

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1026/2004

New Delhi this the 24th day of *December 2004*

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. S.A. Singh, Member (A)**

N.B.Bhatnagar,  
Son of Late Sri K.B.Bhatnagar,  
Senior Artists, AFFPD  
Office Address 57/H, Krishan Menon Marg,  
New Delhi-110011  
R/0 9/766, Lodhi Road, New Delhi.

Applicant

(By Advocate Dr.Sumant Bhardwaj )

VERSUS

1. Union of India,  
Through Secretary, Ministry of Defence,  
South Block, New Delhi.
2. Sri.S.K.Sharma,  
Director, AFFPD,  
H- Block, Room No. 56 Krishna Menon  
Marg, New Delhi-110011
3. Joint Secretary (Training) and CAO,  
Ministry of Defence,  
E Block - Hutments, Opp. Sena Bhawan,  
New Delhi.
4. SAO P-2,  
O/o Joint Secretary (Training ) and CAO  
Ministry of Defence, E Block- Hutments,  
Opp. Sena Bhawan, New Delhi-110011
5. Shri Fakhray Alam,  
Animation Artist, AFFPD, Ministry of  
Defence, Room No. 57, H- Block,  
Krishna Menan Marg, New Delhi.

Respondents

(By Advocate Mrs. P .K. Gupta for respondents 1-4 )  
( By Advocate Shri B. B. Raval for respondent 5 )

ORDER

(Hon'ble Shri S.A. Singh, Member (A))

The applicant is Senior Artist in Armed Forces Film and Photo Division (AFFPD) and through this OA is challenging the impugned order dated 17.9.2003 recommending private respondent No.5 for promotion to the panel of Animation Artist in AFHQ and inter service organizations. Applicant pleads that he is only eligible candidate and he should be given this promotion with all consequential benefits and direct the respondents to hold another review DPC pertaining to the position as on 10.8.1999.

2. A vacancy for the post of Animation Artist arose on 1.8.1998. DPC was held on 10.8.1999 to select the eligible candidates in which respondent No.5 was appointed. The applicant filed OA 1249/2000 in the Principal Bench of the Tribunal challenging the appointment of respondent No.5 which was set aside with a direction to respondents to hold review DPC to consider the eligible candidates for promotion to the post of Animation Artist in accordance with the recruitment rules keeping in view the observations of the Tribunal in the judgement. However, in public interest, respondent No. 5 in this OA was allowed to continue in the promoted post. In pursuance of the directions of the Tribunal, review DPC was held on 15.5.2001 in which the appointment of respondent No.5 was confirmed. Applicant filed another OA 3153/2001 which was disposed of in the following terms:-

- "2. In pursuance of the decision of this Tribunal a review DPC has been held. According to the applicant, the same private respondent has again been selected and placed on the panel.
3. During the course of submission, learned counsel for private respondent informed us that the decision of this Tribunal in OA 1249 of 2000 has been challenged by him and the matter is pending in the Delhi High Court.
4. Learned counsel for official respondents stated that the panel that was prepared in pursuance of the review DPC has also expired with the passage of time and another review DCP shall be held in accordance with law.

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5. Keeping in view the said submission that have been made at the bar, learned counsel for applicant states that for the present subject to the decision of the Delhi High Court in the pending writ petition mentioned above, he would not press the present application and if any adverse decision is taken by the official respondents, he will challenge the same.
6. Allowed as prayed. In the face of the aforesaid, OA is dismissed as withdrawn".

In pursuance of this order, the respondents held another DPC on 5.9.2003 and the recommendations for appointment of respondent No.5 to that post were made by this DPC. Aggrieved by this, the applicant has filed the present OA.

3. The main grounds of the applicant is that he is the only eligible person to be considered for promotion to Animation Artist under the Recruitment Rules of 1991 and has the same grading i.e. very good as that of respondent No.5. Moreover, the applicant is only person left in the panel of DPC for considering the eligible candidate for the post of Animation Artist after the observations and directions of the Hon'ble Tribunal in its order dated 13.2.12001.

4. Respondent No.5 is ineligible because the certificate of requisite training has been found by the Tribunal to be non existent, non Government recognized Institute and also that the certificate in Graphics and Animation is not as per the requirement of the RRs. The Tribunal after finding that Respondent No.5 was not eligible quashed the promotion order and directed the respondents to hold review DPC within three months. Review DPC can only go into all material facts which had not been taken into consideration and, therefore, cannot once again recommend the name of the same ineligible person.

5. This was vehemently contested by the official respondents including private Respondent. The official respondents pleaded that private respondent No.5 was eligible as was the applicant and both were considered by the DPCs. The seniormost person i.e. respondent No.5 was selected. Respondent had the right for making their own choice and the Tribunal cannot interfere in a such matter. The validity of the panel recommended by

the review DPC had expired and as such a fresh DPC was held as per the RRs, which again recommended the name of respondent No.5. Moreover, the applicant in the earlier OAs had not challenged the DPC itself. RRs allowed selection of a person who may not have the required Animation work experience but after selection he is allowed to obtain necessary training before being appointed. This is the case of respondent No.5. Hence, his appointment is in order.

6. Counsel for private respondent strongly pleaded that the rejection of certificate of respondent No.5 by the Tribunal has been taken up in the Hon'ble High Court and as such the Tribunal should not hear this matter until it was decided by the High Court. Counsel also pleaded that after selection he had been sent for training by the official respondents to ET&T Corporation Limited ( A Govt. of India Enterprise ) and that this training met the requirement of the RRs and as such his appointment is in order. Further the applicant is only a matriculate whereas he is a holder of a Degree in fine Arts and a full fledged course of five years. Respondent No.5 has been selected and has been sent to training by the official respondents for which they have paid the fees. Hence, he was fully eligible.

7. We have heard the learned counsel for the parties and gone through the documents placed on record. The basic facts are not contested. Respondent No.5 was appointed to the post and allowed to continue in public interest after the promotion had been quashed by the Hon'ble Tribunal. The official respondents accepts that respondent No.5 and applicant are both eligible but respondent No.5 being senior has been promoted. The basic contention of the applicant is that respondent No.5 has been wrongly selected because he does not have the required essential qualification for appointment under the RRs. Moreover, his earlier certificate was set aside by the Tribunal on the ground that the same had not been issued by an Institute recognized by the Government and even today respondent No.5 is not eligible as the certificate he obtained from ET&T was not

recognized by any Govt. organization. The applicant, on the other hand, has submitted that he has experienced with the preparation and execution of animation work from 1982 onwards and thus he meets the requirement of RRs as per the experience certificate given by the Director, AFFPD vide Ann.A/10 and hence he was fully eligible.

8. The short question before the Tribunal for consideration is does respondent No.5 meets eligibility criteria under the RRs for appointment to the said post. The RRs notified on 17.5.1990 are placed as Annexure R-1 to counter reply. In columns 8 and 9 under educational qualifications they read as under:-

Educational and other qualifications required for direct recruits.	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.
(i) Degree or equivalent in Fine Art/Commercial Art/Sculpture from a recognized Institution/University	Age No Educational Qualification No.
(ii) 3 years practical experience in Animation work Geographical or Architectural Modelling to specified scales in different media.	But for the post of Animation Artist the person should have 6 months practical experience in Animation work failing which he will have to undergo 6 months training in animation work before appointment to the post
Note 1 : Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.	
Note 2: The qualification regarding experience in relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Scheduled Castes and Scheduled Tribes. If at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.	
Desirable (i) Knowledge of motion picture technology.	
(ii) Experience in layout and designing of publicity materials and printing of publications.	

9. The averment of the respondents is that as per the condition of the RRs they have a right to select a person who is otherwise eligible for promotion as Animation Artist subject to the condition that he will have to undergo 6 months training in Animation work before appointment to the post. In the case of respondent No.5 he was otherwise eligible and hence he was selected. He was sent for training in Animation work at ET&T Govt. of India Enterprise before his appointment. The duration of this course is six months and it could be completed in three months in fast track by attending six days a week. It is not for the Tribunal to judge whether the respondent No.5 meets requirement of RRs or not which is entirely left for expert body to judge. The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgement over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.

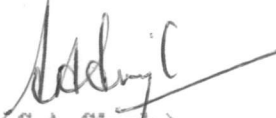
10. We have heard the learned counsel for the parties and have gone through the documents on record. It is not contested by the applicant that respondent No.5 is senior. The only averment of the applicant is that he was ineligible for consideration for the post of Animation Artist because he does not fulfill the conditions and other qualifications for the post. Further the certificate of respondent No.5 was ~~not~~<sup>d</sup> found to be not valid in the earlier judgement of the Tribunal in OA 1249/2000, hence his selection should be set aside.

11. We cannot agree with the arguments of the applicant that respondent No.5 does not possess the qualification for selection of Animation Artist. From a plain reading of the rule reproduced in para 8 it is clear that a person who does not have six months practical experience in Animation work can be selected subject to the conditions that he will undergo six months training in Animation work. In the case of respondent No. 5 the



respondents themselves have sent respondent No.5 to training course in ET&T, a Govt. of India Enterprise. We agree with the respondents that it is not for us to judge the suitability of the contents of this course. Suffice to say that the course is found to be acceptable by the respondents and is from a Govt. of India Enterprise for which the respondents have paid the fees. The letter of the ET&T merely states that the course is not recognized by AICTE and not that ET&T is not recognized by the Govt. of India. In fact ET&T is a Govt. of India Enterprise. The Hon'ble Tribunal in its judgement in OA 1249/2000 dated 13.2.2001 has held that the certificate issued to respondent No.3 was from an organization which is not even recognised by the Govt. and as such the certificate could not be accepted. ET&T is a Govt. of India Enterprise and as such certificate issued by it would be from a Govt. recognized institution. It is not necessary that the course should also be recognized by AICTE as there is no such requirement in the Recruitment Rules.

12. In view of the foregoing we find the OA without merit and according it is dismissed. No costs.

  
(S.A. Singh)  
Member (A)

  
(M.A. Khan)  
Vice Chairman (J)

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