

Central Administrative Tribunal
Principal Bench

OA 352/2000

New Delhi this the 23th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Madan Mohan,
S/o Shri Prabhati Lal,
R/o Vill-Pandhawala Kalan,
PO - Nazafgarh, N.Delhi-43. Applicant.

(By Advocate Shri U. Srivastava)

Versus

Union of India through

1. The Secretary,
Min. of Information and Broadcasting,
Govt. of India,
Shastry Bhawan, New Delhi.
2. The Director,
Prasar Bharti,
Broadcasting Cooperation of India,
Directorate General, All India Radio,
New Delhi.
3. The Chief Engineer (T),
Staff Training Institute (T),
All India Radio & Television,
Kingsway, Delhi.
4. Shri Charan Singh,
S.T.I. (T), All India Radio & Television,
Kingsway, Delhi. Respondents.

(By Advocate Shri Rajeev Bansal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).

The applicant is aggrieved by the order issued by the respondents dated 31.1.2000 enclosing the letter dated 31.12.1999, in which they have informed him that his claim for promotion to the post of Daftry arising in the recruitment year of 1986 has been rejected.

2. The brief relevant facts of the case are that the applicant was appointed as Peon on regular basis by the respondents w.e.f. 8.5.1987. According to him, a post of

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Daftry fell vacant in the office on 13.9.1996 due to promotion of one Shri Ram Naresh. He has submitted that another person, namely, Shri Tara Chand had come on transfer from the D.G. Office and had also been sent there w.e.f. 17.12.1987 and he was the first appointee to the post of Daftry. Then, one Shri Ram Naresh had joined as Daftry on his being declared surplus in his parent organisation on 18.12.1987 and had been promoted as LDC on 12.9.1996. The applicant has submitted that he made a representation to the respondents on 23.9.1996 stating that he had come to know from reliable source that a proposal is under consideration to fill up the post by a general candidate who is junior to him. He has submitted that according to the rules, the post of Daftry has to be filled from amongst the Peons in the office on the basis of the seniority. In reply to his representation, he has submitted that the respondents vide their letter dated 30.10.1996 informed him that the post has been filled by a reserved category candidate. He again made another representation against this action of the respondents. It is noticed from the Memo. dated 29.1.1998 that the respondents have rejected his contentions, made against their action in promoting one Shri Charan Singh as Daftry.

3. Shri U. Srivastava, learned counsel for the applicant's main contention is that the first post of Daftry in the office arose on 13.9.1996 and was a single vacancy. He has contended that in the circumstances, where one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be ^{for} _{as} SC/ST, it should be treated _{as} ^{for} unreserved and filled accordingly, and the reservation carried forward to subsequent three years. He has relied on the provisions regarding reservations and

concessions in promotions, as given in Swamy's Compilation on Seniority and Promotion in Central Government service which has been referred to in his representation dated 17.4.1998. Shri U. Srivastava, learned counsel has also submitted that since the respondents have taken an illegal action which is contrary to the rules, they should not take the technical plea of limitation. He relies on the judgements of the Supreme Court in **Madras Port Trust Vs. Hymanshu International By Its Proprietor V. Venkatadri (Dead) By L.Rs.** (1979(4) SCC 176), **B.Kumar Vs. Union of India** (1988(7) SLR 462) and **Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association & Ors.** (JT 1998 (3) SC 223). Learned counsel has contended that the vacancy of Daftry in the first recruitment year 1986 was never filled and the same is being carried forward and cannot, therefore, be filled by a SC candidate. According to him, the first recruitment year for the post of Daftry was 1986 which has been carried forward and should have gone to a general candidate and not to a SC candidate, namely, Shri Charan Singh, who is junior to him. Learned counsel has, therefore, prayed that the impugned order dated 31.12.1999, sent to him with the covering letter dated 31.1.2000 (Annexure A-I), should be quashed and set aside with a direction to the respondents to fill the post of Daftry which occurred on 13.9.1996 in accordance with the relevant rules and instructions, after declaring the promotion of Shri Charan Singh as illegal and against the rules and instructions.

4. The respondents in their reply have taken a preliminary objection that the application is hopelessly barred by limitation as the applicant has challenged the promotion given in the year 1996. Further, they have also

stated that the applicant's representation has been rejected vide letter dated 30.10.1996 followed by another letter dated 29.1.1998. Shri Rajeev Bansal, learned counsel has, therefore, submitted that repeated representations will not have the effect of extending the period of limitation. On merits, the respondents have also submitted that the impugned letters dated 31.1.2000 and 31.12.1999 are legal and valid and are in accordance with the rules and instructions. They have confirmed that Shri Tara Chand was a DG's staff and accordingly he was taken back by the Director on 17.12.1987. They have also submitted that Shri Charan Singh was found suitable for promotion by the DPC held on 14.10.1996. They have submitted that Shri Ram Naresh, Daftry had come on transfer from ESD, AIR, New Delhi to the office of the answering respondents vide letter 7.12.1987 and was promoted as LDC on 13.9.1996 and so the post of Daftry fell vacant. The vacancy of Daftry in the 1st recruitment year arose in 1986. Point No. 1 was reserved for SC candidate but being a single vacancy, was treated as unreserved and Shri Ram Naresh, a general category candidate was appointed against this point. Accordingly, the vacancy reserved for SC candidate was carried forward and became available in 1996 and it was thus filled by Shri Charan Singh, a person belonging to SC community. Therefore, the respondents have submitted that the action taken by them is in accordance with the relevant rules and instructions and the judgements of the Hon'ble Supreme Court and there is, therefore, no illegality or other infirmity as contended by the applicant. They have, therefore, prayed that the application may be dismissed.

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5. In the rejoinder, the applicant has submitted that although his representation regarding the promotion of Shri Charan Singh has been rejected by the respondents in 1996 and 1998, as he was not satisfied with the same, he had made another representation which has been finally dealt with by the respondents in the impugned letter which has been sent to him only on 31.1.2000. Therefore, Shri U. Srivastava, learned counsel has submitted that the application is not barred by limitation. He has also reiterated his averments in the O.A. and has submitted that the vacancy of Daftry in the first recruitment year arose in 1996 which was reserved for SC candidate but being a single vacancy it should be treated as unreserved. He has also submitted that the respondents themselves have agreed that the appointment of Shri Ram Naresh who came on transfer from ESD, AIR, New Delhi was irregular and, therefore, the post of Daftry has never been filled in accordance with the Recruitment Rules which is 100% by way of promotion.

6. We have carefully considered the pleadings and the submissions of the learned counsel for the parties.

7. From the impugned letter issued by the respondents dated 31.12.1999, it is seen that the first recruitment year for filling up the vacancy of the post to Daftry was in 1986. That post was filled by Shri Ram Naresh, a general category candidate who had come on transfer from another office and has been later promoted as LDC on 13.9.1996. Under the relevant Recruitment Rules, peons with three years regular service in the feeder cadre

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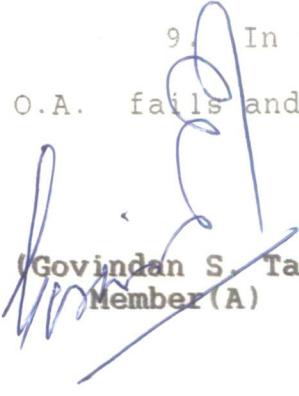
can be considered for promotion to the post of Daftry. The respondents have stated that at that time, since point No.1 was reserved for a SC candidate and they had carried forward the same, so it became available in 1996 for a reserved category candidate. This action is in accordance with the relevant rules for reservation for SC/STs. In the letter dated 31.12.1999, the respondents have submitted that although the appointment of Shri Ram Naresh Yadav against that post was irregular, it was for the reason that they had not got the approval for de-reserving the vacancy at that time. Therefore, the vacancy became available for the reserved category in the second recruitment year 1996. We find no illegality or infirmity in the stand taken by the respondents that they have rightly filled the post of Daftry by promotion of Shri Charan Singh who belongs to the SC community against the vacancy reserved for SCs. In the circumstances, we also find no justifiable reasons to set aside the promotion order of Shri Charan Singh as Daftry nor any merit in the contentions of the applicant to the contrary. The judgements of the Full Bench of the Tribunal in **Dhiru Mohan Vs. Union of India & Ors.** (Full Bench Judgements-CAT (1989-1991) 498) will not assist the applicant because in no way it can be held that the promotion order of Shri Charan Singh is void or illegal to set it aside at this stage.

8. Regarding the question of limitation raised by the respondents, although the Hon'ble Supreme Court has held that the respondents as Model Employers should not take technical pleas, in view of what has been stated above

Yours

we are not inclined to condone the delay in the present case. The applicant has not denied the fact in the rejoinder that his representations against the promotion of Shri Charan Singh as Draftry in 19⁹⁶ have been rejected by the respondents vide their orders dated 13.10.1996 and 21.9.1998. This OA has been filed on 21.2.2000. He has submitted that as these orders were not speaking orders, he had again made representation to the respondents who had finally disposed of the same vide the impugned letter. However, as stated above, the action taken by the respondents is neither illegal nor improper warranting any interference in the matter.

9. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.


(Govindan S. Tampi)
Member (A)

'SRD'


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)