

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2701/92

New Delhi this the 4th day of December, 1997.

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Zile Singh Yadav,
S/o Shri Sher Singh Yadav,
H.No. RZ-339, Kailashpuri Extn.,
Opposite Nasirpur Primary School,
New Delhi-110045.

...Applicant

(By Advocate Shri Surat Singh)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. Director General, EME
Army Headquarters,
New Delhi.
3. Officer Commanding,
Vehicle Depot Workshops EME,
Delhi Cantt-110010.

...Respondents

(By Advocate Shri K.R. Sachdeva)

ORDER (ORAL)

(HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)):

This application is filed against the action of the respondents in not forwarding his application to outside posts. For post of Senior Technical Assistant (Electronics) in the grade of Rs.2000-3200 against an advertisement he applied through proper channel. His application was turned down on the ground that no Govt. order exists for forwarding of application for employment elsewhere. The applicant again applied for the post of Senior Chageman in the grade of Rs.1400-2300 under the same respondents and this application was also turned down without being forwarded. His application for no objection certificate (NOC for short) for enabling him to apply for a post of Junior Engineer in the Haryana State

Electricity Board in the pay scale of Rs.1640-2900 was also turned down and respondents declined his request on the ground that there was no provision to issue NOC for employment elsewhere. Same thing happened when he applied for the post of Permanent Commission and Short Service Commission in the Indian Air Force. Aggrieved by these successive denial of opportunities to him, the applicant has prayed for setting aside the order refusing him NOC and also for a direction to the respondents to forward his application through proper channel for the senior post with a NOC. By an interim order the respondents were directed to consider the request of the applicant which might be pending for consideration or which may be made by him during the pendency of the OA in accordance with the Government instructions referred to in the order.

15

2. The respondents reiterate their position that no provision exists for forwarding the applications beyond the scope of their internal departmental circular dated 6.11.65 (Annexure R-1) and they aver that they have followed the instructions strictly. In the aforesaid circular it is stated that "In respect of scientific and technical personnel applications will be forwarded for outside posts twice a year, even if they are holding permanent posts, provided there is no shortage in the specific cadre or group to which the individual officer belongs." The respondents, therefore, have taken the plea that the allegation of denial of opportunity is untenable as the applicant has no legal right to ask for forwarding of his application directly to another department. They have also stated that he has not been deprived of his legitimate rights of further promotions. As far as departmental promotion is concerned, he is only entitled to it as per the existing rules and regulations of the department.

h

Respondents contend that when he has voluntarily accepted a permanent appointment to a regular service, which offers him the chance of an honourable career with prospects of earning promotion on merits, he is under a moral obligation to devote his energies whole heartedly to the performance of his duties in that post and not to divide his attention and efforts in search for employment elsewhere. He cannot complain of hardship or harsh treatment only because his application for any other post had been withheld as per the rules. The specific ground on which the respondents have declined to forward his application and also issue a NOC was that there was a shortage of Instruments Mechanics in the corps of EME and, therefore, his application was turned down by the Army Headquarters. In support of the question of shortage of the cadre, the respondents have enclosed a letter dated 21.12.92 of the Headquarters Technical Group EME Delhi Cantt (Annexure R-II).

16

3. Learned counsel for the applicant concedes that it might be possible that the posts for which he had applied for might have been filled up by now. He also informs that in compliance of the interim directions of the Tribunal the respondents had in fact forwarded two applications to outside posts pending the disposal of this OA and submits that these applications are still pending consideration.

4. Learned counsel for the respondents, however, submits that the Tribunal has to take into account the overall policy guidelines in regard to the question of forwarding of applications. It is for the respondents to decide to what extent the public interest will be served in forwarding such applications keeping in view the shortage in the posts and

h

also organisational needs. He submits that on the one hand there is ban on recruitment and on the other there is a shortage and in the event of applicant's selection to any outside post the respondents will be in great difficulty in operating this post of Instrument Mechanic in the EME Workshop where he is working. In order to have a closer consideration into this, we looked into the actual position of shortage vis-a-vis ban on recruitment. In the aforesaid letter dated 21.12.92 (Annexure R-II) it is stated that there is acute shortage of the Instrument Mechanics in the Corps of EME as a whole and the respondents have detailed the authorised strength and the actual persons holding posts against the strength and the deficiencies in the cadre. It has been stated further that if the applicant who was holding the solitary post of Instrument Mechanic in VDW, Delhi Cantt is selected and relieved for taking employment elsewhere, the resultant vacancy cannot be filled up due to the existing ban on recruitment. Besides this, it is also made clear that the transfer of Instrument Mechanics from one establishment to another to fill up deficiencies is also out of question as Instrument Mechanics being industrial personnel are borne on the unit roster and are not subject to transfer liability. This in substance is a real reason for applying to provision of general policy circular of the respondents dated 6.11.65 at Annexure R-1.

5. We have considered this aspect, with due concern. Taking into account the overall requirements of policy as laid down in Annexure R-1 for forwarding the application in the Scientific and Technical categories the respondents cannot ordinarily be faulted if they do not forward applications in respect of the personnel where there

h

18

is a shortage in the specific cadre or group to which the individual officer belongs. In the instant case it is admitted position by their own letter dated 21.12.92 that the authorised strength of VDW is only one against which the applicant is holding the post. The ban on recruitment is not as though there is a ban even if it is desired to fill up vacancies ~~that~~ had occurred in the normal course due to resignation, retirement or death or dismissal of the incumbent of the post unless it is specifically stated so, which would imply that vacancies cannot be filled up at all. No such averment has been made by the respondents in their reply. There can be ban on fresh recruitment against newly created posts where there is addition to the sanctioned strength. Here the authorised strength is one and there can be no ban on recruitment if vacancy arises for one reason or the other and there is no addition to the staff strength as a result of filling up of vacancy. Hence, if applicant applies for another post and selected, the respondents would be free to fill up the vacancy as per rules. The respondents have not shown how this cannot ^{done} be under any Rule or instruction. We are, therefore, of the view that the reasoning as shown by the respondents in their letter *ibid.*, as mentioned in this particular case, cannot be a valid ground for refusal to forward of applications within the framework of the departmental circular dated 21.12.92 (Annexure R-1).

6. In the light of this we direct the respondents to consider forwarding the applications, if any, pending with the

h

respondents for outside posts in terms of their own instructions dated 21.12.62. With this direction, this application is disposed of. There shall be no order as to costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

K. Muthukumar
(K. MUTHUKUMAR)
MEMBER (A)

'Sanju'