

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 728/99

Dated: 4.2.2000.

D.P.Gupta Applicant.

Mr.Suresh Kumar Advocate for
.Applicant.

Versus

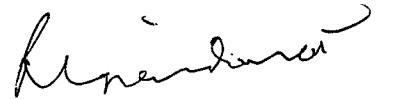
Union of India & Anr. Respondent(s)

Mr. R.K.Shetty Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?
- (3) Library?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 728/99.

Friday, this the 4th day of February, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

D.P.Gupta,
Flat No.198,
Type - IV, Ist Floor,
Central Govt. Staff Quarters,
Wadala,
Mumbai - 400 031.
(By Advocate Mr.Suresh Kumar)

...Applicant.

Vs.

1. Union of India through
The Secretary,
Ministry of Surface & Transport,
Transport Bhavan,
1, Sansad Marg,
New Delhi - 110 001.

2. Director General of Shipping,
Jahaz Bhawan, Ballard Estate,
Bombay - 400 001.
(By Advocate Mr.R.K.Shetty)

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant is praying that he may be considered for regular promotion or ad-hoc promotion for the post of Shipping Master. The applicant has alleged in the OA that when the post of Shipping Master is vacant, he being the seniormost should have been considered for ad-hoc promotion or at least placed in-charge for looking after the current duties of Shipping Master, but instead a junior officer viz. Assistant Director has been asked to look after the duties of Shipping Master in addition to his own duties. The respondents have filed

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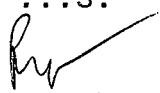


reply opposing the application. We have heard both the learned counsels for the parties regarding admission and interim relief.

2. The applicant claims to be the seniormost Dy. Director or Deputy Shipping Master in the Department. Admittedly, the post of Shipping Master has fallen vacant. But, according to respondents the previous incumbent Mr.S.Berguzar has gone on deputation and therefore the post is lying vacant. One Mr.M.E.Hussain had been brought as Shipping Master on deputation and he has since been repatriated to his parent department in July, 1999.

As far as the applicant's prayer for regular promotion is concerned, the respondents counsel submits that one Mr.S.Berguzar who was working as Shipping Master is presently on deputation to the Delhi Vidyut Board, New Delhi and is expected back after completing his deputation period in April, 2000 and therefore there is no question of filling up that post by regular or ad-hoc promotion. It is well settled that no Court or Tribunal can give a direction to Government to fill up a particular vacant post. Even for promotion a civil official has a right to be considered, but no right to demand the Government to promote him or to fill up the post. In these circumstances, we only observe that as and when the Government takes up the question of filling up the post of Shipping Master either by regular promotion or by ad-hoc promotion, then applicant should be considered having regard to his seniority in the post according to rules.

3. As far as the applicant's grievance that he should have been considered for being placed in-charge of the post of Shipping Master and the order of the administration giving such

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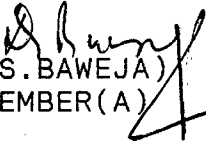
duties to junior officer Mr.Elango is not correct, the respondents contention is that applicant is not working in that office and therefore the available officer viz. the Assistant Director has been asked to look after the duties of Shipping Master in addition to his own duties. It is also stated at the bar on behalf of the respondents that no salary and allowances are paid to Mr.Elango due to this additional charge. At this stage, the learned counsel for the applicant submits that even his client is prepared to forego salary and allowances and is prepared to look after his duties of Shipping Master in addition to his own duties. In the circumstances, we feel that the government should be asked to consider the claim of the applicant for holding the post of Shipping Master as an additional charge in addition to his own duties and pass a speaking order. We are making this observation since the learned counsel submitted that the Government has no good reasons as to why it did not appoint the applicant as an officer to look after the post of Shipping Master. The Competent Authority has to apply his mind to all the facts of the case and then consider whether the applicant can be given that job or not by a speaking order. Needless to say that if any adverse order is passed, it is always open to the applicant to challenge the same according to law.

4. In the result, the OA is disposed of at the admission stage subnect to the observations that when the Government decides to fill up the post of Shipping Master either by regular or ad-hoc promotion, then the applicant's case should be considered having regard to his seniority as per rules. The

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applicant's claim should also be considered for looking after the duties of Shipping Master in addition to his own duties as alleged. The Competent Authority must apply his mind and pass as speaking order as observed above within a period of four weeks from the date of receipt of this order. A copy of the order be communicated to the Director General of Shipping (Respondent No.2) at Mumbai for information and necessary action according to law. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.