

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00447/2012

&

M.A.No.315/2013 in OA.No.447/2012

Date of CAV:05.12.2017.

Date of Order :12.01.2018.

Between :

Jaikumar, s/o Narayana, aged 42 yrs,
Designation-Data Entry Operator/A,
NFC, E.C.No.5482, O/o Nuclear Fuel
Complex, ECIL Post, Hyderabad. ... Applicant

AND

1. The Government of India, rep., by its
Secretary, Dept. Of Atomic Energy,
Anushakthi Bhavan, C.S.M.Marg,
Mumbai.

2. The Chief Executive, Nuclear Fuel Complex,
ECIL Post Hyderabad. ... Respondents

Counsel for the Applicant ... Smt..N.Shoba

Counsel for the Respondents ... Mr.V.Vinod Kumar, Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This OA has been filed seeking the following reliefs:

“To declare the proceedings No.9/1/2008-1/R&W/2011/A, dt: 08.12.2011 and the consequential proceedings Ref.NFC/PAR-I/03/59/41, dt:13.01.2012 in re-designating the applicant as Data Entry Operator Grade 'A' as UDC (Upper Division Clerk) with effect from 01.01.1996 as arbitrary, illegal, unjust and unconstitutional and consequently call for the records and set aside the same and the respondent to promote the applicant as per his appointment pursuant to norms in office memorandum dt.13.02.1990 and pass such other and further order or orders as this Tribunal may deem fit and proper in the circumstances of the case.”

2. The applicant submits that he was appointed as Data Entry Operator (DEO) Grade-A under the 2nd respondent on 04.10.1993 in the pay scale of Rs.1150-25-1500/-. The promotion from DEO Grade-A to Grade-B and to higher grades are regulated as per the DOPT OM dated 13.02.1990, which states as follows:

I. For the post of Data Entry Operator Grade-B, : DEO Grade-A, with 6 years regular service in the grade.

II. For the post of Data Entry Operator Grade-C, : DEO Grade-B, with 3 years regular service in the grade.

III. For the post of Data Entry Operator Grade-D, : DEO Grade-C, with 4 years regular service in the grade.”

As per the aforesaid norms, he was to be promoted as DEO Grade-B, C & D.

However, even after completion of 18 years, he was stagnated as DEO Grade-A.

3. It is the contention of the applicant that he submitted a representation on 17.01.2011 to the Chairman, Grievance Committee/Chief Administrative Officer regarding non-implementation of promotion norms. He also submitted Annexure.A-3 representation dated 13.07.2011 for promotion, pay fixation and post classification from the date of appointment. In response to the said representations, the 2nd respondent vide his letter dated 28/29 November 2011 stated that the matter relating to grant of higher pay scale to the post of DEO Grade-B has not been acceded to. Therefore, the grant of pay scale of Rs.4500-125-7000/- (pre-revised) under ACP is in order. With regard to his representation for the next higher pay scale, he was informed that the proposal was turned down. Thus, his representation for promotion/pay fixation and post classification has not been considered by the respondents inspite of repeated representations.

4. While so, the respondents issued the impugned OM dated 8.12.2011 re-designating DEOs in Grade-A as UDCs with immediate effect and integrating them with the post of UDC. The applicant submits that before issuing the said OM, objections were not invited and that the action of the respondents in re-designating DEO Grade-A as UDC is illegal, unjust and unconstitutional and violation of the principles of natural justice.

5. It is also the contention of the applicant that the post of DEO is classified as Non-Ministerial post and the nature of duties is data preparation including Alpha-numeric data entry graphic data entry, voice entry, optical entry etc., whereas the post

of UDC is classified as ministerial. Thus, the post of DEO Grade-A cannot be re-designated and integrated with the post of UDC, as the nature of duties is very different. If the promotion norms for DEOs had been implemented, the applicant would have been promoted as DEO Grade-B in the year 1999 after 6 years of service as DEO Grade-C in 2006. Thus, the action of the respondents in not extending the benefit of promotion, pay fixation and post classification from the date of his appointment is illegal.

6. In their reply statement, the respondents have stated that the applicant joined the Organization as DEO Grade-A on 4.10.1993 as per the conditions stipulated in the offer of appointment dated 21.9.1993. The post classified was "Industrial Workman Non-Technical" which has been accepted by the applicant. These posts are categorized in the auxiliary category of Department of Atomic Energy and therefore promotion to the higher post is vacancy based. The holders of the posts are not eligible for merit promotion on par with Technical/Scientific personnel. Thus, as per the norms, promotion to the next grade of DEO Grade-B is on completion of 6 years of service in the Grade of DEO-A and also with regard to the availability of the vacancy in the grade of DEO-B. As the applicant could not be promoted for want of vacancy, he was granted the first financial upgradation as per the Assured Career Progression Scheme (ACPS) in the scale of Rs.4500-125-7000/- with effect from 15.11.2006. Further, since the post of DEO is an isolated post and could not be considered as a cadre with promotional avenues, the DEOs were made eligible to appear for departmental examination for the posts of Assistant/Assistant Accountant from the year 2003 onwards with a view to increase their promotional opportunities. The

applicant applied for the 15th Centralized Examination for the post of Assistant Personnel Officer during the year 2009 for which the eligibility criteria is UDC/Assistant/Stenographer with certain service conditions. Since the post of DEO was not in the feeder cadre as per the Recruitment Rules for the post of Assistant Personnel Officer, his request for appearing for the above examination was not considered. Since the post of DEOs was isolated and in order to provide promotional avenues, the department had modified the recruitment norms vide Annexure.R-I dated 21.7.2010 making the DEO Grade-A, who have completed 8 years of regular service in the grade and DEO Grade-B who have completed 3 years of regular service in the grade as eligible for appearing in the departmental examination for the post of Assistant Personnel Officer/Assistant Administrative Officer. As the DEOs are only 13 in the entire department, it was decided to re-designate the DEO Grade-A as UDC with certain conditions and a communication to this effect was issued in Annexure.R-2 OM dated 8.12.2011. Accordingly, the applicant was re-designated as UDC with effect from 8.12.2011.

7. The respondents state that no malice can be attributed to the respondents on account of the said re-designation. They have submitted that there is no merit in the OA and prayed for its dismissal.

8. The applicant has filed a rejoinder stating that the Recruitment Rules clearly mentions that promotion from DEO Grade-A to grade-B is not vacancy based and that it is time bound promotion. He also submitted that since the nature of the work of the

DEOs and UDCs are different, these two posts cannot be merged. Respondents have issued proceedings to integrate DEO Grade-A with UDC to cover up their mistake of non-implementation of promotion norms. Further, if the post of DEO is an isolated post then the said post shall be merged with the post of Tradesman (Computers) because the nature of the DEOs job is identical to that of Tradesman (Computers). They have also denied that the post of DEOs come under the auxiliary category. The respondents should have taken action as per DOPT Recruitment Rules and not convert DEOs to UDCs.

9. The respondents have filed an additional reply statement stating that the Department of Atomic Energy has power to decide all matters relating to the personnel under its control as per Para 5 of the Government of India (Allocation of Business) Rules, 1961 and that they are exempted from consulting DOPT which formulates the Recruitment Rules.

10. Heard the learned counsel on both sides and perused the record.

11. The applicant is aggrieved by the action of the respondents in integrating the post of DEO Grade-A with the post of UDC. His main arguments are that the nature of duties of the DEO and UDC are very different and hence the post cannot be integrated. Instead, the respondents ought to have given promotion to the higher grades of DEO as stipulated in the OM dated 13.2.1990. It is also the specific contention of the applicant that promotion to the DEO Grade-B and higher grades is not vacancy based and would be a time bound promotion. Applicant has relied heavily on the Recruitment Rules to show that the promotion from DEO Grade-A to Grade-B is time bound promotion.

12. On the other hand, the respondents have stated that the promotion to the next grade of DEO-B is on completion of 6 years in the service from the grade of DEO and having regard to availability of a vacancy in the grade of DEO-B. As the applicant could not be promoted for want of vacancy, he was granted the first financial upgradation as per ACP in the scale of pay of Rs.4500-125-7000 with effect from 15.11.2006. It has also been stated that the integration of DEOs with the post of UDC has become necessary because the DEO post is an isolated post without promotional avenues in its own cadre. Further, as per the guidelines issued for review of cadres in Government it was suggested to merge these posts with the main administration and accounts cadres to increase the promotional opportunities to these posts.

13. It is pertinent to observe that the applicant contends that he was eligible for promotion to the post of DEO Grade-B in 1999 itself and DEO Grade-C in 2002, and DEO Grade-D in 2006. If these were time bound promotions, as contended by him, he ought to have represented for DEO Grade-B in 1999 itself. He has, however, not produced any evidence of having ventilated his grievance or taken recourse to the remedies available to him under the law at the relevant time. It is only on 13.07.2011 that he has given a representation. As the applicant has placed reliance on the Recruitment Rules, we have perused the Annexure.A-8 Model Recruitment Rules dated 13th February 1990 circulated by DOPT to all Ministries to adopt the Rules with suitable modifications, if any, depending on their peculiar requirements. However, we did not find any mention in these Rules that the promotions are to be ordered on time bound basis without reference to availability of vacancies. The applicant has not produced any other evidence to support his contention. Hence, we hold that there is no force in the pleas raised by him.

14. The applicant has also failed to demonstrate the prejudice caused to him in terms of emoluments, seniority etc. by the integration of DEO Grade-A with UDC.

15. On the other hand, the respondents have pointed out that the integration has been done to provide for career progression to the DEOs and also after taking into consideration the functional requirements and the total strength of the cadre etc. Admittedly, this is a policy decision taken to introduce more promotional opportunities for Data Entry Operators and we do not find sufficient reason to interfere with the policy.

16. In the result, the OA fails and is accordingly dismissed. M.A.No.315/2013 for vacation of interim orders is allowed.

17. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 12th day of January, 2018

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