

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1031 of 1995

Allahabad this the 25th day of July 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. D.S. Baweja, Member (Admn.)

Dr. Bimal Chandra Bhadra, A/a 56 years, S/o Late Santosh Chandra Bhadra, Presently posted as Senior Specialist, Ordnance Factory, Kanpur.

APPLICANT.

By Advocate Sri Sudhir Agrawal

Vs.

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General, Ordnance Factories Board, 10-Auckland Road, Calcutta.
3. Dr. (Mrs.) Indu Dev, Dy. Director, Indian Ordnance Factories Health Services presently looking after the duties of the post of Addl. Director of Health Services Ordnance Factories Board, 10-A, Auckland Road, Calcutta.

RESPONDENTS.

By Advocate Sri Amit Sthalekar.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant Dr. Vimal Chandra Bhadra has approached the Tribunal seeking the relief that the order dated 28/3/95 annexure A-1 written by the respondent no.3 as Director General, Ordnance Factories, be quashed. The quashment of the orders annexure A-2

and A-3 passed by Dr. R.K. Shah, Additional Director of Health Services is also sought. Besides, a mandamus restraining the respondent no.3 from discharging the duties of the Office of the Director of Health Services, was sought to be issued. The further relief sought is that the respondents no.1 and 2 be directed to consider the applicant for promotion in Senior administrative grade w.e.f. 27.5.92 when the promotion on similar post was made from the side of the General Medical Duty Officer and Dr. R.K. Shah was promoted. The applicant also sought direction to the respondents no. 1 and 2 to allow the applicant to discharge the duties of the Director of Health Services.

2. The brief facts of the case are that the applicant was appointed as Specialist at one of the specified medical centres on 10.10.1983. This appointment was made on the basis of the creation of 24 posts of Specialists at six Specialist Medical Centres vide annexure A-4. These centres were at Calcutta/Ishapore, Kanpur, Shahjahanpur, Nagpur, Jabalpur and Kirkee. Prior to the creation of these posts of Specialists in the year 1981, the Health Services in the Ordnance Factories consisted only of general duty Medical Officers who were discharging the professional duties as well as the administrative duties. The need was felt of Specialists and, therefore, only in five disciplines namely Surgery, Medicine, Obstetrics, Gynaecology and Anaesthesia were posted the Specialists at the given centres. The rules of the service called the Indian Ordnance Factories

Health Services(Group A) Recruitment Rules, 1993 were subsequently framed.

3. There may not be a dispute between the general Medical Duty Officers and the Specialists, certain guide lines were framed by the Government of India, Ministry of Defence, Ordnance Factories Board and issued a letter dated 01.11.1983 (annexure A-5). It was mentioned that with the sanction of Specialist Medical Officers in certain factory hospitals, a different cadre of Medical Officers having different scale of pay was going to be introduced and, therefore, the medical administration of such hospitals had to be revamped. It was feared that by introduction Specialists, Medical Officers ^{not} having higher initial scale of pay, there was likelihood of some imbalance in medical administration. To obviate such administrative difficulties and to ensure the smooth running of the hospitals, certain guide-lines were framed. It was made clear that from that date, the cadre of Medical Officers of Ordnance Factory Organisation would have two different types namely cadre of Specialist Medical Officers of Senior and junior scales of pay and cadre of Administrative Medical Officers. The purpose of introducing Specialists in the service, was to allot Specialist work of the patients to them. They were not required to be spared for administration work. On the other hand, the Administrative Medical Officers were **required**

to perform general duties of Medical Officers and that too of routine professional work. They were, however, permitted to hold administrative charge as Senior Medical Officer or P.M.O. on being selected by the Departmental Promotion Committee. Such Administrative Medical Officers were given entire charge of the hospitals. The Senior Specialist Officers were put under direct control, for all administrative purposes, of the General Managers of the Factory. The hospital order fixing the duties of Senior Specialist Officers required the approval of the General Manager. Thus, started the functioning of the Specialist Medical Officers.

4. According to the Indian Ordnance Factory Health Service Group 'A' Recruitment Rules, 1993 (annexure A.18), two separate cadres were created. The promotion in the two cadres was determined separately. According to the Schedule-1 attached to these rules, a Specialist Medical Officer, Grade II in general scale had the promotional avenue of going in Specialist Medical Officer Grade II (Senior Scale) and then Specialist Medical Officer Grade I, and thereafter Senior Specialist. The Administrative Medical Officer starting the career as Assistant Medical Officer (Junior time scale) could be promoted as Senior Medical Officer/Assistant Director Health Services (Senior Time Scale) and then to Principal Medical Officer/Deputy Director Health Services(Ord.Scale)

and then Principal Medical Officer/Deputy Director Health Services(Non-functional and Selection Grade), and thereafter to the post of Additional Director of Health Services. The scale of pay which was admissible to Additional Director was given to Senior Specialist and the grade of Principal Medical Officer/Deputy Director Health Services(Non-functional and Selection Grade) was given to Specialist Medical Officer Grade I. Both Senior Specialists and Additional Director of Health Services were eligible for the promotion to ^{the post of} Director of Health Services in the grade of Rs.7300-7600.

5. The applicant contends that the Pay Commission had recommended two posts in the pay scale of Rs.5900-6700 but, both those posts were not given to the Specialist cadre. The telex message annexure A-8 was sent indicating that one of those two posts. was given to the Specialist cadre and the other to general duty Medical Officer cadre. On the basis of creation of these posts, Dr. R.K. Shah was appointed as Additional Director of Health Services vide order dated 27.5.92 (annexure A-9). It is pleaded on behalf of the applicant that despite the fact that two posts were created by one and the same telex message ^{and} but, the posting of Dr.R.K. Shah was made from the side of the general duty Medical Officer but, the same benefit by promoting the applicant to the higher post, was not given. The respondents kept the said post vacant. The applicant made representation (ann. A-10)

on 18.12.1991 in this connection. When nothing was heard, another representation (ann-A-11) on 18.9.92 was also made. The respondent no.2, without giving any reply to the representation, published seniority list (annexure A-12) on 20.7.93. The applicant was shown in the said seniority list at serial no.1. The order of promotion of the applicant (annexure A-13) was issued on 21.4.94 whereby he was made Senior Specialist and was transferred from Ishapore to Kanpur. The applicant again made representation on 03/5/94 (ann-A-14) desiring to know as to what was the grade in which he was promoted and what seniority would be given to him. Besides, he had also requested for continuance at Ishapore on the promoted post. The respondent no.3 intimated the applicant on behalf of respondent no.2 vide letter dated 23.5.94 (annexure A-15) that he (applicant) was promoted in senior administrative grade and his transfer was on promotion. The applicant, however, joined the post of promotion on 27.8.94. Thereafter, he again made representations on 03.9.94, 04.10.94 and 06.12.94 claiming his entitlement for promotion in senior administrative grade from the date when Dr. R.K. Shah was promoted from the other wing on 27.5.92. His contention was that granting of promotion belatedly was unreasonable, arbitrary and discriminatory and was intended to cause sufference to the applicant. It appears that no reply was⁶ sent² of these representations.

6. In the meantime, Dr. R.K. Shah attained the age of superannuation on 31.1.1995 and on the retirement of Dr. Shah, the respondent no.2 directed the respondent no.3 vide order dated 23.2.1995(ann.A-17) to look after the duties of Additional Director of Health Services. The contention of the applicant is that the respondent no.3 was only a Deputy Director much below to the applicant and the charge of Additional Director was given to respondent no.3. The respondent no.3 issued a letter(ann. A-1) to the applicant in which the respondent no.3 disclosed her designation as Director, Health Services (Offg.); and by this letter, the representation which was made by the applicant on 06.12.94, was rejected. The contention of the applicant is that a junior officer can neither be allowed to work as Director, Health Services, nor such a junior officer can assume the power to dispose of the representation of a senior officer. The applicant, however, represented to the Secretary, Ministry of Defence vide representation dated 16.7.95(annexure A-19) but, with no result. The applicant further claims that he, being senior in both the wings of the service, should have ^{been} entrusted the work of the Director of Health Services so long as either the promotion of the applicant to the post of Director was made, or anybody else had resumed the charge of the office of the Director of Health Services. Hence, this O.A. with the reliefs described above.

7. The respondents contested the case by filing the affidavit of Rajvir Singh, Works Manager of

Ordinance Factory, Kanpur. The grounds taken in the counter-affidavit are that the O.A. is barred by limitation and the representations made by the applicant were legally rejected vide orders dated 9/10-1-95, 11-1-95 and 28-3-95. It is averred that the applicant cannot be given charge of Ordinance Factory, Kanpur Hospital Administration because such a charge can be given only to Senior Medical Officer or Principal Medical Officer of the general duty Medical Officers. It is pointed out that the applicant has challenged the instructions which were issued by Ordinance Factory Board on 02.11.83, 28.11.86 and 12.2.87 by filing an O.A. no.389/89 before the Calcutta Bench of the Tribunal but, the said O.A. was dismissed on 18.4.95. Thus, it is pleaded that the applicant cannot agitate the matter again. As regards the promotion of the applicant, it is contended that the promotion was subject to the recommendation of Departmental Promotion Committee, and when the same considered the name of the applicant and recommended his promotion, the order was passed on 21.4.94 in pursuance of which the applicant had taken over the charge of higher post on 27.8.94. It is, therefore, pleaded that the applicant cannot claim his promotion from the date of 27.5.92. It is further pleaded that seniority of officers of general duty cadre and that of the specialist cadre is completely separate and thus, the applicant ^{can} not claim his seniority in

comparison with the general duty Medical Officer. It is further contended that because the applicant is Senior Specialist Grade Officer, he cannot be given the post of Additional Director of Health Services which goes to the general duty Medical Officer, cadre. As regards the promotion of the applicant to the post of Director is concerned, it is pointed out that since the applicant had taken over ⁱⁿ the senior Specialist grade in August, 1994, he would be eligible for the post of ~~Additional~~ Director of Health Services only in August, 1997. It is, therefore, emphasised that the claim of the applicant for the post of Director at present is unjustified.

8. The respondents also denied the allegation that the respondent no. 3 Dr. Indu Dev was dis^{charging} ~~charged~~ the duties of Director of Health Services. It was pointed out to be a typographical error when designation, by the respondent no.3, was shown as D.H.S.(Offg.) in some of the communications. It is further pleaded that by this typographical mistake, neither respondent no.3 assumes the charge of Director nor any authorisation can be presumed. It is further averred that the order authorising Dr. R.K. Shah to exercise financial and administrative powers of the Director, was a temporary administrative arrangement which was made keeping the public interest in mind. It is claimed that such an order cannot be treated as Dr. Shah being posted Director. The delay in the promotion of the applicant is tried to be explained by saying that in

all the major disciplines, ^{namely &} Surgery, Medicine, Obstetrics, Gynaecology and Anaesthesia, there were Specialist Medical Officers. Since the post of Senior Specialist in the senior administrative grade was common to all these disciplines, it became necessary to prepare doetailed seniority. It took time but, however, such doetailed seniority, -- of Specialist Medical Officers, was prepared and circulated in January, 1993. The D.P.C. met on 12.11.93 and recommended the name of the applicant who was promoted vide order dated 21.4.94 but, he joined on 27.8.94. The further reason of delay was stated to be the consultation with U.P.S.C. and Ministry of Defence. On these grounds, it is pleaded that the O.A. be dismissed.

9. The applicant filed rejoinder in which the facts which were already narrated in the O.A., were reiterated. It was, however, urged that the contents of para 6 (a) to (e) of the counter-reply were incorrect and false and, therefore, a separate misc-application 2935/95 was moved to initiate criminal proceedings as well as contempt proceedings against the maker of the said affidavit. The respondents filed reply to the said application and denied the allegation of incorrectness of falsehood made in the counter-affidavit.

10. We have heard Sri Sudhir Agrawal, counsel for the applicant and Sri Amit Sthalekar, counsel

for the respondents. The record is also perused.

11. After hearing the learned counsel for the parties and going through the pleadings of the rival parties, it appears to be a fight between the Specialists and Generalists. It is revealed from the pleadings that the Indian Ordnance Factory Health Services, were, in the beginning, consisted of only one category of Medical Officers who were discharging the professional duties as well as administrative duties. Since, the need was felt of Specialists, and as the history of creation of Specialists cadres suggest, the posts of some Specialists, were created only at six centres. The State, as employer, was quite alive about the possible fighting between the two cadres. It was for this reason that guide-lines were made and the administrative control over the Specialist-cadre was given to the General Manager of the factory. It appears that those guide-lines were subsequently diluted and an impression was created in the mind of the Specialist-cadre that they have been subordinated to the general duty Medical Officer although, they (Specialist Medical Officers) were carrying higher grade. Anyway, it is quite clear that the rules of the Services which are called the Indian Ordnance Factory Health Services Group 'A8 Recruitment Rules, 1993 were framed.

Copy of these rules(annexure A-18) has been brought on record and it appears that these rules were published in the Gazette in 1995. The perusal of these rules indicates that two separate and distinct cadres, were created and they were shown in the Schedule. We have already pointed out the hierarchy or the promotional avenues in the two cadres. The general duty Medical Officer starts a journey in the service As Assistant Medical Officer and can reach upto the post of Additional Director of Health Services. Similarly a Specialist starts from Specialist Medical Officer Grade II and may go upto the Senior Administrative grade which is equivalent to the grade of Additional Director of Health Services. For the post of Director, ~~For the post of Director~~, both Additional Director of Health Services and Senior Specialist with 3 years regular service in the grade of Rs.5900-6700, are made eligible for promotion. In this way, it is crystal clear that the jobs of the two cadres have been clearly demarcated. The general duty Medical Officer shall do routine professional work and be responsible for the administration of the hospitals. On the other hand, the Specialist Medical Officers shall do only professional work. In such a situation, the contention of the applicant that he should have been given the charge of the post of Additional Director, Health Services is not maintainable, because this post goes in the cadre of general duty Medical Officer.

12. The grievance of the applicant is that the

post of Deputy Director of Health Services is junior to the Additional Director of Health Services and to the Senior Specialist Medical Officer because the post of Additional Director of Health Services and Senior Specialist are equated. When the applicant was promoted and had taken over the charge of Senior Specialist, there was no justification for the respondent no.3 who was only a Deputy Director, to dispose of the representation dated 06.12.1994 of the applicant by assuming the role of Director, Health Services(Offg.). The letter annexure A-1 is quite clear to indicate that the respondent no.3 had designated herself as Director, Health Services(Offg.). No doubt, the respondents have come with the plea that it was a typographical error but, there is no substance in it because this assumed office has been shown by the respondent no.3 in several other letters which have been filed by the applicant alongwith the rejoinder application. The guide-lines(annexure A-5) which were issued on 01.11.1983, stipulated a clear cut administrative hierarchy for general duty Medical Officers, and for Specialist Medical Officers. It was apprehended that administrative problems may occur and for that reason precautionary steps were taken. These guidelines were subsequently modified vide order dated 28.11.86(annexure A-6) indicating that all the Medical Officers including Specialist Medical Officers would be directly under the P.M.O./S.M.O.-Incharge so far the duties in the hospital were concerned. It was also mentioned that in the event of the absence of P.M.O./S.M.O. - Incharge

being on leave or sick,, the next Senior Medical Officer or general duty Medical Officer, would officiate as the Superintendent of the hospital. Subsequently, the Indian Ordnance Factory Health Services(Group A) Recruitment Rules, 1993 came into force and again the same division and distinctions in the two cadres namely general duty Medical Officers and Specialist Medical Officers, was maintained. The equation of the Medical Officers of the two wings was shown in the Schedule. The consequent relief, therefore, appears that the guide lines(annexure A-5) which were issued on 01.11.1983 should have remained² in force so that the vickering which developed between the two cadres, may not have originated. The rational view also appears that a Medical Officer who is drawing higher salary and who has been given higher pay scale, can neither be placed nor be deemed to have been placed under another Medical Officer who was getting less salary and was placed in the lower scale of pay. The reason of this conclusion is that promotion, as understood under the service law jurisprudence means advancement in rank, grade or both. The promotion is always a step towards advancement to a higher position, grade or honour. This view was taken by their Lordships of Hon'ble Supreme Court in the case 'Tarsem Singh Vs. State of Punjab and Others 1994(4) S.L.R. 577'. It is clear from the pleadings of the parties in this case, that this principle of promotion was not kept in view while the orders particularly annexure A-6 dated 28.11.86 was passed and Specialist Medical Officers who were

drawing higher salary, were attempted to be placed under the administrative control of the Superintendent of the hospital or P.M.O./S.M.O.-Incharge. It has not been made clear to us whether such an arrangement is still ^{vogue}invoked or it has been withdrawn. In case the practice of keeping the Senior Specialist Medical Officers under the administrative control of the officer who is drawing less salary is still ^{vogue}invoked, the respondents should take immediate remedial steps.

13. In the present case, the applicant has prayed the quashment of the order annexure A-1, passed by the respondent no.3 who was holding a lower post i.e. of the Deputy Director, Health Services and had assumed the role of the Director of Health Services. The respondents particularly the respondents no.1 and 2 have come with the case that the respondent no.3 was never allowed to assume the office of the Director of Health Services and to pass orders particularly disposing of the representation of the applicant. It is further averred that there was a typographical error in the order annexure A-1 where the designation of the respondent no.3 was written as D.H.S.(Offg.). The mistake may be committed once or twice, but not repeatedly. The learned counsel for the applicant has brought on record number of papers marked annexure R.A.-1, running in several pages starting from page 9 to 29. We find that the respondent no.3 Dr.(Mrs.) Indu Dev had shown her designation on all these papers as D.H.S.(Offg.). Clearly, it is intentional^{ly} and they are deliberately

written, probably to humiliate the applicant in particular and all the members of the Specialist cadre in general. We do not find any material which may indicate that the actual representation dated 06.12.94 of the applicant, was disposed of by the Director, Health Services, and respondent no.1 had simply communicated such an order. The only inference which can be drawn that the respondent no.3 assuming the role of Director of Health Services, disposed of the representation made by the applicant and passed ^{order} annexure A-1. The result, therefore, is that there was neither any legal right vested in respondent no.3 nor was any propriety attached therewith to pass the order annexure A-1. We, therefore, quash the order, annexure A-1. ~~to A-3.~~

We had already directed the Director General vide our order dated 22.3.96 that the duties of Director, Health Services be taken away from the respondent no.3. We reiterate our stand and direct the respondents no.1 and 2 that the respondent no.3 should not discharge the duties and perform ^a the functions of the post of Director, Health Services because senior to her is present atleast in the Specialist Medical Officer cadre.

14. It is argued on behalf of the applicant that the respondents did not act fairly in granting the senior administrative grade to the applicant. The reasons advanced are that the Pay Commission, looking to the cadre of the Specialist Medical Officers and the nature of duties and less opportunities

of promotion, had recommended creation of two posts in the grade of Rs.5900-6700 but, the respondent no.1 gave only one post to the Specialist Medical Officer grade and the other was given to the general duty Medical Officers. The power of creation of post is an executive function. The Pay Commission has a role of recommendation. The State may accept the said recommendation in toto or in part or may reject the same altogether. Thus, on the basis of recommendation of the Pay Commission, an employee or an association of a particular service does not acquire any right to claim the benefit as was recommended by the Pay Commission.

15. The learned counsel for the applicant, however, argues that the creation of two posts each in the two cadres carrying grade of Rs.5900-6700 was made by Telex message dated 07.9.90 and Dr. R.K. Shah, a Medical Officer of the cadre of general duty Medical Officers, was given the promotion w.e.f. 27.5.92 while the other post which was given to the Specialist Medical Officer cadre, hanged in balance. It appears from the perusal of the record that the applicant had been fighting for the creation of the said post by moving representations after representation but, no reply was given. However, the seniority list ^{constituted} ~~constituted~~ only of five Specialist Medical Officers, was communicated on 20.7.93 and thereafter the order of promotion of the applicant who was on the top of the list, was given on 21.4.94. The learned counsel for the

applicant pointed out towards this delay and contended that the respondents no.1 and 2 acted in an unfair manner by delaying the creation of post and by giving the promotion on the said post to the applicant after about 2 years when it was actually given to Dr. R.K. Shah. The explanation offered by the respondents through counter-reply is that detailed seniority of the Specialist Medical Officer, cadre was to be prepared and thus, there was delay. We have already discussed the letter annexure A-4 whereby these 24 posts of Specialist Doctors at six.centes were created. It is really ^{astounding} ~~estroncousing~~ if two years period may be consumed in the preparation of the seniority list of five officers out of total number of 24 Medical Officers. In our opinion, the respondents have failed to explain the delay reasonably. What appears ^{is that} that the matter of finalising the creation of post in the cadre of Specialist Medical Officers ~~and~~ thereafter promotion to the applicant, was delayed because of the mounting pressure from the side of the general duty Medical Officers. The State is required to be a model employer. It is expected of the Model employer to deal with the employees of different cadres though rival to each other, equally. We see no justification that the post in general duty Medical Officer may be created and Dr. R.K. Shah may be appointed on 27.5.92 while the promotion of the applicant may be delayed to the extent that he could assume the charge only on 27.8.94. Our attention has also been drawn towards the language which was ^{used} ~~issued~~ in the order of Dr. R.K. Shah (annexure A-9) and in the order of the applicant (annexure A-13) dated 21/4/94.

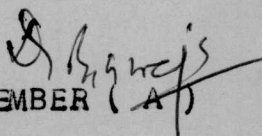
The order annexure A-9 directs Dr. R.K. Shah to take over on the post of promotion with immediate effect while in the order of the applicant ~~it~~² was made effective from the date of assumption of the charge ^{7th post} of Senior Specialist. The discrimination is apparent. The learned counsel for the applicant, therefore, argues ~~that~~ the promotion of the applicant be deemed from the date 27.5.92 when it was given to Dr. R.K. Shah. The reasons advanced for this delayed order of creation and the order of promotion of the applicant is that the applicant may not be eligible for consideration for the post of Director, Health Services. The reliance has been placed on *Mahadev Kalekar & others* Vs. State Bank of Hyderabad J.T. 1990(3) S.C. 450² in which similar situation had arisen. The petitioners in the said petition had prayed that they should be granted notional promotion from the date when the promotions were given to the officers of Group 'B'. Their Lordships of Supreme Court had accepted the prayer because it was found reasonable. In this case, the creation of two posts to the rival cadres was ordered by one and the same Telex message but, Dr. R.K. Shah was promoted on 27.5.92 whereas the applicant could take over the charge only on 27.8.94. The delay is attributable to the respondents no.1 and 2 and the explanation which is offered, is also found to be lame. In these circumstances, it would be proper and legally justified if the applicant is allowed notional promotion with no benefit of salary w.e.f. 27.5.92. This notional promotion shall give him the benefit of length of service on the post of Senior Specialist in senior administrative grade of. Rs.5900-6700.

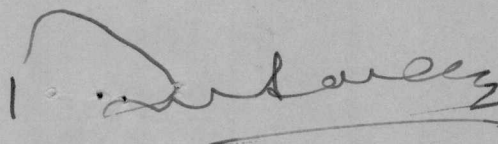
16. The learned counsel for the applicant has also prayed that a mandamus directing the respondents no.1 and 2 be issued to consider the applicant for discharging the duties on the post of Director of Health Services and to hold regular selection for his promotion. We cannot give any direction to promote the applicant on the post of Director but, we can certainly direct the respondents no.1 and 2 to consider the name of the applicant for such a promotion if he fulfills all the requisite qualifications.

17. The learned counsel for the applicant has also moved a misc.application no.1031/95 making a prayer that the person who had filed counter-reply, should be prosecuted for making incorrect and false averments in para 6 (a) to (e) of the counter-reply. It has been opposed on behalf of the respondents. We are of the view that when the allegations were made against Dr. (Mrs.) Indu Dev, the respondent no.3 ~~she~~ ought to have filed the counter-reply atleast for herself. Sri Rajvir Singh filed the counter-reply perhaps on the command of the seniors in the Ordnance Factory Board or other officers. We have not recorded a finding that the averment was definitely incorrect or false because we did not consider it necessary. The finding was based on other facts and circumstances. In such a situation, we are not inclined to draw any proceedings against Sri Rajvir Singh. In this way, the M.A.1031/95 also stands disposed.of.

18. The plea was ~~also~~ taken by the respondents that the O.A. was time barred, while scrutinising the facts, we come to the conclusion that the applicant had been representing on each and every time and he had been seeking for creation of the post as well as for the promotion of himself. The continuity of cause of action goes on till the creation of the post is made and promotion given or the representation disposed of. Thus, we do not see any substance in this prayer that the O.A. was barred by limitation.

19. On the consideration of the facts and circumstances of the case, we allow the O.A. partly. No order as to costs.


MEMBER (A)


MEMBER (J)

/M.M./