

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 26 JUL 1988

APPLICATION NO.

509

/ 88(F)

W.P. NO.

Applicant(s)

Shri S. Dorairaj

To

1. Shri S. Dorairaj
Peon
CMP Records
Bangalore - 560 025

2. Shri R.O. Kolekar
Advocate
32, Rest House Road
Bangalore - 560 001

3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011

4. The Provost Marshal
Adjutant General's Branch
Army Headquarters
DHQ PO
New Delhi - 110 011

5. The Adjutant General (Org 8) (I of R)
Army Headquarters
DHQ PO
New Delhi - 110 011

Respondent(s)

V/s The Secretary, M/o Defence, New Delhi & 5 Ors

6. The Officer incharge Records
CMP Records
Bangalore - 560 025

7. Shri C.K. Damodaran
Daftary
C.M.P. Records
Bangalore - 560 025

8. Shri Govinda
Daftary
C.M.P. Records
Bangalore - 560 025

9. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAN/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 22-7-88.

QC - *R.V.J.S. Sahadev*
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

Yashu
K. N. N.
26.7.88

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 22ND DAY OF JULY, 1988.

PRESENT:

Hon'ble Mr. Justice K.S.Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. L.H.A.Rego,

.. Member(A).

APPLICATION NUMBER 509 OF 1988

S.Dorairaj,
Peon, CMP Records,
Bangalore 560 025.

.. Applicant.

(By Sri R.D.Kolekar, Advocate)

v.

1. Union of India,
Ministry of Defence
represented by its Defence Secretary,
New Delhi.
2. Provost Marshal,
Adjutant General's Branch,
Army Headquarters,
DHQ PO New Delhi-110 011.
3. Adjutant General (Org 8) I of R),
Army Headquarters,
New Delhi.
4. Officer Incharge Records,
CMP Records,
Bangalore 560 025.
5. C.K.Damodaran,
Daftry, CMP Records,
Bangalore-560 025.
6. Govinda,
Daftry, CMP Records,
Bangalore-560 025. .. Respondents.

(By Sri M.Vasudeva Rao, Standing Counsel for R1 to R4)

This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. Sri S.Dorairaj, applicant before us, is a member of a Scheduled

Caste ('SC'). He initially started his career as Tin and Copper



Smith Mate and was appointed as Peon in the office of the AOC Records, was transferred in the same capacity on 13-3-1969. He transferred in the same capacity on 2-5-1977 to the office of the Core of Military Police Records ('CMP Records'), Bangalore in which office he is working ever since then.

3. In August 1987 there was a vacancy in the post of Daftry in the office of the CMP Records. In order to fill up that vacant post a Departmental Promotion Committee ('DPC') constituted for the purpose on 21-8-1987, considered the cases of the applicant and respondent-6, who is junior to the former and recommended the promotion of the latter and accepting the said recommendations the Officer-in-Charge, CMP Records - respondent-4 has promoted respondent-6 as a Daftry from 1-1-1988. In this application made on 14-3-1988, the applicant has challenged his non-promotion and the promotion of respondent-6 to the post of Daftry.

4. In justification of the supersession of the applicant and the promotion of respondent-6 as Daftry, respondents 1 to 4 have filed their reply and have produced their records. Sri Govinda, who is respondent-6 has appeared in person and has naturally supported his promotion and the supersession of the applicant.

5. Sri R.D. Kolekar, learned counsel for the applicant, contends that the supersession of his client and the promotion of respondent-6 who was his junior was in contravention of the Ministry of Defence (Class IV post) Recruitment Rules, 1968 (Rules) framed by the President under the proviso to Article 309 of the Constitution, Article 16 of the Constitution and was illegal.

6. Sri N. Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for respondents 1 to 4 sought to support the supersession of the applicant and the promotion of respondent-6.



No.6. Respondent-6 appeared in person and justified his promotion and the supersession of the applicant.

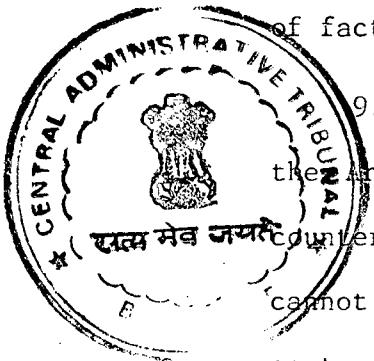
7. In the cadre of Peons, ^{as per} the applicant is senior to respondent No.6 is admitted by all the parties. Even otherwise, an examination of the records and the proceedings of the DPC show that the applicant is senior to respondent-6 in the cadre of Peons.

8. The promotion to the post of 'Daftry' which is a promotional post from the post of Peon is regulated by the Rules. Column No.12 of the Rules which primarily deals with the eligibility or the requirements for promotion to the post of Daftry from that of Peon reads thus:

"Peon with 3 years service in the grade."

Except for this, the Rules do not provide for any other educational qualifications as a condition precedent for promotion to the post of Daftry from the post of Peon. As on 21-8-1987, the applicant had three years ⁴⁸ of service in the grade of Peons and was, therefore, eligible for promotion as a Daftry. While this is the legal requirement of the Rules, the DPC had found the applicant unfit to hold the post of 'Daftry' on the ground that he does not meet the educational qualifications as required by the Recruitment Rules noticed by us and clarified by a letter written on 25-8-1980 by the Army Headquarters. We are clearly of the view that the DPC had totally misread the Rule and had erroneously found that the applicant does not possess the educational qualification necessary for promotion to the post of Daftry, though no such qualification had as a matter of fact been prescribed by the Rules.

9. We have also perused the letter dated 25-8-1980 written by the Army Headquarters. We are of the view that this letter runs counter to the requirements of the Rules and, therefore, the same cannot be depended upon for sustaining the supersession of the applicant.



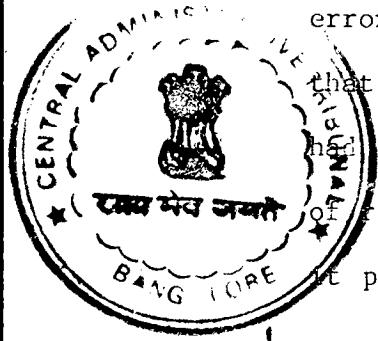
10. But, notwithstanding the above, Sri Rao strongly relied on the Army Instruction No.45 captioned as 'Prescription of minimum educational qualification for Peons, Jamadars, Daftries and Record Sorters of Central Services, Class IV' and the annexures thereto to sustain the supersession of the applicant and the promotion of respondent No.6.

11. We have carefully examined the Army Instructions issued in 1952 and 1956 relied on by Sri Rao.

12. We have earlier noticed that the Recruitment Rules had been made by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution. When the promotions to the posts are governed by the Recruitment Rules made by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution, any earlier instructions issued either by Government or by the Army Headquarters even providing for a contrary situation, cannot be depended upon to deny the promotion legitimately due to the applicant under the Recruitment Rules. On this view, we cannot place any reliance on the Army Instructions relied on by Sri Rao.

13. We have carefully examined the proceedings of the DPC.

14. The DPC had found the applicant unfit only on the ground that he was not educationally qualified to hold the post of Daftry. The DPC had not found him unfit to hold the post of Daftry on an evaluation of his service record. If the DPC had not formed an erroneous view of the requirements of the Rules, we have no doubt, that it would have recommended the promotion of the applicant who had the requirement of 3 years service/^{to} the post of Daftry instead of recommending respondent-6 in his place. On this view, we consider it proper to annul the promotion of respondent-6 and direct respon-



dent-4 to promote the applicant in the place of respondent-6.

15. Before parting with this case, it is necessary to point out that the applicant had impleaded one Sri C.K.Damodaran, as respondent-5 who appears to have been promoted as Daftry as early as on 1-7-1980. Sri Kolekar, in our opinion, very rightly did not press the claim of the applicant against the promotion of respondent-5 made on 1-7-1980. Even otherwise, the claim of the applicant against the promotion of respondent-5 made on 1-7-1980 is clearly barred by time and is liable to be so rejected. We, therefore, reject the challenge of the applicant to the promotion of respondent-5 to the post of Daftry from 1-7-1980.

16. We have found that the supersession of the applicant was illegal and directed that he should be promoted in place of respondent-6. But, notwithstanding this we consider it proper to deny the difference of salary due to the applicant till 31-7-1983 and direct respondent-4 to give effect to this order with effect from 1-8-1988.

17. In the light of our above discussion, we allow this application in part, annul the promotion of respondent-6 from the post of Peon to the post of Daftry and direct respondent-4 to promote the applicant in his place from 1-8-1988.

18. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

19. Let this order be communicated to all the parties immediately.

Sd/-

VICE-CHAIRMAN. 2/1

TRUE COPY

Sd/-

MEMBER(A) 22-7-88

np/-

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE