

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 892/86

.. Date of decision: 05.02.93

Sh. Raj Singh

.. Applicant

Versus

Union of India

.. Respondents

Sh. B.B. Srivastava

.. Counsel for the applicant

Sh. K.C. Mittal

.. Counsel for the respondents

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Hon<sup>o</sup>ble Sh. P.K. Kartha, Vice Chairman (J)

Hon<sup>o</sup>ble Sh. B.N. Dhoundiyal, Member (A)

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

J U D G E M E N T

(Delivered by Hon<sup>o</sup>ble Sh. B.N. Dhoundiyal,  
Member (A))

Shri Raj Singh is aggrieved that he has been denied promotion as a Daftary even though the required orders were issued by the office of the Medical Superintendent, Safdarjang Hospital on 16.6.78 (A.1).

2. The applicant was appointed as a Peon in Safdarjang Hospital on 10.4.65 and confirmed on 1.6.71. In 1978, he was selected for one year training as Operation Theatre Assistant.

*Dr. 2.*

Successful completion of this training would have made him eligible for appointment as O.T. Assistant (Class III). The training commenced on 15.4.78. On 16.6.78, orders for his promotion as Daftry were issued and he was asked to join his duties in the Orthopaedics Department immediately. On 24.6.78, he submitted an application requesting for permission to join as Daftry after completion of his training. He was asked to join as Daftry by 6.7.78. On 17.5.79, he again represented for his promotion but was informed vide memo dated 14.6.79 that his request would be considered on merit when the next vacancy arises. Thereafter, he made a number of representations and was again informed by memo dated 19.12.84 that his representation would be considered when a post of Daftry for reserved category falls vacant. His further representations did not bring any favourable response. He has prayed for the following reliefs :

1. That he may be promoted to the post of Daftry w.e.f. 8.6.78, the date of promotion mentioned in the Hospital Memo No. 2-6/78-Admn.III dated 16.6.1978 (Annexure A).
2. That his pay in the time scale of the Daftry's post be fixed w.e.f. 8.6.78 and he may be allowed upto date arrears of undrawn pay and allowances in the Daftry's scale w.e.f. 8.6.78 together with interest thereon at 18 % p.a.
3. That the cost of the suit including Counsel's fee and other incidental expenses may be reimbursed to him. *Av*

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4. That he may further be granted any other relief which this Hon<sup>o</sup>ble Tribunal may deem fit.

3. While considering MP 1928/90, this Tribunal passed an order on 20.3.91 directing the respondents that in case the applicant is senior to the other three persons who have been promoted as Daftry by order dated 13.6.90, he should also be considered for appointment as Daftry from 12.03.90.

4. The respondents have contended that though he was offered the post of Daftry, the applicant did not report for duty. As the duration of his training was one year and as the post could not be kept vacant. Shri Nirbhay Singh, who was junior to him was appointed as Daftry in public interest. The applicant was undergoing training as a departmental candidate for a different cadre and was thus, not entitled to proforma promotion.

5. We have gone through the records of the case and heard the learned counsel for both parties. Admittedly the applicant was sent for training by respondents as a sponsored candidate. He never refused his promotion as Daftry and his request for allowing him completion of his training cannot be treated as unreasonable. The promotion order was never cancelled. The relevant orders at serial (9) of the Ministry of Finance O.M. dated 14.3.78 are reproduced below :-

"(9) Proforma promotion while undfer training in  
India /abroad.

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F.R.20 provides that in respect of any period treated as duty under F.R.9 (6) (b), A Govt. servant may be granted such pay as Govt. may consider equitable, but in no case exceeding the pay which the Govt. servant would have drawn had he been on duty other than duty under F.R. 9(6) (b).

2. A question has been raised as to whether a Government servant who, while undergoing training or instruction in India, is treated as on duty under F.R. 9(6) (6) can be promoted to the next higher grade during such training or instruction, if he is otherwise entitled to such promotion and if so, how to regulate his pay on such promotion. It has been decided that in such cases, there should be no objection to the promotion of the employee to the next higher grade with effect from the date he would have been so promoted had he not proceeded on training if the conditions indicated below are fulfilled:

(a) he has been approved for promotion to the next higher grade; and

(b) all his seniors, except those regarded as unfit for promotion to the particular higher grade, available have been promoted to that grade.

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He may also be allowed to draw such officiating pay in the next higher grade which he would have drawn from time to time had he been on duty other than duty under F.R. 9(6)(b)."

6. In our view that the benefit of these provisions should have been given to the applicant. The application is therefore, disposed of with the following orders and directions :

1. The applicant shall be deemed to have been promoted to the post of Daftry with effect from 8.6.78 with all the consequential benefits in fixation of pay and allowances and seniority.
2. The arrears shall be payable to him with 12% interest from the due date till payment.
3. These orders shall be complied with expeditiously and preferably within a period of three months from the date of communication of this order.
4. There will be no order as to costs.

*B.N. Dhoundiyal*  
(B.N. Dhoundiyal) 5/2/83  
Member (A)

*P.K. Kartha*  
(P.K. Kartha) 5/2/83  
Vicer Chairman (J)