

30/04/2012

OA No. 556/2009

Mr. C. B. Sharma, Counsel for applicant.

Mr. Anupam Agrawal, Counsel for respondent Nos. 1 & 2.

Mr. V. S. Chatterjee, Counsel for respondent No. 3.

None present for respondent No. 4.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rethore
[Justice K. S. Rethore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 30th day of April, 2012

ORIGINAL APPLICATION No. 556/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Vijay Varma son of Late Shri Hari Prakash, aged about 43 years, resident of 230/14, Sector-23, Pratap Nagar Housing Board, Sanganer, Jaipur and presently working as Junior Engineer Grade II in IT/EDP Centre Headquartered Office, North Western Railway, Jaipur.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Chief Personnel Officer, Office of General Manager, North Western Zone, North Western Railway, Jaipur.
3. Financial Advisor and Chief Accounts Officer, North Western Zone, North Western Railway, Jaipur.
4. Shri R.K.Jain, Junior Engineer Grade I, IT/EDP Centre Office of Financial Advisor and Chief Accounts Officer, North Western Zone, North Western Railway, Jaipur.

... Respondents

(By Advocates:

Mr. Anupam Agarwal - Respondent nos. 1 & 2

Mr. V.S. Gurjar - Respondent no. 3

None present for respondent no. 4.)

ORDER (ORAL)

The applicant has filed this OA against the order dated 13.10.2009 (Annexure A/1) by which respondent no. 4 has been absorbed in IT/EDP Centre in the cadre of Junior Engineer (IT) Grade I w.e.f. 05.10.2009 in the pay band of Rs.9300-34800 with grade pay Rs.4200/- inspite of fact that respondent no. 4 was holding the post of Office Superintendent Grade II in General Branch and cannot be

Anil Kumar

absorbed as Junior Engineer Grade I, as Grade I is a non-selection post from the cadre of Junior Engineer Grade II and also not having qualification for absorption to the cadre of Junior Engineer in IT/EDP Centre.

2. Learned counsel for the applicant argued that the applicant was holding the post of Senior Data Entry Operator in the scale of Rs.5000-8000/- since 1992 but he was not allowed further promotion to the post of Console Operator in the scale of Rs.5500-9000/- because he was posted in the Mechanical Department as Assistant Computer Programmer. The applicant made several requests to the respondents to absorb him in Electrical/Processing Centre. When the respondents not allowed absorption to the applicant as per Railway Board circular, he filed an OA No. 458/2008. That during the pendency of the OA, the respondents passed order dated 05.05.2009 (Annexure A/22) and order dated 11.05.2009 (Annexure A/23) by which the applicant was absorbed in the IT/EDP Centre with the designation of Junior Engineer Grade II w.e.f. 01.04.2005. He further argued that in the meantime, the respondents issued order dated 16.11.2006 (Annexure A/15) and 12.06.2008 (Annexure A/19) regarding reorganization of staffing pattern of EDP Centres.

3. He further submitted that the post of Junior Engineer Grade I is a promotional post from Grade II without any practical test and applicant is due for promotion as Junior Engineer Grade I but the respondents intentionally deprived the applicant and absorbed

Anil Kumar

respondent no. 4 in IT/EDP Centre as Junior Engineer Grade I without procedure as no employee can be absorbed in Grade I. He further submitted that respondent no. 4 also did not have the qualification of Computer system. He belongs to the clerical grade and cannot be absorbed in IT/EDP Centre in the cadre of Junior Engineer Grade I. The applicant represented to the respondents against the absorption of respondent no. 4 but no action was taken by the respondents. The respondent no. 4 was holding the post of Office Superintendent Grade II in General Branch, therefore, he could not be absorbed as Junior Engineer Grade I, depriving the applicant from his promotion. Therefore, he requested that order dated 13.10.2009 (Annexure A/1) be quashed and the applicant be allowed promotion to the post of Junior Engineer Grade I in the scale of Rs.9300-34800/- with Grade Pay of Rs.4200/- with all consequential benefits.

4. On the other hand, learned counsel for the respondents submitted that the Railway Board has issued the directives vide letter No. 2002/AC-II (CC)/37/8 dated 17.11.2004 (Annexure R/1), para No. 7(ii) of which states that staff working on ex-cadre basis in computer centres at Divisions, Workshops, Stores Depots will be considered for deployment in the equivalent grade on request in the new set up. He further submitted that Railway Board vide letter No. 2002/AC-II(CC)37/8 dated 16.11.2006 (Annexure R/2) has allowed to implement the directives of letter dated 17.11.2004 with the revised condition in regards to residency period of 5 years and non mandatory of training. The applicant had joined North Western Railway on

Anil Kumar

03.11.2003 and was posted as Assistant Programmer in Mechanical Branch. He further argued that respondent no. 4, Shri R.K. Jain, was working in ex-cadre capacity as on 01.04.2005 and completed five years in broken spell on 05.10.2009. Therefore, he had been absorbed in IT/EDP cadre on the post of Junior Engineer (IT) Grade I PB Rs.9300-34800 plus Grade Pay Rs.4200 w.e.f. 05.10.2009. He further argued that as per Railway Board letter dated 16.11.2006 (Annexure R/2), acquiring educational/professional qualification was also not mandatory for the existing staff who are working on ex-cadre basis as on 01.04.2005 in IT/EDP centre. Thus the absorption of Shri R.K. Jain in IT/EDP cadre is absolutely correct under the Railway Board's guidelines. He further argued that the applicant has not challenged the letter dated 16.11.2005 (Annexure A/15) by which the policy of reorganization of staffing pattern of EDP Centres was issued. Similarly, he argued that the applicant has also not challenged the policy guidelines issued vide letter dated 12.06.2008 (Annexure A/19) and without challenging policy guidelines, the applicant cannot challenge the absorption of respondent no. 4 because he has been absorbed as Junior Engineer Grade I according to these guidelines. He also stated at Bar that this OA has become infructuous because the applicant as well as respondent no. 4 both are working as Senior Section Engineer since 19.09.2011 in the same scale of pay with same grade pay.

5. Heard learned counsel for the parties and perused the relevant documents on record. Condition No. V(b) of letter dated 16.11.2006

Anil Kumar

(Annexure A/15) regarding reorganization of staffing pattern of EDP Centres provides as under:-

"(b) **Minimum service condition:-** Minimum service for the existing staff for eligibility for absorption in the reorganized cadre has been revised as 5 years. However, staff willing for absorption in reorganized cadre but having less than 5 years service, will be allowed to work in ex-cadre capacity up to 5 years and considered for absorption after completion of 5 years."

Perusal of this letter mentions that the post of OS Grade II is in the scale of Rs.5500-9000/-. It is not disputed that respondent no. 4, Shri R.K. Jain, was working as OS Grade II in the pay scale of Rs.5500-9000/- while the applicant was working as Junior Engineer Grade II in the scale of Rs.5000-8000/-. Thus Shri R.K. Jain was working in the higher pay scale than the applicant. Under the Railway Board's circular dated 16.11.2006 (Annexure A/15) and circular dated 12.06.2008 (Annexure A/19), there is no provision that the employees who are to be absorbed should have the prescribed qualification for that particular post. The applicant has not challenged the circular dated 16.11.2006 (Annexure A/15) and 12.06.2008 (Annexure A/19) which are circulars regarding the reorganization of staffing pattern of EDP Centres. Since Shri R.K. Jain, respondent no. 4, was working in the higher pay scale than the applicant, therefore, respondents have rightly absorbed him on the post of Junior Engineer Grade I. We find no illegality/infirmity in the order dated 13.10.2009 (Annexure A/1) passed by the respondents regarding the absorption of respondent no. 4, Shri R.K. Jain in the IT/EDP cadre as Junior Engineer Grade I w.e.f. 05.10.2009. Moreover, it has not been disputed by the learned counsel for the applicant that applicant as well as respondent no. 4 both are

Anil Kumar

now working as Senior Section Engineer in the same scale of pay with same grade pay since 19.09.2011. Therefore, in our view, the applicant is not entitled for any relief in the present OA.

6. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

AHQ