

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 3259/2001

New Delhi, this the 19th day of August, 2002

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HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

R.P. Bagai,
Joint Secretary,
Ministry of Defence,
Government of India, South Block,
New Delhi - 11

... Applicant

(By Advocate : Shri Vikas Singh)

Versus

1. Union of India
Through the Secretary,
Ministry of Defence,
Government of India,
South Block, New Delhi
2. The Secretary,
Ministry of Personnel,
Public Grievances, Pension
Govt. of India
Department of Personnel & Training
North Block, New Delhi - 110001
3. The Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi

... Respondents

(By Advocate : Smt. Avinash Kaur)

ORDER

By S.A.T. Rizvi, Member (A) :

The applicant born on 15.1.1947 joined Army training in June 1966 in the wake of the Emergency declared on 1.11.1962 and on completion of training joined the Armed Forces in the Short Service Commission (SSC) in April 1967. Commissioned on 23.4.1967 he was to complete his tenure of five years in the SSC on 22.4.1972. Due to the exigencies of war, he was not released on 22.4.1972. Instead he was released on 6.7.1973, that is more than a year after the completion of the tenure of five years in the SSC. While in the Army, the applicant, not without

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difficulty, succeeded in getting a week's leave sanctioned and appeared at the competitive examination held by the UPSC for the recruitment of the Emergency/SSC released officers of the Armed Forces to the IAS in 1971. At the time of filing his application for the aforesaid competitive examination in May/June 1971, there was no expectation of war breaking order and that was the reason why the applicant filed his application for the aforesaid examination. In any case, since the applicant was unable, due to the exigencies of war, to prepare adequately for the aforesaid examination, he could not make the grade in the aforesaid 1971 examination. The applicant appeared at the next year's examination again and this time he succeeded and was appointed to the IAS as a result of the aforesaid examination of 1972 and joined the Service on 7.7.1973. Since he could make the grade only in the 1972 examination, the respondents have allocated in his favour 1970 as the year of allotment (YOA). This has been done by them by following the relevant rule which reads as under:

"(d) The year of allotment of an officer appointed to the Service in accordance with rule 7A of the Indian Administrative Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt (after the date of joining pre-commission training or the date of his commission where there was only post-commission training) according as he qualified for appointment to the service in his first or second chance, as the case may be, having been eligible under rule 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955"

The applicant's claim is that he should have been allocated 1969 as his YOA.

2. The learned counsel appearing on behalf of the respondents has submitted that the aforesaid rule for determination of YOA is an old and established rule and has been applied to the Emergency/SSC released officers of the Armed Forces for decades. On a plain reading of the aforesaid rule, it is clear that the maximum benefit of seniority/YOA can be granted only to those officers who succeed in the first attempt. Those who succeed in the second attempt are, in accordance with the aforesaid rule, to be granted seniority/YOA below those succeeding in the first attempt by one year. Thus, if the applicant had succeeded in the first attempt that he made in 1971, he would have been allocated 1969 as his YOA. Having failed to make the grade in the first attempt, he has been rightly allocated 1970 as his YOA. The aforesaid rules are rational and have stood the test of time and continue to hold the field. The applicant, in the circumstances, according to him, has no case for the allotment of 1969 as his YOA.

3. The learned counsel for the respondents further submits that the applicant who belongs to the 1970 batch and who has been in the IAS right from 1973 has woken up very late in the day to agitate the matter regarding his seniority/YOA. According to him, the present application is wholly time barred. He has also submitted that the applicant's prayer was first rejected by the respondents vide letter dated 17.3.1999 (Annexure-I to the Counter). Since that letter has given rise to the same grievance, the applicant should have approached this Tribunal within

the time frame laid down in Sections 20 and 21 of the Administrative Tribunals Act, 1985. He has chosen not to do so. The same applies to yet another letter to the same effect issued by the respondents on 19.3.1999 (Annexure-II to the Counter). Since the applicant kept on representing in the matter, the respondents have once again disposed of his representation by a detailed, reasoned and a speaking letter issued by them on 28.9.2000 (Annexure-I). The aforesaid impugned letter deals with the various issues raised in the applicant's representations. The learned counsel has submitted that it is not possible to find fault with the following reasons assigned by the respondents in the aforesaid impugned letter of 28.9.2000:

3(i) The applicant has been appointed to the IAS on the basis of a competitive examination by way of direct recruitment and not by way of lateral appointment from a feeder service/ cadre. It is, therefore, not possible to give him seniority/YOA on the basis of the length of the service rendered by him in the Armed Forces or by having regard to the inter-se- seniority of officers in the Armed Forces. Success/failure at the examination is a relevant criterion for appointment/seniority and therefore, no fault can be found with the aforesaid rule which provides for maximum benefit of seniority/YOA in favour of those who succeed in the first attempt. EC/SSC officers constitute one class. It is not possible to frame a rule calibrated in such a manner so as to take into account the individual circumstances of the officers.

4. The learned counsel appearing on behalf of the applicant has advanced two different pleas in favour of

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allotment of 1969 as the applicant's YOA. The first plea advanced by him seeks to challenge the aforesaid rule vide amended OA filed on 31.7.2002 while the other plea raised on behalf of the applicant seeks to rely on a Court judgement for interpreting the aforesaid rule in such a manner as to treat the second attempt in which he succeeded in the competitive examination as first attempt thereby yielding 1969 as his YOA. According to the latter plea, an attempt made two years after demobilisation from the Armed Forces could be deemed to be the first attempt and accordingly advantage could be given to the applicant in the manner sought by him in the present OA. The applicant was released from the SSC finally in July 1973 and, therefore, by relying on the aforesaid Court judgement, the applicant could appear at the competitive examination two years thereafter in 1975 and that attempt would have to be treated as the first attempt. Thus, the attempt made by the applicant in 1972, came as it did so much before 1975 in which he actually succeeded could, in the circumstances, be treated as his first attempt. In this view of the matter, according to the learned counsel for the applicant, he could be considered for the allocation of 1969 as his YOA.

5. Insofar as the challenge to the aforesaid rule, being the first plea raised on behalf of the applicant, is concerned, the learned counsel for the applicant has placed reliance on the list of SSC officers who have been selected for appointment to the Indian Administrative Service in 1968, 1969 and 1970. The aforesaid list (taken on record) shows that the applicant who belonged to the SSC (NT)-2 course has been a loser in terms of

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seniority/YOA even though he was senior to several others of the same course who have been appointed to the IAS in 1968 and 1969. The applicant was the senior-most in the aforesaid course and has been shown at No.1 in the aforesaid list. One Shri V.K. Gore, who was next to the applicant in seniority in the same course and who too was commissioned in April 1967 got away with 1968 as his YOA while the applicant has been given 1970 as his YOA. The aforesaid Shri Gore was born on 2.6.1945, i.e. he was older than the applicant roughly by one and a half years. The aforesaid Shri Gore appears to have succeeded in the very first attempt he made at the competitive examination and has, therefore, been given the maximum benefit of seniority/YOA. In the event, he is a gainer by two years as compared to the applicant. The aforesaid gain of two years is attributable to the age of Shri Gore. Being older has turned out to be a factor to his advantage. This situation, according to the learned counsel appearing on behalf of the applicant, is arbitrary and without rational basis. Like-wise, one Shri A.M. Warty who belonged to the course SCC(NT)-3 course and was accordingly much junior to the applicant in the Armed Forces got away with seniority/YOA of 1967. The said Shri Warty was born on 30.4.1944 and was commissioned in the SSC in August 1967, more than three months after the applicant was commissioned. He got away with 1967 as his YOA only because he was much older than the applicant.

6. In addition to the aforesaid plea, the learned counsel appearing on behalf of the applicant has also placed before us a hypothetical situation in which a demobilised/released EC/SSC officer takes his first chance

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at the competitive examination, say at the age of 28 years, while another EC/SSC released officer of the same batch/seniority in Armed Forces takes his first chance, say at the age of 23 years, after their simultaneous release from the EC/SSC. The latter fails to make the grade in the first attempt while the former makes the grade in his first attempt. According to the aforesaid rule for the allocation of YOA, the former who took his first attempt at the age of 28 years stands to gain in seniority/YOA over the latter who might have succeeded in his second attempt say at the age of 24 or 25 years. Here again, the learned counsel has argued, arbitrariness is writ large in the way seniority/ YOA is allocated. The former candidate can be seen to have got away with higher allocation of seniority/YOA although he is presumed to have remained without work after being released from the Armed Forces for a much longer period than the latter candidate. It is also possible that the former candidate had engaged himself in some other job or avocation during the period after his release from the Armed Forces upto the time of his selection for appointment to the IAS. Gaining of advantage in the allocation of seniority/YOA in the aforesated circumstances, according to the learned counsel, suffers from the vice of arbitrariness. In view of the aforesaid position, the aforesaid rule, according to him, deserves to be struck down as in its actual operation it tends to treat equals unequally and unequal equally. Article 14 of the Constitution is, in the circumstances, attracted.

7(i). We have already noticed that on the question of as to which opportunity utilised by an EC/SSC released

officer should be deemed to be his first attempt/chance, the learned counsel appearing for the applicant had placed reliance on a Court judgement. That judgement relates to the case of Narendra Nath Pandey and Others Vs. State of U.P. and Others decided by the Supreme Court on 21.7.1988 and reported in (1988) 3 SCC 527. We have perused the aforesaid judgement and find that the issue to be decided in that case was about the period of time to be computed for the grant of seniority/YOA after an EC/SSC officer has been demobilised/released. It was brought to the notice of the Supreme Court in that case that EC/SSC officers spend a considerable time after their demobilisation/release before they appear at the competitive examination for recruitment to the IAS. In the process such EC/SSC released/demobilised officers get enormous advantage in terms of seniority over other officers also recruited to the IAS by competitive examinations or otherwise from different streams other than the EC/SSC stream.

7(ii). The rules invoked in that case were the UP Technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 and the U.P. Non-Technical (Class II)/Group 'B' Services (Appointment of Demobilised Officers) Rules, 1980, hereinafter called 'the 1973 Rules and 1980 Rules' respectively.

7(iii). Seniority of officers recruited in accordance with the 1973 Rules and the 1980 Rules was to be determined according to rule 6 of the 1973 Rules and rule 5 of the 1980 Rules respectively. The basic rule for the grant of seniority provided in the aforesaid rule 6 or rule 5 was to the effect that the seniority of an EC/SSC officer

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appointed under the aforesaid Rules shall be determined on the assumption that they entered the Service concerned at their second opportunity of competing for recruitment and that they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination. In other words, it was provided in the aforesaid Rules that whosoever out of the EC/SSC released officer succeeds at the competitive examination for recruitment to the IAS, will be assigned seniority/YOA by assuming that he had succeeded at the examination at the second opportunity. This was to be irrespective of the attempt, whether first or the second, in which the officer succeeds. The first opportunity was to arise immediately on completion of 21 years of age and the second opportunity just a year thereafter. Viewed thus, the aforesaid rule lays down that irrespective of the attempt, whether first or second, in which an EC/SSC released officer succeeds, the seniority/YOA will be granted to him by assuming that he succeeded by availing of the opportunity coming his way immediately after attaining the age of 22 years.

7(iv). Another category was created by the aforesaid rule for the grant of seniority/YOA. That category related to an EC/SSC released officer who had two opportunities at his disposal to appear at the competitive examination before joining the training prior to being commissioned in the Armed Forces. The rule, by way of a proviso to the aforesaid rule 6 lays down that any EC/SSC released officer who had two opportunities at his disposal as above, irrespective of whether he actually availed of any of them, shall, on being successful at the competitive

examination be assigned that year of allotment/seniority as would be allowable to successful candidates of the first competitive examination held after the day of his joining the training aforesaid. It would be seen that the net effect of the aforesaid rule is that those who, despite two opportunities being available to them before joining the training in Armed Forces, actually succeeded at the competitive examination later, quite irrespective of whether they had availed of any of the aforesaid two opportunities, will have to be content with seniority/YOA by one year less than the other category of EC/SSC released officers. For the sake of convenience the aforesaid rule 6(1) of the 1973 Rules which is identical to rule 5 of the 1980 Rules is reproduced as under:

"6. Seniority and pay - (1) Seniority and pay of candidates appointed against the vacancies reserved under sub-rule (1) of Rule 3, shall be determined on the assumption that they entered the service concerned at their second opportunity, of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination :

Provided that any such candidate who had two opportunities before the date of his joining the training prior to his commission whether he actually availed any such opportunity or not, shall be assigned the same year of allotment as successful candidates of the first competitive examination held after the said date.

Explanation. - The year of a candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service."

7(v). As already stated, the grievance of the appellants in the aforesaid case before the Supreme Court was that although there were long gaps between the dates of

demobilisation and the dates of recruitment of the respondents (EC/SSC demobilised officers), the State of Uttar Pradesh had, in computing the seniority of the respondents taken into consideration not only the period during which the respondents served the Armed Forces, but also such long gaps. This gave undue advantage to the EC/SSC released officers over the others recruited from other streams. The Supreme Court, after considering the aforesaid matter decided to compress the long gaps by suitably interpreting the aforesaid rule 6 (1) instead of by striking down the said rule. The Supreme Court came out with an interesting formulation/interpretation. The Court held that since the competitive examinations in question are generally difficult, a period of at least two years should be allowed to EC/SSC released/demobilised officers to prepare for the examination. The opportunity arising on completion of the aforesaid period of two years was to be treated as the officers' first opportunity. The second opportunity was to arise accordingly the very next year, i.e., on completion of three years from the date of the officers discharge from the Armed Forces. In short, the Supreme Court held that EC/SSC released officers should be allowed three years for competing in the competitive examination for recruitment to the IAS after their demobilisation. The long gap complained of by the appellants before the Supreme Court was thus compressed by the Supreme Court to a maximum of three years. The matter before the Supreme Court was decided accordingly.

8. The applicant in the present OA seeks to benefit from the aforesaid judgement in Narendra Nath Pandey and

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Others Vs. State of U.P. and Others (supra) by advancing the plea that since he was released from the Armed Forces in July 1973, in his case the first opportunity should be deemed to have arisen only in 1975, after completion of two years from the date of his release from the Armed Forces, and the benefit of seniority should be extended to him on that basis. Whereas the applicant could, in terms of the aforesaid judgement of the Supreme Court, avail of the first opportunity in 1975, in point of fact he did so in 1971 with second attempt made by him in 1972. Thus, according to the learned counsel appearing on his behalf, the applicant's second attempt itself came much before the first opportunity he could avail of in 1975. The applicant's case is, in the circumstances, according to the learned counsel, reinforced and the benefit of seniority/YOA should be extended to him accordingly.

9. We have considered the aforesaid submissions made on behalf of the applicant and find that N.N. Pandey's case (supra) is distinguished. The appellants in N.N. Pandey's case belonged to the Provincial Civil Service of the State of U.P. who were directly recruited to the PCS on the basis of competitive examinations held by the U.P. PSC and were appointed under the U.P. Civil Service (Executive Branch) Rules, 1941. The appellant PCS Officers are also eligible for recruitment to the IAS by way of promotion. However, the application of the aforesaid rule 6 (1) adversely affected their seniority as the same gave seniority to the EC/SSC released officers retrospectively over and above the seniority/YOA given to the PCS officers promoted to the IAS. Moreover, the aforesaid rule 6 (1) makes no distinction between those

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who succeed at the competitive examination at the first or the second attempt in the matter of grant of seniority/YOA except to the extent that a separate category has been created for the purpose of grant of seniority/YOA to take care of those who succeed at the competitive examination without availing or without succeeding at any of the two opportunities available to them before the date of their joining the training in the Armed Forces. The aforesaid rule is clearly distinguished from the rule to be relied upon for determining the seniority/YOA of EC/SSC released officers, to which a reference has already been made and the relevant portion whereof has been reproduced in paragraph 1 above. The aforesaid case (N.N. Pandey & Others (supra)) thus being distinguished, the interpretation of the aforesaid rule 6 (1) by the Supreme Court by compressing the long gap cannot be applied to the facts and circumstances prevailing in the applicant's case, having regard to the obvious fact that he is to be governed for the purpose of grant of seniority/YOA by a rule which is entirely different from the aforesaid rule 6 (1) and the facts and circumstances prevailing in N.N. Pandey's case (supra) are also materially different from those obtaining in the applicant's case.

10. It is true that in actual operation of the rule to which the applicant is subject, the issue of long gaps can arise in the same way in which it arose in the aforesaid case (N.N. Pandey - supra). But none of the parties in the present OA has raised that issue. Notwithstanding this position, even if we decide to import/transplant the concept of compression of long gap in the manner propounded by the Supreme Court in the aforesaid case,

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into the rule to which the present applicant is subject, we will still have to decide as to which of the two attempts made by the applicant in the present OA will have to be regarded as his first opportunity in the sense in which the word 'opportunity' has been used by the Supreme Court in the aforesaid case. Admittedly, the applicant has availed of both the chances available to him, firstly in 1971 and thereafter in 1972. Both these years fall much before 1975 which is to be regarded as the applicant's first opportunity in terms of the rule laid down by the Supreme Court in the aforesaid case. At the same time, both the aforesaid opportunities have already been availed of by the applicant in the present OA even before the first opportunity determined in accordance with the aforesaid judgement was to arise in 1975. The applicant had not yet been demobilised/released when he availed of both the opportunities aforesaid. The Supreme Court had, in its aforesaid judgement, visualised a situation in which the EC/SSC released/demobilised officers were to avail of the opportunities to appear at the competitive examination after their demobilisation/release. The applicant's submission is that the second opportunity availed of by him in 1972 in which he was successful should be regarded as his first attempt, forgetting the attempt which he had already made in 1971.

11. For various reasons, which we have already outlined above, and having special regard to the fact that the facts and circumstances of the two cases are substantially and materially different and the applicable rules are also at variance with each other, we are

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inclined to take the view that acting fairly in the matter it is not possible to concede the applicant's request for treating his second attempt made in 1972 and in which he succeeded as the first attempt for the purpose of grant of benefit of seniority/YOA accordingly in terms of the rules to which he is actually subject.

12. The applicant has emphasised that owing to the exigencies of war he was not released on completion of the normal term of five years in April 1972. Instead he was released much later only in July 1973. In the process he rendered additional service of more than a year in the Army. His plea is that the advantage of additional service so rendered by him should be given to him by giving him the seniority/YOA of 1969. The YOA allotted to him is 1970 and, therefore, if the aforesaid plea is accepted he would have the YOA of 1969 allotted in his favour. In support of the aforesaid contention, the learned counsel appearing on his behalf, has relied on Ram Janam Singh v. State of U.P. and Another with State of U.P. and Another v. Rajendra Singh Malhan and Others both decided by the Supreme Court on 25.1.1994 and reported in (1994) 2 SCC 662. That case, in our view, is entirely distinguished. It appears that some persons who had entered the Armed Forces during normal times and were therefore, not eligible for special treatment in accordance with the U.P. Non-Technical (Class-II) Services (Reservation of Vacancies for the Demobilised Officers) Rules, 1973 and the U.P. Non-Technical (Class-II/Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980 had sought the benefit of the aforesaid rules which was dis-allowed by the Supreme

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Court. The aforesaid 1973 Rules were to be applied only to those who had been released from the Armed Forces upto 10.1.1968. Similarly, the aforesaid 1980 Rules were to apply to those who were released from the Armed Forces on or after 3.12.1971. The petitioner before the High Court in that case had been recruited to the Armed Forces during the period between 11.1.1968 and 2.12.1971. The Supreme Court which had noticed the aforesaid judgement in Narendra Nath Pandey's case (supra) had set aside the High Court's judgement, and the respondents were held not entitled to any benefit under the aforesaid 1973 Rules and or the 1980 Rules. While dealing with the aforesaid case (Ram Janam Singh (supra)), the Supreme Court indeed had occasion to pronounce on the validity of the relevant Rules which provide for the grant of benefit of service rendered in the Armed Forces for the purpose of fixation of seniority/YOA. Relying on the aforesaid judgment will, therefore, not assist the applicant in any way.

13(i). The learned counsel appearing on behalf of the applicant next proceeded to place reliance on Union of India and Others vs. Dr. S. Krishna Murthy and Others connected with four other appeals decided by the Supreme Court on 20.9.1989 and reported in (1989) 4 SCC 689. Here again the case is distinguished. It appears that the Central Administrative Tribunal had struck down the rule 3 (2) (d) of the Indian Forest Service (Regulation of Seniority) Rules, 1968 and Clauses (c) and (d) of sub-rule (3) of Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954. On the other hand, the Culcutta High Court relying on a construction of Rule 3 (2)(d) of the IFS (Regulation of Seniority) Rules, 1968, had allowed

the writ petition and had set aside the orders relating to the year of allotment to the ECOs and SSCOs. The aforesaid rules, in the case of the IFS or the IPS are identical and Clause (c) of sub-rule (3) of Rule 3 of IPS (Regulation of Seniority) Rules, 1954 is reproduced below for the sake of convenience:

"3(3)(c) The year of allotment of an officer appointed to the Service in accordance with Rule 7-A of the Indian Police Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post- commission training according as he qualified for appointment to the Service in his first or second chance; as the case may be, having been eligible under Rule 4 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955."

13(ii). The validity of the aforesaid rule came in for a decision by the Supreme Court in the aforesaid case. The Court held as under:

"13. We are unable to accept the contention. The impugned rules have been framed with a view to giving weightage to the ECOs and SSCOs in recognition of their past services in the army during the period of emergency. We fail to understand why the classification has no rational relation to the objects sought to be achieved by the impugned rules. The classification has been made only for the purpose of compensating the ECOs and SSCOs for their lost opportunity because of their joining the army service and the impugned rules best subserve the purpose. Accordingly, we do not think that there is any merit in the finding of the Tribunal and also in the contention of the respondents that the impugned rules are violative of the provision of Articles 14 and 16 of the Constitution."

In the aforesaid judgement, the Supreme Court has clearly

held that the impugned rules, meaning thereby the aforesaid rules relating to the IFS and the IPS, are quite legal and valid, and that nobody has any fundamental right to a particular seniority or to any chance of promotion.

14. The corresponding rule for the fixation of the year of allotment to the ECOs and SSCOs in respect of appointment to the IAS, already reproduced in paragraph 1 above is identical to the aforesaid Rules framed for the IPS and the IFS. The Supreme Court having declared the aforesaid Rule in respect of the IPS and the IFS as valid, we are not in a position to hold a different view in the matter. In the circumstances we find that the relevant rule applicable to the IAS reproduced in paragraph 1 above is valid, and notwithstanding the circumstances highlighted on behalf of the applicant in paras 5 and 6 above, the plea advanced on behalf of the applicant that the aforesaid rule is violative of Article 14 of the Constitution is rejected.

15. The respondent plea of limitation bar is set aside in view of the rejection of the applicant's claim on merits and by a speaking order as late as on 28.9.2000.

16. For all the reasons brought out in the preceding paragraphs, we find no substance in the various pleas advanced on behalf of the applicant. Accordingly we find no ground to interfere with the impugned letter dated 28.9.2000.

17. In the light of the foregoing, the OA is dismissed. There shall be no order as to costs, however.

S.A.T. RIZVI
(S.A.T. RIZVI)
Member(A)

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ASHOK AGARWAL
(ASHOK AGARWAL)
Chairman