directions within a period of four months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

Shanta S
(Smt. Shanta Shastry)
Member (A)

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*Order/Judgement despatched
to Applicant .. respondent (s)
on 21.2.1992*

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CENTRAL ADMINISTRATIVE TRIBUNAL
Bombay Bench

RA No.40/2002 in
OA No.785/98

Bombay, this the day of November, 2002

HON'BLE SMT. SHANTA SHAstry, MEMBER(A)
HON'BLE SHRI SHANKER RAJU, MEMBER(J)

S.V.Desai ... Applicant
-versus-
Union of India & Others ... Respondents

O R D E R (BY CIRCULATION)

By Shanker Raju, M(J):

This Review Application is directed against the order passed on 17.6.2002 in OA 785/1998. We have perused the order dated 17.6.2002 and also perused the review application.

2. MA No.753/2002 has been filed for condonation of delay in filing the RA is rejected as we are not satisfied with the grounds taken in the MA.

3. The grounds taken in RA, in our considered view, cannot be countenanced as the attempt of the counsel of the applicant is to reagitate the matter afresh. The scope and ambit of the RA is limited. RA can be allowed if a patent error is apparent on the face of the record. We do not find any error apparent on the face of the record. The present R.A. is not maintainable as per the provisions of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 read with Order 47, Rule (1) of CPC and also in view of the ratio laid down by the Hon'ble Apex Court in K. Ajit Babu & Others v. Union of India & Others, JT 1997 (7) SC 24. The R.A. is accordingly dismissed, in circulation.

S.Raju
(Shanker Raju)
Member(J)

/Rao/

Shanta S.
(Shanta Shastry)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO: 26/2003 IN
ORIGINAL APPLICATION NO: 785/98

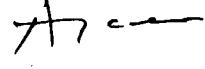
TRIBUNAL'S ORDER

DATED: 29.4.2003

Mrs. A. Srivastava for Shri C.M. Jha counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

Mrs. Srivastava says that the Hon'ble High Court while dismissing the Writ Petition extended the time for implementation of the order passed in the OA. She is not pressing the C.P. at this juncture. She seeks liberty to withdraw the C.P. with permission to file fresh C.P. if cause of action arises. Permission granted. C.P. stands disposed of. Notice on alleged contemners are discharged.


(Shankar Prasad)
Member(A)


(A.S. Sanghvi)
Member(J)

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