

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.No.756/2000

Wednesday, this the 28th day of January, 2004

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri S. K. Naik, Member (A)

Mrs. Leela Radhakanthan
Assistant
Dean's Office
Armed Forces Medical College
Pune-411 940

(By Advocate: Shri S.P. Saxena)

..Applicant

Versus

1. Union of India through
the Secretary
Ministry of Defence
South Block, New Delhi-11
2. The Director General
Armed Forces Medical Services
Ministry of Defence
M Block, New Delhi-1
3. The Commandant
Armed Forces Medical College
Pune-411 40

(By Advocate: Shri R.K.Shetty)

..Respondents

O R D E R (ORAL)

Shri S. K. Naik:

The applicant - Mrs. Leela Radhakanthan - since retired was working in the clerical cadre of the Armed Forces Medical College under respondent No.3. It is her contention that the respondents are supposed to have one post of Assistant at supervisory level for every 12 posts of LDC/UDC. Further, as per their own instructions, the respondents are required to have a post of Office Superintendent for every 5 posts of Assistant. Contending that the Armed Forces Medical College was authorised 40 posts of LDC/UDC, she claims that there should have been 3 posts of Assistants and 1 post of Office Superintendent. In support of her claim, she has relied upon the Office Memoranda dated 15.12.1969 and

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11.6.1975 issued by the Ministry of Defence. The respondents, despite their own instructions, however, did not create the post of Office Superintendent. Had they complied with their own instructions, the applicant contends, that she would have been found eligible and selected for the post and would have been in the scale of pay of Rs.5500-9000/- w.e.f. 1.2.1999. She, therefore, wants a direction to be issued to the respondents in the matter.

2. At the time of arguments before us, counsel for the applicant has referred to the proposal mooted by respondent No.3 to the higher authorities in which he had categorically proposed that the ministerial cadre of the Armed Forces Medical College deserves a post of Office Superintendent Grade I and two posts of Assistant. However, the matter remained under examination and despite a lapse of more than two years, the re-organisation has not been given effect to. Meanwhile, he contends that the respondents are advancing untenable grounds, such as a cut of 10% in the staff strength, which has the effect of reducing the total number of posts of LDCs/UDCs in the organisation. The counsel contends that the respondents taking recourse to this new found ground have stated that the AFMC would not be entitled to even one post of Office Supdt, which is just an after thought. The counsel contends that the later developments cannot be taken into account as the instructions prevalent at the time of their issue should prevail for working out the number of supervisory post.

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3. The counsel further goes on to state that since the instructions issued during June 1975 was quite clear and unambiguous; there was absolutely no reason for respondent No.3 to make any reference in the matter to the higher-ups and he should have himself implemented them at his level. By virtue of the undue and avoidable delay and inaction on part of the respondents to arrive at a decision in the matter, the applicant has been made to suffer. The counsel, therefore, contends that the Tribunal direct the respondents to create one post of Office Superintendent in the scale of pay of Rs.5500-9000/- and consider the case of the applicant against the same by holding a DPC and in the event of the applicant being selected, she should be given all the consequential benefits.

4. The counsel for the respondents while agreeing that their instructions envisage the ratio of 1:12 between the Clerks and the Assistants and further that 1/5 of the posts of Assistants will be eligible for the post of Office Superintendent Grade I, however, contends that the Armed Forces Medical College is not entitled to any post of Office Superintendent Grade I in the scale of Rs.5500-9000/-, as the entire strength of the Ministerial cadre comprises of only 34 Clerks. On the ratio of 1:12, the counsel contends that the Institution will be entitled to only 2 posts of Assistant. Therefore 1/5th of 2 posts will not give any post of Office Superintendent and, therefore, contends that the claim of the applicant has no merit. The counsel has further contended that creation/restructuring of post in a Government Department is a policy matter and the Tribunal cannot interfere with the same. In support of his

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contention, the counsel has drawn our attention to the decision of the Hon'ble Supreme Court in Mullikarjuna Rao & others etc. etc. v. State of A.P. & others etc. AIR 1990 SC 1251, in which it has been held that "The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution".

5. The facts of the case in hand squarely fall within the domain of the policy making by the State, inasmuch as whether or not to create a post is squarely within the domain of the Executive and further that to effect a 10% cut/reduction in the staff strength also is a policy measure which cannot be interfered with by the Tribunal.

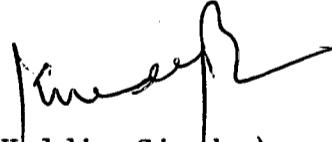
6. We have carefully considered the averments and contentions raised by the counsel for both the parties. While we are inclined to agree with the counsel for respondents that creation/restructuring of the cadre strength is within the domain of the Executive and further that imposition of a 10% cut in the staff strength is a policy measure fully within the domain of the Government and, therefore, we would not like to intervene in the matter, but we would like to observe that in the case in hand, because of the long delay and due to cross reference between the respondents that has occurred, the original proposal of respondent No.3 to create/restructure the Ministerial cadre by giving appropriate number of posts of Assistant/Superintendent has got derailed. In fact, even after the 10% cut, a

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fine distinction is being made stating that in the total Ministerial cadre strength of 34, a share of the Assistants in the ratio of 1:12 comes to only 2 and, therefore, 1/5 of 2 does not entitle to even a single post of Office Superintendent. We find from the OM dated 11.6.1975 that for calculating the ratio between Office Superintendent Grades II (now Assistant) and Office Superintendent Grade I, the ratio of 1:5 is to be kept in mind and in that the fraction half or more is to be treated as one and fraction less than half only can be ignored. The respondents, however, are not adopting the same criterion while arriving at the ratio of 1:12 to the entire clerical strength of 34. In our view, they should adopt the same criteria in their case also, in which case the AFMC would be entitled to 3 posts of Assistants. However, for the reasons stated above, we are not inclined to accept the application and accordingly dismiss the same, but we hope that the respondents would keep this observation of ours in mind and have a second look at the matter.

7. The OA is dismissed in the above terms. No costs.

Naik
(S. K. Naik)
Member (A)


(Kuldip Singh)
Member (J)

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