

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: **187/97**

Date of Decision: **24 SEPTEMBER, 97**

Dr. Diwakar Tripathi Applicant.

Mr. G K Masand Advocate for
Applicant.

Versus

U.O.I. & 4 ors. Respondent(s)

Mr. V. S. Masurkar Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. **Justice R.G. Vaidyanatha, Vice Chairman**

Hon'ble Shri. **P.P. Srivastava, Member(A)**

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

Remainder
V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO. 6
PRESOT ROAD, MUMBAI 400001

O.A.No. 187 of 1997

Dated: This 24th day of September, 1997

Coram: Hon. Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P. P. Srivastava, Member(A)

Dr. Diwakar Tripathi
Selection Grade Lecturer
Government College
(By Adv. Mr. G K Masand)

..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Human
Resource Development,
Department of Education,
Curzan Road, New Delhi

2. The Administrator
U.T. Administration of Daman and
Diu Secretariat Moti Daman, Daman 396220

3. The Development Commissioner
& Chief Secretary
U.T. Administration of
Daman and Diu Secretariat,
Moti Daman,
Daman 396220.

4. The Secretary (Education)
U.T. Administration of
Daman and Diu Secretariat
Moti Daman, Daman 396220

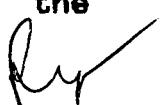
5. The Principal
Government College
Daman 396210
(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel)

..Respondents

ORDER
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[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed by the applicant seeking a direction for appointing the applicant as a Reader and for other consequential benefits. The respondents have opposed the Application by filing a reply. After admitting the Application on 1.9.1997 we have heard the



learned Counsel on both the sides on the merits of the petition.

2. Few facts which are necessary for disposal of this application are as follows:

3. The applicant is working as a Selection Grade Lecturer in the Government College at Daman. The applicant has acquired a Ph.D. degree in the year 1983. He has published many research papers. He is entitled to be promoted to the post of Reader with effect from 1.1.1986 as per Career Advancement Scheme Notification dated 22.7.1988 issued by the Government of India. The respondents are bound to implement the notification issued by the Government of India. According to this Notification and Scheme, a Lecturer who has put in 13 years of service and who has obtained a Ph.D. is entitled to be designated as a Reader by upgrading the post of Lecturer as that of a Reader. The respondents have not promoted the applicant as a Reader though he is entitled to be either promoted or designated as a Reader as per the Scheme mentioned above. After the Government of India issued clarification the respondent administration of Daman and Diu constituted a Screening Committee for the purpose of considering eligible Lecturers for promotion/designation to the post of Reader in pursuance of the Scheme of Upgradation. The Fifth Respondent invited all the eligible Lecturers to give



their self appraisal in detail for the said promotion/upgradation of designation as a Reader. The applicant submitted his self appraisal, but no decision is taken by the Respondents or the Screening Committee regarding promotion/upgradation of the post of Lecturer. Hence the applicant has approached this Tribunal for a declaration that he is entitled to be designated as Reader with effect from 1.1.1986 with all consequential benefits and costs.

4. The Respondents have opposed the application by filing a written statement. It is stated that the application is barred by limitation and there are latches and delay on the part of the applicant. The applicant has no right to seek a direction for being promoted or designated to the post of Reader. There is no post of Reader as such. It is the prerogative of the Administration to decide whether to create the post of Reader or not. No official has a right to get a direction for creation of a post. The applicant has been promoted to the Selection Grade and his seniority has been maintained and no injustice is caused to him and therefore he is not entitled for any relief. According to the respondents there is no necessity to create the post of a Reader. This is purely a policy matter for the Administration to decide whether to create a post or redesignate the post as that of a Reader. It is, therefore, submitted that there is no merit in the application and it has to be dismissed with costs.



5. The short point for consideration is whether the applicant has made out a case for his being considered for the promotion/designation to the post of a Reader as claimed in the Application.

6. According to the 'Career Advancement Scheme of 1988' certain guidelines are given by the Government of India for creation or upgradation to the post of a Reader, according to which a Lecturer who has put in a particular number of years of service, and who holds a Ph.D. degree or an equivalent published work, would be entitled to be considered and would be eligible for promotion or designation to the post of Reader. In fact the Daman Administration had entertained some doubt about this Notification and sought clarification from the Government of India by writing a letter dated 1.12.1993. The Administration pointed out some difficulties in giving effect to the 1988 scheme and sought advise and clarification from the Government of India. This letter was replied by the Government of India vide letter dated 30th September 1994 stating that the Daman Administration should carry out the Advancement Scheme and requested the Daman Administration to constitute a Selection Committee and take necessary steps for the promotion of Lecturers to the post of Reader. Therefore, in view of the direction given by the Government of India and the recommendation of the University Grants Commission (U.G.C.) the Daman Administration is duty bound to



consider the promotion of Lecturer to the post of Reader.

7. The main thrust of the Administration as per the written statement and the main argument advanced by the learned Counsel for the Respondents is that it is a policy matter for the Administration to decide whether to create the post of a Reader or not. The Tribunal cannot give a direction to the Administration to create the post of Reader. The question whether the Tribunal can give a direction for creation of a post on the basis of 1988 Scheme or it is purely left to the Administration to decide that matter and that the Tribunal has no say in the matter is a moot point. In our view it is not necessary to express one way or the other on this point since on admitted facts we find that the Daman Administration in this case has taken a policy decision to create the post of Reader and to promote Lecturers to that post and hence now the Administration cannot turn round and say that it is a policy matter and the Administration cannot be forced to create the post of a Reader. There is intrinsic material on record to show that the Administration had accepted 'Career Advancement Scheme' and further sought clarification from the Government of India and then has taken a decision to create or upgrade the post of Lecturer to the post of Reader. We have already seen that the Administration had some doubt and sought clarification from the Government of India. The Government of India by its letter dated



30th September, 1994 (page 50 of the paper book) clarified the position and requested the Administration to constitute a Screening Committee and take necessary action for considering eligible Lecturers for promotion to the post of Reader. In pursuance of this clarification and direction of the Central Government the Administration issued a notification dated 16.4.96 (page 55 of the paper book). The preamble of the notification reads as follows:

"The Administrator of Daman, Diu and Dadra Nagar Haveli is hereby pleased to constitute ... the Screening Committee for considering placement / promotion of cases of Lecturers ... for promotion / designation to the post of Reader in conformity with the 'Career Advancement Scheme ...'"

It is, therefore, clear that the Administrator took the policy decision to appoint a Screening Committee to consider the cases of Lecturers for being promoted or upgraded as Readers as per the Career Advancement Scheme.

Then what is more, the Principal of the College issued a Circular dated 11.7.96 (page 56 of the paper-book) which reads as follows:

"All the eligible lecturers of this College are hereby requested to fill in the requisite self

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appraisal proforma in triplicate for Promotion/Designation to the post of READER. The same may please be submitted to the undersigned on or before 13/07/1996."

8. From the above circular we find that the eligible Lecturers were called upon to give self appraisal proforma for being considered for promotion/designation to the post of Reader.

It is, therefore, seen from the correspondence between the Administration and Central Government, the clarification issued by the Government of India, the appointment of Screening Committee and calling for self appraisal from the candidates it can fairly be concluded that the Administration has taken a policy decision for creating the post of Reader either by upgradation or by promotion in pursuance of the Career Advancement Scheme.

It is not, therefore, open for the Administration to contend that it has not yet decided to create the post of Reader and hence this Tribunal cannot give any direction for the creation of the post of Reader etc. In our view the Administration has already decided to create necessary post of Reader on promotion from amongst the Lecturers on the basis of Career Advancement Scheme and has taken follow up action but it has not finalised the promotion of Lecturers to the post of Readers.



9. Since the post of Reader has been created and self appraisal forms have been called from the willing candidates, the Screening Committee is duty bound to consider them and decide as to which Lecturers are entitled to be promoted / designated as Readers as per the provisions of the Career Advancement Scheme. Since the Administration has failed to pass final orders on the Scheme the applicants were well advised to approach this Tribunal for necessary directions. In our view the Administration will have to be directed to pass order of appointment of Lecturers to the post of Readers at an early date.

10. It is also argued on behalf of the Administration that there is delay on the part of the applicant in approaching this Tribunal and the claim is barred by limitation. In our view this argument has no merit. The argument is based on the fact that the applicant is claiming promotion retrospectively from 1986. For the moment we are not concerned whether the applicant is entitled for retrospective promotion or not and we are concerned with the question whether the applicant is entitled to be considered for promotion to the post of Reader. The administration appointed a Screening Committee in 1996 and called for self appraisal forms from the prospective candidates in July 1996. No further steps were taken to fill up the post. Present O.A. is filed in 1995. As such it cannot be said that the



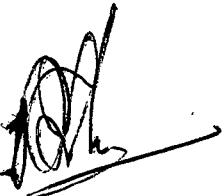
application is barred by limitation. Now the applicant is aggrieved by the act of the Administration in not considering the case of promotion even after appointing a Screening Committee in April 1996 and calling for applications in July 1996. Hence there is no merit in the plea of limitation or of delay.

11. One of the contentions of the applicant is that only Lecturers who have obtained Ph.D. degree are entitled to promotion as Reader. This contention is not correct if we peruse the Career Advancement Scheme. According to the Scheme a Lecturer in a Senior Scale is entitled for promotion to the post of Reader if he has completed 8 years of service, and obtained a Ph.D. degree or an equivalent published work. Therefore, it cannot be said that only persons who obtained Ph.D. Degree are eligible for promotion. Even a Lecturer who has equivalent published work he can be considered for promotion. However, we are not considering here as to who is entitled to promotion.

We only say that the Screening Committee should decide as to which Lecturers including the Applicant are entitled to promotion in terms of the career advancement scheme and then submit those names to the Administration who have to pass appropriate orders of appointment of promotion.

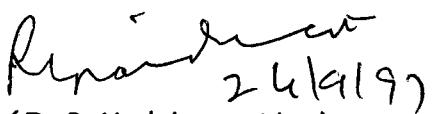


12. In the result the application is allowed partly. The applicant is entitled to be considered for promotion /designation of the post of Reader in terms of the Career Advancement Scheme 1988. The Screening Committee shall decide the case of the applicant and all other Lecturers who are qualified and become entitled to promotion/designation to the post of a Reader in terms of Career Advancement Scheme and recommend names of such eligible candidates. The Administration is directed to appoint those selected candidates as Readers. Since the matter is pending for a long time the Screening Committee and the Administration are directed to complete the entire process of selection and issuing the order as expeditiously as possible and preferably within a period of six months from to day. In the facts and circumstances of the case there would no order as to costs.



(P.P.Srivastava)

Member(A)



R.G. Vaidyanatha
24/9/97

Vice Chairman

trk/-

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R. P. NO.: 06/99 IN O.A. NO.: 187/97.

Dated this Friday, the 4th day of June, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Dr. Divakar Tripathi ... Original
(By Advocate Shri G. K. Masand) ... Applicant
V/s.

Union Of India & 4 Others ... Respondents.
(By Advocate Shri V. S. Masurkar)

Thakorlal S. Parekh ... Review Petitioner
(By Advocate Shri R. R. Shetty) ... (third party)

OPEN COURT ORDER

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is a review petition filed by the third party seeking review of the order of the Tribunal dated 24.09.1997 in O.A. No. 187/97 to which one of us was a party (Shri Justice R. G. Vaidyanatha). The applicant has taken number of grounds to say that the view taken in the said order requires re-consideration. The Learned Counsel for the original applicant, Shri G. K. Masand, opposes the review petition. After hearing both the sides we feel that no case is made out for granting review. Admittedly, the present petitioner, Shri T. S. Parekh, was not a party to the original application. Further, the order was passed in the original application on 24.09.1997 and the present R.P. is filed about more than one year and three months after that order. Therefore, the said order has become final as between the parties to the application and what is more, the order of the Tribunal has been

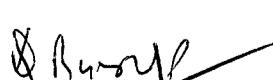
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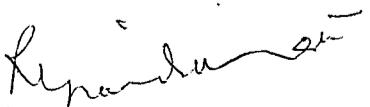
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implemented by the Tribunal by giving promotion to the original applicant. No doubt, the present review petitioner is aggrieved by the grant of promotion to the original applicant in pursuance of the Tribunal's Order dated 24.09.1997.

2. In view of the law declared by the Apex Court in K. Ajit Babu V/s. Union Of India & Others reported in 1997 (5) Scale 83, if a party is aggrieved by the judgement of the Tribunal, he can file a fresh original application and if he persuades the Tribunal that the previous decision is wrong or requires reconsideration, then the Tribunal can refer the question to a larger Bench. However, if the Tribunal is not persuaded to take a different view, then it can dismiss the original application by following the previous decision. Now in the present case, the present review petitioner has already filed an O.A. No. 32/99 wherein he has questioned the correctness of the judgement of this Tribunal and wants re-consideration of the judgement. Therefore, it is open to the applicant to persuade this Tribunal in O.A. No. 32/99 to re-consider the earlier decision dated 24.09.1997 in O.A. No. 187/97. If the Tribunal accepts his contention, then we can refer the question to a larger Bench. If ^{we} they do not accept any contentions in the O.A., then the O.A. fails. In view of this circumstances, we feel that no useful purpose will ^{be} served by admitting this review petition.

3. In view of the above reasons, R.P. No. 6/99 is disposed of without prejudice to the rights of the applicant and subject to the observations mentioned above. In view of this order, M.P. No. 99/99 does not survive and accordingly disposed of.


(D.S. BAWEJA)
MEMBER (A).


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.