

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 20/12 day of May 2011

Original Application No. 1548 of 2005

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Manoj Kumar Khare, son of Late Shri Ram Bahadur Lal, R/o 129-D, Railway College Campus, Railway Colony, Tundla, District Firozabad.

... Applicant

By Adv: Sri Shri A.K. Dubey

V E R S U S

1. Union of India, through its General Manager, North Central Railway, Allahabad.
2. General Manager (P), Northern Railway, Baroda House, New Delhi.
3. General Manager, (Personal) North Central Railway, Allahabad.
4. Senior Divisional Personal Officer, D.R.M. Office, North Central Railway, Allahabad.
5. Divisional Personal Officer, North Central Railway, Allahabad.
6. The Principal, North Central Railway College, Tundla, district Firozabad.

... Respondents

By Adv: Sri Zafar Moonis

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Member (J)

Fixation of pay scale is the issue involved in this case.



2. Briefly the facts of the case are as under:-
 - a. Against the vacancy of Assistant Librarian in the pay scale of ₹ 4000-6000 notified through employment notice dated 01.08.1998, the applicant was selected to the said post and was appointed vide order dated 03.11.1999 (Annexure A-3 to the OA).
 - b. This pay scale, according to the applicant, should have been in the grade of ₹ 5500-9000 (₹ 1400-2660 under pre revised pay scale) whereas, the contention of the respondents is that it is ₹ 4000-6000 (₹ 1200-2040 under pre revised pay scale). In so far as the higher pay scale of Rs. 5500-9000 is concerned it is the case of the respondents that the same is applicable for future recruitment with the revised qualifications and the same is not applicable to the case of the applicant.
3. The order dated 03.06.2003 (Annexure 'A' to the OA) is the letter whereby the applicant was informed about non-applicability and non-entitlement to the higher pay scale of the applicant. The applicant has prayed for the following reliefs:-
 - (i) *To issue a certiorari for quashing of the order dated 03.06.2003, sent by the office of Divisional Railway Manager, North Central Railway, Allahabad to the Applicant.*
 - (ii) *To issue a mandamus directing the respondents to pay to the applicant the grade of Librarian in scale of ₹ 5500-9000 as per recommendation made by the Vth Central Pay Commission report and is also implemented by the Indian Railway.*
 - (iii) *To give the benefit of grade of Librarian to the applicant. From the date of his initial appointment i.e. on 13.11.1999."*
4. The respondents have contested the OA. According to them the applicant was entitled only to pay scale as advertised

and the applicant was selected to the post of Assistant Librarian carrying pay scale of ₹ 4000-6000.

5. The applicant has filed rejoinder affidavit in which he has re-agitated that he is entitled to higher pay scale. According to him the pay scale of ₹ 5500-9000 is applicable. It has been contested by the respondents as under:-

.....Railway Administration has committed mistake by putting the librarian grade in clerk cum librarian only in the said institution (North Railway Inter College) Tundla in the pretext of assistant Librarian therefore it is just necessary and expedient in the interest of justice to correct their mistake. It would be wrong to say that the competent authority of North Railway has no power to change/correct the grade of Librarian in Northern Railway Inter College Tundla with other 10+2 institution in all over India. However, for this correction/change, the principle of the said North Railway Inter College Tundla has written a letter on 15.09.1992 to the Senior Divisional Personnel Officer Northern Railway Allahabad for correction (Annexure no. 7 to the OA) but Railway authority did not consider the matter till date which is discriminatory against the said institution (Northern Railway Inter College Tundla) while in other 10+2 institution there is grade of ₹ 5500-9000, as such it is wrong to say that the competent authority Northern Railway has no absolute power to correct its mistake relating to the salary grade of the Librarian in the aforesaid institution any thing to the contrary is wrong and it is denied."

6. At the time of hearing the applicant has relied upon the decision of Hon'ble Allahabad High Court in the case of *Sahana Mishra Vs. State of UP and others : (2008) 1 ESC 696 (All) (DB) (LB)*. According to said judgment any Deputy Librarian in non-Government aided College possessing the UGC qualification, would be entitled to the designation and scale of Librarian and the change of nomenclature and thus the petitioner therein was entitled for designation of Librarian and the revised pay scale of ₹ 8000-13500 w.e.f. 01.09.2000.

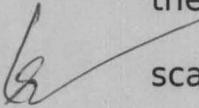
7. In his Supplementary Affidavit the applicant has annexed copy of V Central Pay Commission report relating to revision of

pay scales of Librarian in the school as well as revision of pay scale of Librarian in Kendriya Vidyalaya.

8. Learned counsel for the applicant argued that the case of the applicant is exactly similar to that of one Sri Ram Naresh Yadav whose case is explained in para 4 and 5 of representation dated 15.09.2004.

9. Learned counsel for the respondents has been given opportunity to file their written submissions which, however, was not made available though sufficient time had lapsed.

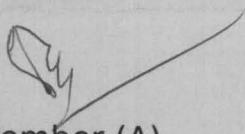
10. Pleadings were perused and the arguments of the applicant heard. The applicant does possess adequate qualification as could be seen from Annexure 1. However, fixation of pay scale is based on the functional responsibilities and not on the basis of individual qualification. This in this case, the pay scale admissible to the applicant is certainly, as per terms of appointment vide order dated 03.11.1999 (Annexure A-3) in the pay scale of ₹ 4000-6000. The introduction of higher pay scale was with reference to higher qualification and for future recruitment. If the applicant possess the same qualification as prescribed for higher pay scale, he cannot be straightway granted the higher pay scale. However, in the event of any other individual with the same qualification or equivalent qualification having been selected after 01.01.1996 and in the event of his (newly recruited) being placed in the pay scale of ₹ 5500-9000 the same would entail an anomalous situation, in that, the pay scale of senior with identical qualification would be lower than that of his junior. In that event the applicant is certainly entitled



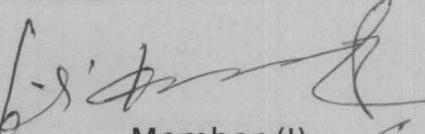
to fixation of pay in the revised pay scale of ₹ 5500-9000. The respondents at that cannot seek refuge on the ground that the applicant was appointed as per terms of appointment and rejected his claim if higher pay scale has been provided for the post of Assistant Librarian or any other re-designation of the said post with higher qualifications.

11. In view of the above the OA is disposed of with the direction to the respondents to verify from the documents whether any other Assistant Librarian with the same qualification as that of the applicant or with equivalent qualification had been inducted in the scale of ₹ 5500-9000 after 01.01.1996 and if so from the very same date as other person had been granted the higher pay scale, the applicant's pay scale should also be revised. If none has so far been appointed in the higher pay scale, the applicant may be informed accordingly.

12. The above order shall be complied with within a period of two months from the date of communication of this order. No cost.


Member (A)

/pc/


Member (J)