

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL****CALCUTTA BENCH**

No.O.A.1589 of 2013

Date of order : 08.11.2016

Present : Hon'ble Justice Mr. V.C. Gupta, Judicial Member
 Hon'ble Ms. Jaya Das Gupta, Administrative Member

SHISHIR KUMAR DUTTA**VS.**

**UNION OF INDIA & ORS.
 (ATOMIC ENERGY)**

For the applicant : Mr. K.K. Maity, counsel

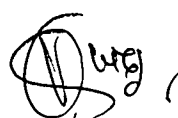
For the respondents : Mr. P. Mukherjee, counsel
 Mr. M.K. Ghara, counsel

ORDER**Per Justice V.C. Gupta, J.M.**

Heard Id. Counsel for the applicant and Id. Counsel for the respondents.

2. The short question for consideration before this Tribunal is whether a Data Entry Operator after acquiring the qualification of M.Sc. in Information Technology will be entitled to be promoted as Scientific Officer.

3. The relevant facts for deciding the aforesaid controversy are that the applicant induced in service as LDC in the year 1990 in the Department of Atomic Energy. He passed M.Sc. in Information Technology after getting permission from the department and this fact is not disputed by the respondent authorities. Thereafter the applicant made a representation to the competent authority praying that he should be promoted to a technical post according to his qualification. His representation was decided on the



basis of a policy of the department dated 09.12.2011 which deals with the cases of LDCs/DEOs which has been annexed as Annexure A-12. The relevant portion of the policy of the department dated 09.12.2011 is extracted herein below:-

"3. Taking into accounts all these aspects it has now been decided that the existing of DEOs in Grade 'A' be re-designated as UDC with immediate effect and the post held by them shall be integrated with the post of UDC, subject to the following conditions:

a) The service rendered with effect from 01-01-1998 or from the date of appointment to the post of DEO Grade 'A', whichever is later, will be counted for the purpose of seniority.

b) There shall not be any financial implication while implementing the re-designation and integration of the post of DEO Grade 'A' with the post of UDC. The ACP/MACP already granted shall not be revised retrospectively. Any monetary benefit payable under the rules shall be effective from the date of this O.M. or from the prospective date of eligibility only.

c) The appointments already effected from the posts UDC/Senior Clerk shall not be reopened. By virtue of condition (a) above, the Data Entry Operators will become eligible for promotion only against future vacancies subject to other conditions as per the existing Recruitment Rules as in the cases of transfer from one unit to other.

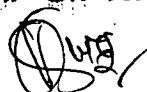
d) The cadre strength of UDC will increase to the extent of number of posts of DEO integrated with it.

4. The re-designation of Data Entry Operators Grade 'A' and integration of the posts with UDC as indicated above is to be implemented by the Units concerned and a compliance report forwarded to the department on or before 30th December, 2011.

5. This issues with the approval of Secretary, DAE."

4. The applicant passed M.Sc. in Information Technology in 2003 and made representation praying for posting to a technical post on 31.05.2004 which is Annexed as Annexure A-8, which is set out below for ready reference:-

"I joined VECC as LDC on 25/10/90. When I joined VECC, I was a B. Com. Graduate with additional technical qualification in Diploma in Computer Application from British Institute. I worked as LDC for 3 years in Accounts Section. On 15/06/94, I was promoted



to Data Entry Operator Grade 'A' in the scale of pay of Rs.4000-100-6000. After getting promotion, within a month DAE scraped off the promotional avenues of Data Entry Operators. I had an opportunity to go to BARC, Mumbai. There I enquired with some staff regarding DEO posts. I came to know from the staff that DEO posts are dropped by DAE and the staff holding DEO posts were given option to convert to technical post as tradesman some 10-15 years back. But this was not known by all other units. So I am neither a technical staff nor an administrative staff for the last ten years. Then, after I took permission from the office to join DOE A level course I joined St. Xavier Computer Centre at St. Xavier College Campus, Park Street for attending the classes conducted by the institute accredited by the DOE. I completed four papers, but could not complete all ten papers due to personal problems. I gave in writing to office for not able to complete the course. Later I thought of joining MCA at IGNOU. I took permission from my office to undergo a six months course with 74% marks and was offered by the University to join the MCA course. In the meantime, Sikkim Manipal University started Master Degree in Computer course MSC(IT)(Master of Science in Information Technology) jointly with Manipal University at Bangalore. After going through the course structure, I felt the M.Sc.(IT) course was more advanced than MCA course of IGNOU because it was covering more of the network related subjects. I applied in the office for getting permission to do the 3 years Master Degree course M. Sc(IT) recognized by the UGC. I got the permission in Feb 2001 and joined the course. I got exemption for 1st Semester because I have completed the six month course for IGNOU, for which I had to appear for the exam only. Now, I have completed my 3 years Master Degree in M.Sc.(IT) from Sikkim Manipal University with more than 75% marks. Therefore, I appeal you to consider my case to a suitable technical post."

5. The decision has been taken on the request of the applicant by the department on 27.09.2012(Annexure A-18) wherein it has been stated that LDC/Data Entry Operator can be promoted to the post of UDC in accordance with the scheme, relevant portion of which extracted herein below:-

"Shri Shishir Kumar Dutta, UDC, CC No.807-573, VECC may please refer to his letter dated 04/01/2012 on the subject mentioned above.

Shri Dutta is informed that his above referred representation was forwarded to DAE, Mumbai for consideration.

DAE, Mumbai has informed the following :

- i) The post 'Data Entry Operator' is being an isolated post and could not be considered as a cadre with promotional avenues in

its own cadre on long terms basis. As per the guidelines issued for review of the cadres in Government, it has been suggested to merge these posts with main administrative and accounts cadres to increase promotional opportunities to these posts.

- ii) Orders issued by DAE at the time of creating Data Entry Operators posts vide ID Note No.5/23/92/BARC/R&D-1/1381 dated 24/10/1994, clearly indicate that these posts are to be treated as auxiliary post and therefore, their promotion is vacancy based and they are not eligible for merit promotion.
- iii) Department has allowed DEOs to appear for the Departmental examination for Assistants/Assistant Accountant from 2003 onwards in order to increase the promotional opportunities to them.
- iv) They have been considered for up-gradation under ACP/MACP in the past.

In view of the above, the request of Shri Dutta has not been agreed to."

Aggrieved by this order, the applicant filed the present original application seeking the following reliefs:-

- "1. A direction upon the respondents to set aside and quash being the Office Memorandum no. 9/1/2008-IR & W/2011/A dated 09.12.2011;
2. An order for quashing of decision dated 25.07.2012 being DAE, ID Note No.9/1/2008-IR & W/233 dated 30.07.2012;
3. An order for quashing of the letter being reference no.VECC/Per-SKD/807-573/1703 dated 27.09.2012 issued by Assistant Personnel Officer VECC, Kolkata;
4. A direction upon the respondent to provide the applicant Technical post according to his qualification;
5. Direction to provide financial benefits as provided to technical assistant;
6. And pass such other order and/or direction/directions as your Lordships may deem fit and proper."
6. Earlier to filing this O.A. the recommendation which has been sent by the department in favour of the applicant was considered and rejected by the Government on 25.07.2012 (Annexure A-6, page 55 of O.A.) which is reproduced below:-

"Reference is invited to VECC ID Note No.VECC/Admn./per-SKD/807-573/1428 dated 18th April, 2012 on the above subject.

2. The proposals have been examined in the Department and following points are submitted for your kind information:

i) The post 'Data Entry Operator' is being an isolated post and could not be considered as a cadre with promotional avenues in its own cadre on long terms basis. As per the guidelines issued for review of the cadres in Government, it has been suggested to merge these posts with main administrative and accounts cadres to increase promotional opportunities to these posts.

ii) Orders issued by DAE at the time of creating Data Entry Operators posts vide ID Note No.5/23/92/BARC/R&D-1/1381 dated 24/10/1994, clearly indicate that these posts are to be treated as auxiliary post and therefore, their promotion is vacancy based and they are not eligible for merit promotion.

iii) Department has allowed DEOs to appear for the Departmental examination for Assistants/Assistant Accountant from 2003 onwards in order to increase the promotional opportunities to them.

(iv) They have been considered for up-gradation under ACP/MACP in the past.

3. In view of the above, it is informed that the request of Shri Shishir Kumar Dutta was not agreed to.

4. Shri Shishir Kumar Dutta may please be intimated accordingly."

7. In this petition, the policy which has been promulgated for Data Entry Operators/LDCs was also challenged in pursuance of which the impugned order has been passed. The relevant rules for the posts of Technical Officer and Scientific Officer in the Department of Atomic Energy have been provided wherein the posts of Scientific Officer and Technical Officer and Technical, Administrative and Auxiliary side have been defined. Necessary recruitment rules provide that these posts should be filled by way of open advertisement. The Scientific Officers/Technical Officers may also be appointed by way of promotion. The recruitment norms for the posts of Scientific Officer SO(C)/Technical Officer TO(C) and above as per

Table No.1 of the said guidelines are extracted below:- may also be appointed by way of promotion.

Table -I

| Sr. No. | Educational qualification | No. of years of relevant experience after obtaining the requisite qualification | | | | | |
|---------|--|---|-------|-------|-------|-------|-------|
| | | SO(C) | TO(C) | SO(D) | TO(D) | SO(E) | TO(E) |
| i) | Ph D | - | - | 0 | - | 4# | - |
| ii) | M.S/M.D. or equivalent | - | - | 0 | - | 4# | - |
| iii) | M.D.S. | - | - | 0 | - | 4# | - |
| iv) | ME/M.Tech.(After B.E. or M.Sc.) | 0 | - | 2 | - | 6 | - |
| v) | B.E./B. Tech. | - | 0 | - | 4 | - | 9 |
| vi) | M.Sc. | - | 0 | - | 4 | - | 9 |
| vii) | M. Pharm. | - | 0 | - | 4 | - | 9 |
| viii) | M.B.B.S.+ relevant P.G. Diploma including D.R.M. or equivalent | 0 | - | 3 | - | 8 | - |
| ix) | M.B.B.S. | 1 | - | 5 | - | 10 | - |
| x) | B.D.S. | 1 | - | 5 | - | 10 | - |

On the strength of this table it has been contended that for Technical Officer(C) the only requirement is M.Sc. However, for the post of Technical TO(D) and TO(E) a further experience of 4 years and 9 years respectively are required after obtaining the requisite qualification. It has been contended by the Id. Counsel for the applicant that as the applicant passed M.Sc. in Information Technology, he is entitled to be promoted to TO(C) on the basis of qualification obtained by him. The norms of special recruitment to the post of TO(C) have been given in the Annexure to Table-I which reads as under:-



| S.No. | Post | Educational Qualification | | Experience |
|-------|--|---------------------------|---|--|
| | TO(C) (Translator in Foreign languages) | 1 | B.Sc./Diploma in Engg. With minimum 60% marks | 2 years in translation and interpretation. |
| | | 2 | Degree in Foreign language with 60% marks. | |
| 2. | TO(C) Library and Information Science | 1 | M. Lib. Inf. Science with minimum 55% marks. | 4 years in responsible capacity in a University Level Library. |
| | | 2 | NET pass or experience | |
| 3. | TO(C) (Safety Officer) | 1 | BE/ME Degree in Safety Engg. Or BE in Chemical/Mechanical/Electrical/Civil Engineering with 60% marks and diploma in Industrial Safety recognized by Central/State Governments. | Factory experience in Industrial Safety desirable. |
| 4. | SO(C) (Radiological Physics) | 1 | M.Sc. with 60% marks | |
| | | 2 | Diploma in Radiological Physics conducted by BARC | |
| 5. | SO(F) (Medical Administrator) | 1 | MBBS | 12 years out of which 3 years as Hospital Administrator |
| | | 2 | Post Graduate Degree in Hospital Administration. OR | 15 years out of which 3 years as Hospital Administrator |
| | | 1 | MBBS | |
| | | 2 | Diploma in Hospital Administration | |

8. The first category of TO(C)s, Translation in Foreign Language required educational qualification of B.Sc./Diploma in Engineering with minimum 60% marks or degree in foreign language with minimum 60% marks with 2 years experience in Translation and Interpretation. 2nd category of TO(C)s, Laboratory and Information Science requires degree of M. Lib. in Information Science with minimum 55% marks and NET pass or experience with additional 4 years experience in responsible capacity in a university level laboratory. The third category of TO(C) is of Safety Officer which requires degree of BE/ME in Safety Engineering or BE in Chemical/

(Signature)

Mechanical/Electrical/Civil Engineering with 60% marks and diploma in Industrial Safety recognized by Central/State Governments with desirable experience in Industrial Safety in a factory. So far as a technical TOD and TOE are concerned, Table No.1 provides 4 years and 9 years experience respectively as stated herein above.

9. The applicant qualified M.Sc. in Information Technology in 2003 and applied for proper technical post as per his qualification in 2004. Hence his case at the most can be covered for the post of TO(C) and not for TO(D) or TO(E) in view of the Recruitment Rules. As per the Recruitment Rules, TO(C)s are of three categories, but the applicant does not have any requisite qualification ~~experience~~ as indicated in the Annexure to the Table-I of the Recruitment Rules. Therefore, he cannot claim any post on the basis of mere qualifying the M.Sc. in Information Technology in terms of the Recruitment Rules.

10. It is not denied that the applicant is working as LDC/Data Entry Operator and in view of the policy of the department he has been granted promotion of UDC to which he was entitled in view of the policy framed by the concerned Ministry/Government. No interference is warranted in the impugned orders of the policy of the department.

11. In view of the above, we do not find any merit in the O.A. Accordingly the O.A. is dismissed. There shall be no order as to cost.

(J. Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member