

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1249/2000
T.A No.

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Date of Decision 13-2-2001

Sh.N.B.Bhatnagar

..Petitioner

Dr.Sumant Bhardwaj

..Advocate for the petitioner(s)

Versus

UOI & ORs

..Respondent

Sh.Gajinder Giri For
respondents 1-2
Sh.Vinod Kumar for R-3

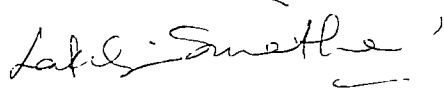
..Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ?. No


(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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Central Administrative Tribunal
Principal Bench

O.A. 1249/2000

New Delhi this the 13th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

N.B. Bhatnagar,
Senior Artists, AFFPD,
57/H, Krishan Menon Marg,
New Delhi-110 011.

... Applicant.

(By Advocate Dr. Sumant Bhardwaj)

Versus

1. Union of India
through Secretary, Ministry of Defence,
South Block, New Delhi.

2. Shri S.K. Sharma,
Director, AFFPD,
H. Block, Krishna Menon Marg,
New Delhi.

3. Shri Fakhray Alam,
Designation Animation Artist, AFFPD,
57/H, Krishan Menon Marg,
New Delhi.

... Respondents.

(By Advocate Shri Gajender Giri for Respondents 1&2,
By Advocate Shri Vinod Kumar for Respondent 3).

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).

The applicant is aggrieved by the order dated 25.8.1999 passed by Respondents 1 and 2 promoting Respondent 3, Shri Fakhray Alam, to the post of Animation Artist in preference to him.

2. The applicant has been working with the respondents since October, 1988 as Senior Artist in the Art Section of the Armed Forces Film and Photo Division(AFFPD). The vacancy in the next higher grade of Animation Artist arose in 1998. The applicant claims that he alone in the Department had the requisite

eligibility and qualifications, as prescribed under the Recruitment Rules of 1991 for promotion to this post which was a selection post. He has alleged that Respondent 3 does not have the requisite qualifications. He has relied on a certificate given by the Director, AFFPD that he had been actively associated with the preparation and execution of Animation work done in the Division since 1982. Dr. Sumant Bhardwaj, learned counsel has contended that Respondent 3 did not possess any experience in the said Animation Work and the respondents had wrongly taken into account the certificate obtained by him which was issued by an organisation which is not even recognised by the Government. He has also submitted that Respondent 3 had not taken advance permission and study-leave from the Administration for pursuing the full time course for which he has obtained the certificate, on which reliance has been wrongly placed by the official respondents in selecting him to the post of Animation Artist. He has, therefore, prayed that the promotion order of Respondent 3 should be set aside with a direction to Respondent 1 to hold a review DPC for consideration of promotion of the applicant who, according to him, is the only eligible candidate in the Department for the post of Animation Artist and he be promoted with retrospective effect.

3. Shri Gajender Giri, learned counsel for the respondents has submitted the relevant DPC proceedings for our perusal. Respondents 1 and 2 have submitted that Respondent 3 who was senior to the applicant in the feeder grade of Senior Artist fulfils the requisite

qualifications, including the training as prescribed in the Rules. The post of Animation Artist is a selection post and promotion is based on merit-cum-seniority. They have stated that after assessment of the performance of the eligible candidates in the feeder grade, including that of the applicant and Respondent 3, the Committee had recommended promotion of Respondent 3 as an Animation Artist. They have further submitted that the applicant cannot challenge the valid promotion order of Respondent 3 without challenging the relevant provisions of the Recruitment Rules.

4. On behalf of Respondent 3, we have heard Shri Vinod Kumar, learned counsel. He has more or less reiterated what has been stated by the official respondents. He has also submitted that Respondent 3 possesses a six months Diploma in Graphics and Animation and, therefore, fulfils the conditions for promotion to the post of Animation Artist. The learned counsel has submitted that even if the certificate issued by the Computer Education Centre dated 8.7.1998 is ignored, still Respondent 3 fulfils the eligibility conditions which have been correctly considered by the DPC. He has, therefore, submitted that the applicant has no case and has prayed that the O.A. may be dismissed.

5. Under the Recruitment Rules, for promotion to the post of Animation Artist, it is provided that a person should have six months practical experience in Animation Work, failing which he will have to undergo six months training in Animation work before appointment to the post. In the reply filed by Respondents 1 and 2,

they have submitted that Respondent 3 who was senior to the applicant in the feeder grade of Senior Artist fulfilled the requisite qualifications, including the training. The training in the field of Animation work which has been relied upon by Respondent 3 is the Certificate issued by the Computer Education Centre, Delhi dated 8.7.1998 in which it has been stated that he has successfully completed the Diploma in Graphics and Animation. Dr. Sumant Bhardwaj, learned counsel had pointed out during the hearing that in this Certificate (copy annexed to the reply filed by Respondent 3), the person issuing the same had even spelt Animation wrongly, which is evident from a perusal of the certificate. Shri Gajender Giri, learned counsel for the official respondents had also contended that even if this certificate issued to Respondent 3 is from an Institution which is not recognised by the Government, that would still be valid and be sufficient. We are unable to agree with this contention that under the Recruitment Rules, any kind of training or practical experience in Animation work received by a candidate, including that from a non-recognised organisation would be sufficient. We also see no force in the submissions made by Shri Vinod Kumar, learned counsel for Respondent 3, that as this was not an essential qualification, the person selected could have also undergone the six months training in animation work before appointment to the post for the reasons mentioned below.

6. We have perused the Minutes of the meeting of the DPC held to consider the candidates for promotion to the grade of Animation Artist in AFFPD. There was one

vacant post in that grade for which three Senior Artists who were available were considered for the year 1998-1999. In paragraph 5, it is mentioned that their experience in the field of Animation Work was ascertained separately from their organisations. As per the certificate issued by the Organisation, they have stated that the position is; (a) Respondent 3, Senior Artist has undergone a course in Animation Work from the Computer Education Centre, Delhi and as such he is eligible for consideration for promotion; (b) the applicant, Senior Artist, AFFPD possesses more than 5 years experience in Animation work and he is also eligible for consideration for promotion; and (c) the third person who was also a Senior Artist, DPR is stated not to possess any experience in Animation Work. From a perusal of the minutes of the DPC meeting, it is, therefore, seen that weightage has been given to the Certificate obtained by Respondent 3 as having undergone a course in Animation work from the Computer Education Centre, Delhi which is not a recognised Institute. The Committee had on the basis of the ACRs obtained by the three eligible candidates graded all of them as "Very Good". They had recommended Respondent 3, who was a Senior Artist for inclusion in the panel for officiating promotion to the grade of Animation Artist. This has been accepted by Respondents 1 and 2 when they had issued the impugned promotion order. It is, therefore, clear that the Certificate issued to Respondent 3 by a Centre which is not an Institute recognised by the Government has been taken into account whereas the experience Certificate issued by Respondent 2 to the applicant on 8.9.1998 does not find a place in the DPC Minutes. In

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the circumstances of the case, we find force in the submissions made by Dr. Sumant Bhardwaj, learned counsel, that the documents placed before the DPC did not reflect the correct facts and position, including the fact that the course in Animation work attended by Respondent 3 is not in a recognised Centre. The stand taken by the learned counsel for the official respondents that the certificate need not be from a recognised Institution cannot be accepted as this would be contrary to the intention of the provisions of the Recruitment Rules. These facts which are contained in paragraph 5 of the Minutes must have weighed with the DPC while making the recommendation of Respondent 3 for promotion to the higher post especially when it is noticed that both the applicant and Respondent 3 have been graded as 'Very Good' on their ACRs.

7. In the facts and circumstances of the case, the O.A. succeeds and is allowed as follows:

(i) The impugned order dated 25.8.1999 is quashed and set aside;

(ii) Respondents 1 and 2 shall hold a review DPC to consider the eligible candidates for promotion to the post of Animation Artist in accordance with the relevant Recruitment Rules, keeping in view the observations made above and taken an appropriate decision. This shall be done within three months from the date of receipt of a copy of this order;

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- (iii) In the meantime in public interest, Respondent 3 may be allowed to continue in the promotion post of Animation Artist till a decision is taken as above;

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(iv) If the applicant is recommended for promotion by the review DPC, he shall be entitled to the consequential benefits in accordance with law.

No order as to costs.

(Govindan S. Tampi)
Member(A)

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)