

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1565/88

Date: 26.4.1989.

Shri Sukha Hussain Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri R.K. Sheron, Advocate

For the Respondents Smt. Raj Kumari Chopra, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M.M. Mathur, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Messenger in the Headquarters, Delhi Area, Delhi Cantonment of the Army Headquarters, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents should be directed to promote him as Daftry w.e.f 6th October, 1986 and that the promotion of two persons junior to him as Daftries by the order dated 8th October, 1987 be quashed.

2. The facts of the case in brief are as follows. The applicant was enrolled as a Sweeper on 21.3.1963 in High Altitude Warfare School, C/o 56, A.P.O. In 1965, he was transferred to J & K Centre, Gwalior. In 1966, he was declared surplus. The Army Headquarters decided that those who had passed eighth class and were in possession of VIII Class original certificate, would be adjusted against vacancies of Messengers and would be remustered in the category of Messenger. The applicant got his VIII Class certificate certified by Lt. Balwant Singh of Military Hospital, Gwalior. A certified copy of the

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same had been filed in his Service Book, when he was remustered as Messenger on 1.12.1966. He was posted permanently to the Military Hospital, Gwalior as Messenger w.e.f. 1.12.1966. He was posted to the Headquarters, Delhi Area, Delhi Cantonment on 1.2.1978.

3. In October, two vacancies for the post of Daftry arose in Headquarters, Delhi Area. The respondents issued a circular calling six serving Messengers, including the applicant for a test and interview for promotion to the post of Daftry.

4. The Departmental Promotion Committee test was held on 21st September, 1987. The applicant also appeared in the test but was not declared successful. Two of his juniors, who were declared successful, were promoted as Daftry by the impugned order dated 8th October, 1987.

5. The applicant has alleged that the question papers were given in English and answers to the questions were also required to be given in English and no choice was given to answer them in Hindi. He submitted his representation to the respondents on 26th October, 1987, wherein he stated that he was qualified upto Class VIII, that as per seniority, he stood second on the list, that he could also operate duplicating machine independently and that as per CPRD-69/73, he fulfilled all conditions for promotion as Daftry. He also stated that he was not given the choice of language for appearing in the test. He contended that the decision given by the D.P.C. was contrary to the rules for promotion as per CPRD 69/73. The respondents informed him vide their letter dated 20th November, 1987 that his case had been examined in detail and rejected. He made further representations to the respondents in May and June, 1988 on the same subject. In his representation ~~of~~ ^{on} June, 1988, he has stated that when reasons for rejection

of his representation dated 26.10.1987 were sought, Sub. Ramji Ojha, one of the members of the D.P.C., asked him to produce original certificate of his having passed the VIII Class. The applicant told him that the original certificate had been eaten by white ants. However, the certified copy of the certificate, duly verified by Lt. Balwant Singh, Company Commander of M.H., Gwalior had already been pasted in his service-book. Sub. Ojha asked him to get the certificate verified from the school authorities. Thereafter, the Principal of the School prepared a temporary certificate, marks-sheet and character certificate and the applicant submitted the same to the respondents for verification on 8.12.1987 (vide Annexure-A to the rejoinder affidavit, p.30 of the paper-book). The applicant has further stated that the same has not been returned to him. He has also contended that his certificate was initially verified in 1966 and on that basis, his post was converted from Sweeper to Messenger. According to him, the reason for a fresh verification after the test was held and selection was approved, is not understood.

6. The applicant had sent a notice to the respondents under Section 80-C.P.C. on 6th June, 1988 in which it was, inter alia, contended that as far as the appointment of Daftry is concerned, no such test had been held in the past and the senior-most Messenger used to get promotion to the said post on the basis of seniority.

7. The respondents have stated in their counter-affidavit that in terms of CPRD-69/73, Peons possessing middle standard educational qualification, are eligible for promotion to the grade of Daftry according to their seniority subject to rejection of unfit. According to the

said CPRD, those who did not possess the minimum educational qualifications, were to be subjected to a test to ascertain their suitability for appointment as Daftry. The test is to be held either in English or in Hindi, according to the choice of the candidate. The respondents have stated that service-books of all Messengers working in the Headquarters, Delhi Area, were scrutinised in order to find out suitable candidates in terms of the aforesaid CPRD. Among them, only the applicant possessed the middle standard educational qualification. But in the service-book, only certified true copy of VIII Class pass certificate was found and as such, he was asked to produce his original certificate before the Departmental Promotion Committee's test to be held on 21st September, 1987. The applicant failed to produce the same in time and, therefore, he was tested along with other Messengers for promotion to the post of Daftry. He was not declared successful in the test.

8. As regards the test, the respondents have stated that though the questions were given in English, the Departmental Promotion Committee had explained the questions in Hindi and candidates were permitted to write the answers either in Hindi or in English, or in both, according to their choice. They have annexed to the counter-affidavit as Annexure R-1, the question and answer-sheet pertaining to the applicant. The applicant had written in Hindi and English in the said sheet. The respondents have contended that the applicant could not produce the original certificate within the time-limit prescribed and, therefore, he was asked to appear in the test.

9. We have carefully gone through the records of the case and have heard the learned counsel for both the parties.

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The case had been listed for admission on 21.4.1989. The undisputed factual position is that the applicant was appointed as a Messenger in 1966 on the basis that he had passed the VIII Class and at the time of his initial appointment, the particulars regarding his educational qualification had been verified by the authorities concerned, i.e., the respondents, and a certified copy of the VIII Class certificate had been kept in the service-book of the applicant. For over two decades since then, no question or doubt had been raised about his educational qualifications.

10. The version of the applicant is that he was asked to produce the original certificate only when he sought the reasons for rejection of his representation in December, 1987. The version of the respondents is that before the test was conducted in September, 1987, he was asked to produce the original certificate, but he failed to do so within the time stipulated.

11. In our opinion, the mere fact that the applicant failed to produce the original certificate when asked for, should not by itself be a ground for holding that he has not passed VIII Class for which proof was available in the service record, though in the form of a certified copy of the certificate. In the circumstances, the respondents should have given the applicant reasonable time to produce the original certificate if the same was considered necessary. In fact, the applicant has also produced a temporary certificate issued by the school authorities on 1.12.1987 certifying that ~~he~~ had passed the VIII Class in 1961. Therefore, we are of the opinion

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that the applicant should not have been asked to appear for a test which was meant for persons who had not passed the VIII Class. In this context, reference may be made to the decision of the Supreme Court in State of Haryana & Others Vs. Shamsher Jang Bahadur & Others, 1972 SLR 441 which was followed in State of Punjab Vs. Madan Singh & Others, 1972 SLR 446. In Shamsher Jang Bahadur's case, the respondents had joined Government service as a Clerk in the erstwhile Pepsu Secretariat in 1955. Pepsu State became a part of the State of Punjab in November, 1956 under the provisions of the States Reorganisation Act, 1956. He was provisionally promoted as an Assistant in December, 1959 in the Punjab Civil Secretariat at Chandigarh. However, he was reverted as a Clerk in February, 1960 on the ground that he failed to qualify the test prescribed under certain administrative instructions issued in 1958. Under the relevant rules applicable to the respondents, a Senior Clerk was entitled to be promoted as Assistant without undergoing any test. In 1958, however, Government issued instructions providing, inter alia, for holding a test for the purpose of promotion. The Supreme Court held that the prescribing of such a test amounted to the alteration of the conditions of service and that the same was not permissible.

12. In the present case, the applicant was entitled to be promoted as Daftry as he possessed the requisite educational qualifications. Therefore, it was not open to the respondents to require him to undergo a test prescribed for those who did not possess the requisite educational qualifications. Asking him to undergo such a test, would amount to alteration of conditions of service,

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apart from constituting a violation of the administrative instructions governing such promotion.

13. We are not impressed by the argument of the respondents that the applicant was asked to undergo the test on the ground that he did not produce the original certificate within the time-limit prescribed by them. The administrative instructions contained in CPRD-69/73, do not envisage that the respondents could ask a person to appear in the test in case he does not produce the original certificate within the time-limit prescribed by them. There is nothing on record to indicate that the genuineness of the certified copy of the VIII Class certificate furnished by the applicant at the time of his entry into service in 1966 was doubted by the respondents. The proper course in the present case would have been for the respondents not to subject the applicant to undergo a test which is meant for those who do not possess the requisite educational qualification and to appoint him on a provisional basis subject to his production of the original certificate, or other satisfactory ~~proof~~ of his having passed the VIII class as is evidenced by the certified copy of the certificate kept in his service-book.

14. In the light of the above, the fact that the applicant appeared for the test and failed, will have to be ignored. We further hold that the applicant should be considered eligible for promotion to the post of Daftry, treating him as having passed the VIII Class examination as evidenced by the certified copy of the certificate placed in his service record. Such promotion should be effected from the same date on which his junior was promoted as Daftry.

Or

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15. The respondents are directed to comply with the above directions within one month from the date of communication of a copy of this order. The parties will bear their own costs.

M.M.
(M.M. Mathur)
Administrative Member

P.K.K.
(P.K. Kartha)
Vice-Chairman(Judl.)