

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 7th DAY OF October, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.966 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

*Naim Javed Khan, aged about 42 years, S/o Shri H.U. Khan, R/o 1384,
Khati Baba, Isai Tola, Jhansi.*

..... Applicant

Present for Applicant : Shri S.M. Ali , Advocate

Versus

1. *Union of India through General Manager, North Central Railway, Allahabad.*
2. *Financial Advisor and Chief Account Officer, North Central Railway, Allahabad.*
3. *Divisional Railway Manager, North Central Railway-Jhansi.*
4. *Manoj Khare, General Supervisor Gd. Rs.5500-9000, C/o E.D.P. Central D.R.M. Office, Jhansi.*
5. *Suresh Kumar Rai, General Supervisor Gd. Rs.5500-9000, C/o E.D.P. Central D.R.M. Office, Jhansi.*

..... Respondents

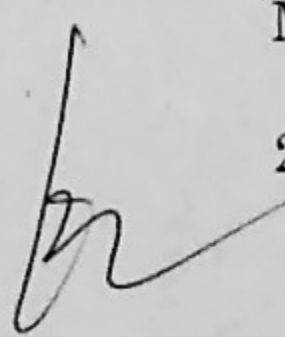
Present for Respondents : Shri A. Tripathi Advocate

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The applicant joined as Electrical Signal Maintainer Grade-II under the respondents. At present, he is working as Senior Signal Maintainer Grade Rs.5000-8000. He has at his credit Post Graduate Diploma in Computer Application, B.Sc. and Diploma in Civil

Engineering. He had appeared and qualified in the written examination for D.E.O., in the Pay Scale of Rs.4500-7000/- in the year 1992, 1994 and 1999 but could not succeed in the viva voce test. According to him, less meritorious candidates were appointed as D.E.O. and the applicant had filed representation dated 15.05.1996 to the E.D.P. Manager for absorption in E.D.P. Centre, Jhansi as D.E.O., (Annexure A-5). Subsequently also, the applicant filed a joint representation along with another individual in 2001 vide Annexure A-7. This was followed by yet another application (Annexure A-8) dated 09.01.2006. Vide Annexure A-10, D.R.M. (P) Jhansi, issued letter dated 24.02.2006 and asked for the option of the applicant in seeking entry in I.T. Cadre as D.E.O. in the said Scale of Rs.4500-7000/- Vide Annexure A-11, the applicant has given his consent for the same. After the formalities have been completed, the applicant was expecting order posting him as D.E.O. As no further communication was received, O.A. No.1359 of 2006 was filed, which was disposed of by Annexure A-14 order, directing the respondents to consider the case of the applicant and decide the same within a scheduled time frame. The case of the applicant was, however, rejected on the ground that applicant has already placed in the grade Rs.5000-8000/- and, as such, he could not be posted as D.E.O., which carried a lower Pay Scale as (Rs.4500-7000). Impugned order at Annexure A-3 refers. Aggrieved by the above order, the applicant has come before this Court in the present O.A.. Applicant has prayed for quashing the Memo vide Order dated 17.04.2007, Annexure A-1, Order dated 23.02.2007 Annexure A-2 and Order dated 16.07.2007 Annexure A-3.



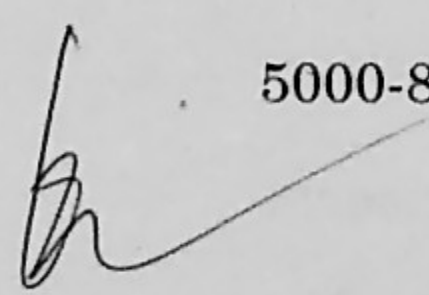
2. Respondents have contested the O.A.. According to them, the applicant could not be considered prior to 2006 as the applicant did not qualify the vivo voce test, though he had qualified in the written test. In so far as the option asked for is concerned, which has been referred to in Para 4.11 of the O.A.. the reply of the respondents is as under:-

"21. That the contents of paragraph no. 4.9, 4.10, 4.11 and 4.12 of the original application are not admitted as stated hence denied. It is however, further submitted that the applicant already working in work study inspector in grade of Rs.5000-8000. Though the grade of D.E.O. is Rs.4500-7000 as such it is not at all possible for the respondents to fill-up the post of D.E.O. 4500-7000 by the person (applicant) who is working in the grade of Rs.5000-8000. It is also relevant to mention here that option form were called from for the said post of D.E.O. from the grade of Rs.950-1500 not from the higher grade. The Ministry of Railway has too the decision to recognizes the staffing pattern of E.D.M.P. Centre (Ex-cadre) and to form a new cadre as information and Technology cadre (Herein after called as I.T. Cadre) w.e.f. 1.4.2005 within administration control of F.A. & C.A.O. vide order dated 17.11.2004. The guide lines regarding the absorption of the staff in new I.T. Cadre is also contained in the said letter further the partial modification of the instruction contained in the letter dated 17.11.2004 have been made by the Railway Board vide letter dated 16.11.2006. It is also worth while to mention here that as per instruction contained in the Railway Board letter dated 17.11.2004 and 16.11.2006, the post of J.E. II in grade of Rs.5000-8000 (R.S.R.P.) in new I.T. Cadre or to be filled up by absorption of existing data entry operator and thereafter the remaining post of J.E.II if any will be filled up by 50% departmental selection and 40% direct recruitment through R.R.B.. It is however, further submitted that the post of J.E. II in new I.T. cadre which lies under the 60% departmental quota will be filled up among regular serving staff of any department in group -C working in grade below of grade of Rs.5000-8000 (R.S.R.P.). It is also important to point out here that with reference to the Railway Board's Letter dated 17.11.2004 and 16.11.2006, the competent authority has accorded the sanction for re-organization of E.D.P. Centre of Jhansi Division in to I.T. Cadre vide letter dated 17.04.2007 were by 12 posts of J.E. II grade of Rs.5000-8000 (R.S.R.P.) has been sanctioned and as per Railway Board guidelines the post of J.E. II in new I.T. Cadre or to be filled up by absorption of existing Data Entry Operator and since 12 employee have already been working in E.D.P. Centre as Data Entry Operator hence after through the absorption as per guidelines of the Railway Board vacancy of J.E. II lines vacant in the newly form I.T. Cadre as such the post of D.E.O. in grade of Rs.5000-8000 is require to be filled up by a

lower grade i.e. 4500-7000 as mention in paragraph no.6(i) in which it is clearly mentioned by the Railway Board that the said post may be filled up by the lowest grade of Rs.4500-7000 as the applicant has already been promoted and working in grade of Rs.5000-8000 as such it is not possible to the respondents to consider the prayer of the applicant to post him in the grade of Rs.4500-7000 in this regard suitable and detail reply has already been giving in the preceding paragraph of the instant counter reply. "

3. The Applicant has filed his Rejoinder Affidavit to the Counter Affidavit filed by the respondents emphatically denying the contents of Paragraph No.21 of the Counter Affidavit.

4. Applicant's counsel strenuously argued that had the applicant's case been considered in its proper perspective at the appropriate time, he would have by now been in a higher pay scale of Rs.5500-9000/-. Even now his promotion in the Pay Scale of Rs.5000-8000/- could not come in his way on change of cadre, as the Pay Scale of D.E.O. stands revised from Rs.4500-7000 to Rs. 5000-8000/- since March, 2005. As such, the contention that the applicant's case for change over from higher pay scale of lower pay scale cannot be considered, is not correct. At least from 28.03.2005, the applicant's pay scale and that under the D.E.O. are comparable. As the option was asked consciously in 2006, that has to be adhered to, especially when the Offer and acceptance have already been completed. Counsel for the applicant also produced a copy of the order dated 28.03.2005, whereby the pay scale of D.E.O. were revised from Rs.4500-7000/-, 5000-8000/-.



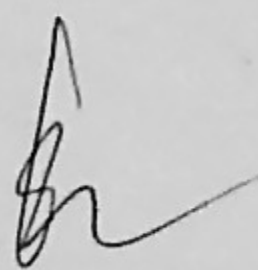
5. Counsel for the respondents submitted that the applicant's case cannot be considered in any event for the period anterior to 2006. Further, as on date, vacancy also does not exist. There are only 12 posts, which stand filled up.

6. Arguments were heard and documents perused. Admittedly, the decision to call for the option by the D.R.M. (P), Jhansi has been taken consciously. In fact, vide order Annexure A-6 as well as Annexure A-9, the applicant has been fairly reported upon, with a view to getting him inducted in the I.T. Cadre. However, as he did not qualify in the vivo voce, he could not be selected by them and certain others have been selected. However, at the same time, we cannot agree with the contention of the applicant that less meritorious candidates were selected. When those who had been appointed as DEO had qualified in the vivo voce, they cannot at any rate be considered to be less meritorious. The only point to be considered is regarding the contention of the respondents that the applicant, at the material point of time was in 5000-8000/- whereas the pay scale of D.E.O. was 4500-7000 and as such his case cannot be considered for posting him lower pay scale. This contention cannot be accepted as, such a situation no longer exists, since, from 22.03.2005 the pay scale of DEO stood revised at Rs. 5000-8000/-. Yet another satellite question to be considered is whether the applicant should be inducted in the I.T. cadre as DEO w.e.f. March, 2005. It is the case of the respondents that there is no vacancy at the respondents. If the applicant has to be inducted from March, 2005, in the absence of

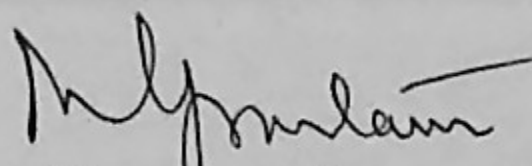
vacancy, it should be only by replacement of the applicant in the place of some other DEO, whereas, no one has been impleaded in the O.A. Without affecting the career prospects of any other serving DEO, if the applicant is prepared to accept bottom seniority, he may be inducted in the next available vacancy. His pay, however, would be protected. None of his seniors could be allowed stepping up of pay, as the applicant has been holding the scale of Pay of 5000-8000 since long.

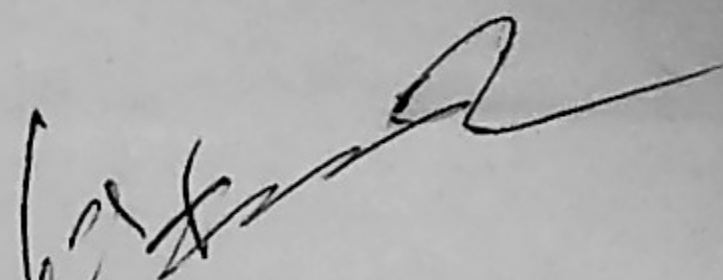
7. The O.A. is, therefore, disposed of with the following directions:-

- (a) The applicant be directed by the Administrative Authorities to give his consent for induction for I.T. Cadre (DEO) in the pay scale of Rs.5000-8000/- subject to the condition that he shall be junior to all the existing DEO his induction shall be only prospective as and when vacancy in the post of DEO arises.
- (b) The Department may communicate in its order, that in the event of inducting the applicant in I.T. Cadre, his pay shall be protected on his changing over from the present post to DEO.
- (c) In case any of the D.E.Os senior to the applicant tries to get monetary benefit on the ground of stepping up of pay at par with the junior (applicant), the same shall not be allowed as the applicant has been enjoying the pay scale of 5000-8000/- since long.



8. The respondents shall address the applicant to communicate his willingness to join the post of DEO with the bottom seniority, as mentioned above, within a period of two months from the date of receipt of certified copy of this order. No costs.


Member-A


Member-J

Sushil