

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1119 of 2000

Monday, this the 3rd day of December, 2007

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Raghu Nath Ojha, Son of Late Nagina Ojha, resident of H.No. 261/5, Shastri Nagar, Kanpur.

Applicant

By Advocate Sri R.K. Shukla

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Govt. of India, NEW DELHI-11.
2. The Director General, D.G.A.Q.A., Ministry of Defence, 'H' Block, NEW DELHI-11.
3. The Officer Commanding, Air Armament Inspection Wing, Khamaria, JABALPUR-482005 (M.P.).
4. The Officer-in-Charge, Detachment, A.A.I.W., Kanpur-208009.

Respondents

By Advocate Sri Saumitra Singh

O R D E R

By K.S. Menon, Member (A)

This O.A. has been filed against the impugned letter dated 26.06.2000 passed by respondent No. 3 in which reasons have been given as to why applicant could not be promoted to H.S.G-II w.e.f. 15.12.1994 i.e. the date his junior was promoted. This letter has been issued in response to the applicant's representation dated 13.06.2000. Being aggrieved with this letter, the applicant has sought directions of this Court to be given to the respondents No.1, 2, 3 and 4 to promote him on the post of Examiner H.S.G-II w.e.f. 15.12.1994, when his junior was promoted together with payment of arrears and issue any other direction as may be deemed fit and proper in the circumstances of the case besides awarding cost to the applicant.

2. The facts in brief are that the applicant was working as Examiner Skilled in A.A.I.W., Kanpur in the scale of Rs.3050-4590/-. Based on the vacancies, a trade test was conducted for 18 vacancies

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on 28.10.1994 for promotion to the post of Examiner H.S.G-II at A.A.I.W. Jabalpur. Out of these vacancies, two vacancies were notified against Detachment A.A.I.W., Kanpur. As per existing procedure, the employees were asked to furnish their option certificate, which was to be executed prior to appearing in the trade test. It appears that following four employees had exercised their options: -

<u>Names of Candidates</u>	<u>Choice of Station as per option Certificate</u>
1. Sri S.C. Arya	Kanpur
2. Sri Rais Ahmad.	Muradnagar/Kanpur
3. Sri A.K. Bhatia.	Kanpur
4. Sri R.N. Ojha (applicant).	Kanpur.

Based on the result of the trade test and options exercised by the above mentioned employees, the respondents had placed them in the above mentioned order of seniority. Sri S.C. Arya and Sri Rais Ahmad, who would normally have been adjusted against the notified vacancies at Kanpur could not be given the promotion immediately as disciplinary proceedings were pending against them. Their cases were hence kept in a sealed cover. Sri Babu Singh, Junior to the applicant was promoted, superseding the applicant as Sri Babu Singh had opted for a posting to Chanda as per the 18 vacancies, which were notified. The applicant's main grievance is that since he had passed the trade test and was senior to Sri Babu Singh he should have been promoted against the vacancies available at Kanpur, specially since this vacancy was not filled up by Sri S.C. Arya, who was senior to the applicant in view of the sealed cover procedure adopted in his case.

3. The contention of the respondents is that this procedure of obtaining the option certificate was arrived at after detailed discussion with the Unions and Federations in the JCM Meeting. It was in accordance with this decision that the vacancies were notified and above option certificates called for. The respondents further state that it was because of problems faced in transferring the employees on promotion to the various factories located throughout the country that this method was adopted and the option certificate clearly indicates that the options once exercised are irrevocable. However, only if the postings are not done according to their choice, the employees were prepared to be superseded. The respondents' further state that even if Sri S.C. Arya was not considered for promotion due to sealed cover procedure adopted in his case, the said vacancy would have to be

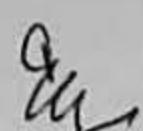
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offered to Sri A.K. Bhatia, who was senior to the applicant. Hence the applicant did not have any case at all for seeking promotion and posting at Detachment AAIW, Kanpur. Once the disciplinary proceedings were completed in the case of Sri S.C. Arya and Sri Rais Ahmad, they were promoted according to their choice given in the option certificates.

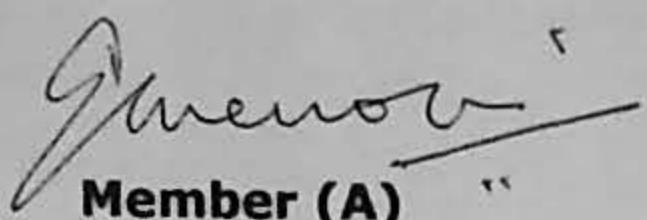
4. The respondents' main contention is that the applicant has challenged Sri Babu Singh's promotion dated 15.12.1994, whereby he was superseded. Subsequent to that, applicant did not object nor file any representations against the said supersession. It was only on 13.06.2000 (annexure A-3) that he filed a representation for the first time. It is this representation, which has been replied to by the respondents vide the impugned letter dated 26.06.2000. Consequently, the applicant filed this O.A. on 05.10.2000, which is highly time barred and cannot be entertained under Section 21 of the Administrative Tribunals Act, 1985.

6. We have heard the counsel for both the parties and perused the pleadings on record.

7. It should be mentioned here that we are at this juncture not going into the merits of the case but are confining ourselves to the issue of limitation and hence maintainability of the O.A. Admittedly, when Sri Babu Singh was promoted on 15.12.1994, the applicant should have represented or objected to the said supersession. He however chose to do so only six years later vide his representation dated 13.06.2000. A bare reading of this representation clearly shows that it was being filed for the very first time as he has not made any reference to any earlier representations that may have been forwarded to the respondents. It, therefore, clearly establishes the fact that the applicant has represented belatedly. The contention of the applicant that he filed this O.A. within few days after receiving the impugned letter dated 26.06.2000, is without any basis because the said impugned letter is not an order of the respondents, which can be challenged. It is purely a reply to his representation dated 13.06.2000 which itself is time barred and hence it clearly established that this O.A. has been filed belatedly after approximately six years and hence barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.



8. In view of the above, we are of the considered opinion that the O.A. being barred by limitation deserves to be dismissed. The O.A. is accordingly dismissed as time barred. No order as to costs.



Member (A)



Member (J)

/M.M/