

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 971/93

Date of Decision: 29.7.1999

Dadu Genu Bhalerao

Applicant.

Shri S.P. Saxena

Advocate for
Applicant.

Versus

Director, M.I.T.S, Pune & Another

Respondent(s)

Shri 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?


(R.G. VAIDYANATHA)
VICE CHAIRMAN.

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.971/93

Thursday the 29th Day of July, 1999

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

Dadu Genu Bhalerao,
Residing at 1458/11,
Centre Street, Camp Pune,
Pune - 411 001.

.. Applicant.

Advocate by Shri S.P. Saxena.

V/s.

1. Director,
Military Intelligence,
Training School,
General Staff Branch,
Army HQ DHQPO,
New Delhi - 110 001.
2. Military Intelligence,
Training School & Depot,
Wanarie,
Pune - 411 040.

.. Respondents.

Advocate by Shri R.K. Shetty.

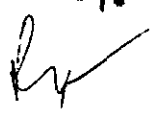
Order (Oral)

(Per : Justice R.G. Vaidyanatha, Vice Chairman)

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The Respondents have filed their reply. We have heard learned Counsels appearing on both sides.




2. The applicant is working as a Gestetner Operator in the office of 2nd Respondent. He was appointed as Gestetner Operator on 1.6.1967. It appears that the post of Artistan in the said Institution is vacant and the same is yet to be filled up. However, the services of the applicant are being utilised as an Artistan from 1970 till today. The Respondents have not filled the post of Artistan by re-mustering Gr.'D' employee directly to a Gr.'C' post on the ground that the former is not in direct line of promotion to the later and therefore the claim of the applicant for being promoted by re-mustering to the post of Artistan has not been accepted. He made representations with no success. Though his services are being utilised as Artist he is being paid in the scale of Gestetner Operator's post till now. The Respondents have taken stand that they could not appoint the applicant as Artist due to a ban on recruitment. The Respondents have also written letters to the higher officers for relaxation for lifting the ban on employment. In spite of this, the applicant is still in the post of Gestetner Operator for the last 24 years. The applicant has approached this Tribunal with the present application praying for a direction to the Respondents to appoint the applicant to the post of Artisan Gr.I on permanent basis and to pay him the salary due to him from 17.1.1970 till now and the Respondents be directed to give arrears of difference in wages due and payable to him from 17.1.1970 to the post of Artistan Grade I with all consequential benefits.



3. The Respondents in their reply have admitted that the applicant was all the while working as an Artistan Gr.I despite having been issued a letter of appointment to the post of Gestetner Operator. They have also admitted that the applicant is a good Artistan, but after 1972 there was a ban on filling up of vacancies and the higher authorities clearly stated that there was a ban on creation for new posts or filling up of existing vacancies. The applicant cannot force the department to appoint him to the post of Artistan. The post of Artistan has to be filled up by calling the candidates from Employment Exchange, when the applicant can compete with the other candidates. It is therefore, stated that the question of re-mustering directly to a Group 'C' post unless the former is in direct line of promotion to the latter, the applicant is not entitled for any relief as prayed for, as there is no such Government orders.

4. After hearing both the sides and perusing the records we find that the applicant was initially appointed to a Gr.'D' post and his claim is for the post of Artistan which is admittedly a Gr.'C' post. The Respondents have clarified that the Gr.'D' post cannot be re-mustered as Gr.'C' post unless the posts are in the direct promotional line, which is not the case here. It is not a case of the applicant, that as per rules he is entitled to be appointed official directly to Group 'C' post. As per rules the present post held by the



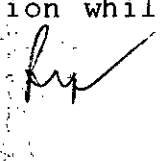
applicant is not at all in the direct line of promotion to the post of Artist and hence he is not entitled to the benefit as he has claimed in his application. It may be pointed out here that the appointment of the applicant to the post of Artistan is wholly in the hands of local administration but due to ban on recruitment the benefit of pay to the post of Artist cannot be given. The Tribunal cannot give any direction to appoint the applicant to the post of Artistan as per rules though he has been working as an Artistan Grade I with effect from 17.1.1970 till today as mentioned in the application.

5. We are concerned with the grievance of the applicant that he was appointed to the post of Gestetner Operator and working for the last 30 years and having no chance of promotion but it is a matter for the administration to consider the applicant to the post of Artistan which is vacant and the applicant has necessary qualification for the said post. Therefore there should not be any difficulty for the administration to appoint the applicant to the said post though not filled so far. The Respondents have submitted that there is a ban on recruitment but the applicant's counsel submitted that though there was a complete ban on filling up of all vacancies, the ban has since been lifted. It is for the administration to fill up the post or not but once they decide to fill it up as per rules, then they must consider the claim of the applicant. The applicant has the

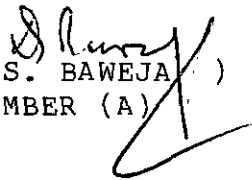


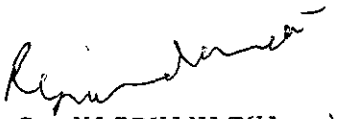
requisite qualification and has also experience in that post and therefore he has a better claim for the post in question. Normally, as per rules, the post in question has to be filled up by calling applications from local employment exchange. The respondents have produced general rules of relaxation dated 15.1.1969 which is at page 20 of the respondents reply. It is mentioned that though normally a class III post has to be filled up by calling application from Employment Exchange, if there is a candidate in Class IV post who is more suitable and has qualification, then his name may be considered even though his name has not been sponsored by the Employment Exchange. The fact that the applicant has been working in the post of Artistan is not disputed. It is also not disputed that his work is satisfactory, he has also necessary qualification, therefore in view of this Government Order dated 15.1.1969 the applicant's case will have to be taken up by the administration even though his name is not sponsored by Employment Exchange as provided in the Ministry of Defence Memorandum dated 15.1.1969 at page 20 of reply by the Respondents.

6. In the result, the OA is disposed of with a direction to the Respondents to consider the claim of the applicant for being appointed to the post of Artistan as and when the respondents decide to fill up that post. In such a case, when the applicant has the experience as an Artisan and good record of service may be taken into consideration while



considering his claim for the post of Artistan. In the circumstances of the case, there will be no order as to the costs.

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D.S. BAWEJA)
MEMBER (A)

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R.G. VAIDYANATHA)
VICE CHAIRMAN.

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