

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 241/08

This the 16th day of December, 2008

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Misra, Member (A)**

Ashutosh Bhatnagar, aged about 38 years son of late Sri A.K. Bhatnagar, r/o 171-A, Summer Vihar Colony, Alambagh, Lucknow.

Applicant

By Advocate: Sri M. Bhargava

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow Division, M.G. Marg, Lucknow.
3. The Senior Electrical Data Processing Manager, Northern Railway, Hazratganj, Divisional Office, Lucknow.

Respondents

By Advocate: Sri Arvind Kumar

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

The applicant has challenged the orders dated 22.3.2007 and 28.3.2007 of the respondent No. 3 as well as his order dated 16.10.2006 repatriating the applicant to his parent cadre.

2. The brief facts of the case are as under:-

3. The applicant was borne originally in the cadre of Assistant Station Master of Northern Railway. During 1999, the applicant applied to be transferred to the computer cell as a Data Entry Operator and was accordingly posted as such on 14.12.99 on adhoc basis. The Railway Board issued a circular on 27.11.2004 for constitution of a new Information Technology (IT) cadre in the Railways. This circular provided for selection to the entry level post (JE-II) against promotion quota from amongst regular serving staff having the prescribed qualification and five years experience as regular employee in any department. This circular was further modified by the Railway Board on 16.11.2006. The revised circular (Ann.A-10) states that



60% of the post of J.E. (IT) Grade II will be filled up by departmental selection and 40% by direct recruitment. As regards departmental selection, it goes onto say that the existing Data Entry Operator (DEOs) working in the pay scale of Rs. 4500-7000 will be considered for absorption / placement in J.E. II Grade (5000-8000) based on scrutiny of service records and confidential reports. In other words, the requirement for having prescribed qualification as is meant for direct recruitment was done away with.

4. The respondents have submitted that the deployment of the applicant in the Computer Cell was purely made on adhoc basis keeping in view the necessity of manning the Data Entry Centre with persons familiar with computer applications; but for regular appointment as Data Entry Operator, selection tests were carried out. Applicant appeared in the selection test held on 13.10.1999 and was unsuccessful. Nevertheless, he was allowed to continue in the Computer Cell and another opportunity was given to him to appear in the selection test held on 6.2.2003. Again the applicant was found unsuccessful. Therefore, it can not be held that he was a regularly appointed Data Entry Operator in the computer Cell. As such, he did not have any right or legal claim to be permanently absorbed in the reconstituted IT cadre. In view of such circumstances, and his unsuitability for permanent absorption, he was repatriated on 16.10.2006 to his parent cadre where he had already got promotion to the higher grade of Rs. 5000-8000. The concessions under the revised circular dated 16.11.2006 were not available to him as he had already been relieved from the Computer Cell by that time.

5. The applicant filed O.A. No. 596/2006, challenging the aforesaid repatriation order dated 16.10.2006 and this Tribunal directed the respondent No. 2 namely Divisional Railway Manager, Lucknow to decide the representation of the applicant dated 1.12.2006. The respondent No. 3 issued the impugned order dated 22.3.2007 rejecting the claim of the applicant for permanent absorption in the IT cadre. The rejection was made on the ground that the applicant had failed in two selection tests and as such without qualifying through a positive act of selection, he could not establish any claim for automatic absorption. The impugned order dated 22.3.2007



clarified that the aforesaid rejection order was passed by respondent No. 2 after applying his mind to the case of the applicant taking into consideration his representation and records available. But the order was communicated by the respondent No. 3 in the aforesaid letter. The applicant filed a W.P. No. 678(S/B) of 2008 before the Hon'ble High Court, Lucknow Bench and the Hon'ble High Court disposed of the petition with a direction that the applicant should avail himself of the alternative remedy. Hence, this application.

6. The applicant has vehemently denied the assertion of the respondents in his Rejoinder Reply and has claimed that he should have been absorbed automatically on the strength of the Railway Board's circular dated 16.11.2006 as he had more than 5 years of experience as Data Entry Operator and should have been considered for absorption purely on the basis of his service records, confidential reports as per the modified selection criteria. Counsel for respondents argued at the time of hearing that this circular was of no avail to the applicant as he had already been repatriated before issue of this circular. Admittedly, the applicant was seeking absorption into the Junior Engineer I.T. Grade II in the scale of Rs. 5000-8000 which is the entry level post in the I.T. cadre. As stated earlier, the circular dated 27.11.2004 says that 50% of the cadre will be filled up by direct recruitment and 50% by selection from amongst regular serving staff in any Department working in grades below Rs. 5000-8000/- with minimum of 5 years of regular service and having qualification as prescribed for direct recruitment. The qualification prescribed for direct recruitment is Post Graduate Diploma in Computer Applications / B.Sc (Computer Science)/ Bachelor of Computer Applications /DOEACC 'A' level course of three year duration or equivalent from recognized university /institute. (Annexure A-9). It is not the case of the applicant that he had the prescribed qualifications. Therefore, he has no case for being recruited against the promotion quota. But he is laying his claim for absorption under item No. 7 of this circular which says that the existing staff in the EDP Centers in the lower grade of Rs. 4500-7000 will be considered for absorption in Junior Engineer Grade II in the re-organized set up of the IT Cadre provided they pass the selection test. A concession / relaxation to the extent of 10% in the standard may be allowed to



them to facilitate their deployment in the new cadre, failing which they will be repatriated to their parent cadre. Since this circular clearly mentions the requirement of passing selection test for Data Entry Operator in the scale of Rs. 4500-7000, before they could be absorbed in the rank of Junior Engineer Grade II, there was no illegality for not considering the case of the applicant for permanent absorption into the IT cadre when he could not pass the selection test. As mentioned earlier, he was already relieved from the Computer Cell by the time revised guidelines were issued on 16.11.2006 on this subject..

7. The other ground taken by the applicant is that the respondent No. 3 was not competent to pass the impugned order dated 22.3.2007. Admittedly, this Tribunal had given a direction to the respondent No. 2 to consider the representation of the applicant and pass a reasoned order. It has been clarified by respondent No. 3 in his letter dated 28.3.2007 that the speaking order was, in fact, passed by the respondent No. 2 but communicated in the impugned letter of respondent No. 3. In view of this clarification, there is no force in the contention of the applicant that competent authority had not passed the impugned order.

8. In the result, we do not see any merit in this application, which is accordingly dismissed. No costs.


(DR. A.K. MISHRA)

MEMBER (A)

HLS/-


(M. KANTHAIAH)
MEMBER (J)
16.12.2008