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**CENTRAL ADMINISTRATIVE TRIBUNAL
Jodhpur Bench: Jodhpur**

**Original Application No. 80/2004 and
Misc. Application No. 44/2004**

Date of decision: 12.01.2005.

Hon'ble Mr. J K Kaushik, Judicial Member

Hon'ble Mr. M K Misra, Administrative Member.

Hari Dutt Sharma, s/o Shri Pokar Mal, aged 44 years, Pipe Fitter, in the Office of the Garrison Engineer (South), Bikaner, r/o near Railway Tanki, Bikaner.

Applicant.

Rep by Mr. Vijay Mehta, : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Western Command, MES, Chandimandir
3. Commander Works Engineer(P), Bikaner.
4. Commander Works Engineer MES (Air Force). Bikaner.
5. Engineer in chief, Army Head Quarters, New Delhi.

: Respondents.

Mr. Dependra Singh proxy counsel for
Mr. Ravi Bhansali : Counsel for the respondents.

ORDER

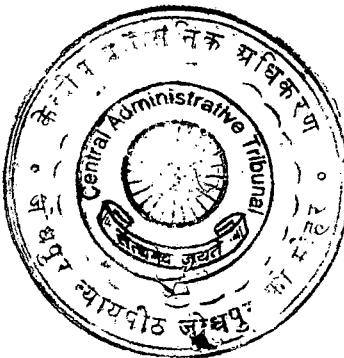
Mr J K Kaushik, Judicial Member.

Shri Hari Dutt Sharma, has filed this O.A preponing the date of his appointment to the post of H.S. Gr. II, i.e. with effect from 15.10.84, instead of 13.11.86.

2. We have heard the learned counsel for the parties and have anxiously considered the pleadings and records of this

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case. The admitted facts necessary for resolving the controversy involved in this case as borne out from the pleadings of the parties are that the applicant was initially appointed on 31.08.81 to the post of Pipe Fitter Skilled. He was trade tested along with two others and after passing the same enjoyed his promotion to the post of H.S. Gr. II with effect from 13.11.86. Vide order dated 15.10.84, there was an upgradation of the posts to the tune of 20% of the vacancies to H.S. Gr. II on the basis of seniority without any obligation of trade test. Over and above these 20% vacancies, 15% posts were required to be filled on the basis of trade test within two chances before 30.06.86 and those who qualified were to be given promotion with effect from 15.10.84. The test was not conducted in time. Some of the similarly situated persons including two of his juniors have approached this Tribunal and vide Annex. A.3, the case was allowed in their favour and they were allowed the benefits of promotion to the post of HA Gr. II with effect from 15.10.84. Similarly a number of other similarly situated persons were also allowed the said benefit from 15.10.84 vide letter dated 05.03.2004. But the applicant was not allowed similar benefits.

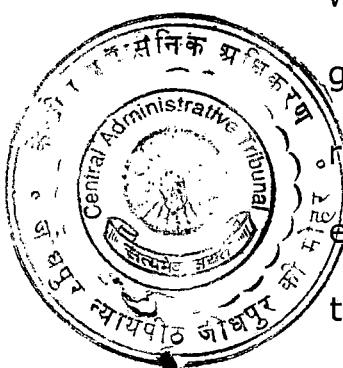


3. As regards the variances, in the facts, the respondents have narrated in their reply that the applicant was appointed as Pipe Fitter only and not Pipe Fitter Skilled Grade. It is also averred that the applicant was at sl. No. 11 of the seniority list

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and as per the upgradation scheme he could not be given promotion as per his seniority and trade test for him could not be conducted. The moment he passed the trade test he has been granted the promotion. The promotion to Shri Gurucharan Singh has been given as per the directions of this Tribunal in O.A. No. 49/97 and the said direction is applicable only to the applicants who have filed that O.A and not to the applicant herein. Hence the O.A may be dismissed with costs.

4. Misc. Application No. 44/2004 has been filed for condoning the delay in filing the O.A. The main grounds for condonation of delay are that when the applicant came to know from his colleagues regarding the promotion given to similarly situated persons in compliance of the order of this Bench of the Tribunal, which the respondents made on 20.08.2003, he took recourse to get similar benefits to him. It was further submitted that the respondents cannot make artificial distinction between those employees who had gone to Court and those who did not knock the doors of the Court and for waiting for the outcome of the litigation. The same has been replied by the respondents wherein it has been averred that no substantial reason has been furnished for approaching this Tribunal after a lapse of considerable period.



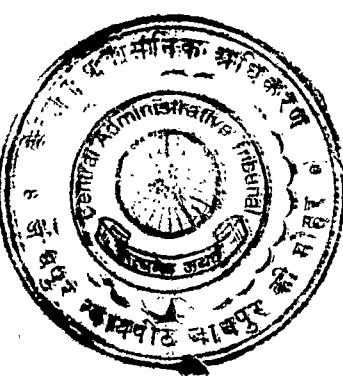


5. Both the learned counsel have reiterated the facts and ground mentioned in their respective pleadings of the parties.

The learned counsel for the applicant has endeavoured to persuade us that some of the juniors to the applicant have been extended the benefits in implementation of the order at Annex.

A/3. The applicants therein are similarly situated like the present applicant and the case of the applicant could not have been neglected on the pretext that his juniors have gone into litigation and the applicant has not chosen to take such course of action. As regards the limitation, he has submitted that the MA contains good and sufficient reasons for condonation of delay in filing this O.A.

6. On the other hand, the learned counsel for the respondents has strenuously opposed the contentions raised on behalf of the applicant and has strived hard to persuade us that the O.A deserves to be dismissed on the ground of limitation itself since there are no good and sufficient reasons for condonation of delay. On merits, he has submitted that the other persons were granted similar benefits since there were specific orders from the Court in their favour.



7. We have considered the rival submissions made out on behalf of both the parties. Before, advertting to the facts, we would like to dispose of the peripheral issue regarding the



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limitation in filing the O.A. We have carried out incisive analysis and there are facts which we have gathered are that one Gurucharan Singh, who is admittedly, junior to the applicant has been extended the benefit of preponing his date of promotion to the post of H.S Gr. II with effect from 15.10.84 somewhere in the year 2003, in implementation of the orders of this Tribunal. We have also perused the order which came to be passed by this Bench of the Tribunal, wherein at the first instance, the O.A came to be dismissed on the ground of limitation itself and when the matter was taken up before the Hon'ble High Court of Rajasthan, at Jodhpur the Hon'ble High Court had held that the same was not barred by limitation and the case ought to have been decided on merits and the same was decided accordingly. Firstly, we find that one of the juniors to the applicant has been granted the promotion with effect from 15.10.84, somewhere in the year 2003. As per the service jurisprudence, one has got a right for consideration for promotion and definitely that right is available to an individual when his next junior is considered. In this case, his next junior was considered and has been promoted only in the year 2003 with effect from 15.10.84, may be in pursuance of the order of this Tribunal. Hence the applicant would have right for consideration and that right arises only to him in the year 2003. Therefore, the very O.A is within limitation as prescribed under Sec. 21 of the Administrative Tribunals Act, 1985.





8. Otherwise also the benefit of a judgement is required to be extended to the similarly situated persons especially when the particular law has been laid down and the judgement is a judgement in rem and not in personam. In the said judgement, this Tribunal had embarked upon the principle of law that the delay in holding the trade test would not have any effect on the date of promotion under upgradation. In this view of the matter also, limitation would not be prohibit us in deciding this case on merits.

9. Now, adverting to the merits of the case, it is admitted case of the applicant that when his next junior has been promoted his case has not been considered. He has a fundamental right for consideration of promotion at par with his juniors. We aptly agree with the submissions put forth on behalf of the applicant that there can be no reasonable classification on the basis of one litigating and other non- litigating. There can be no intelligible differentia for such classification and the same does not have any nexus with the object sought to be achieved; i.e. the same does not stand to scrutiny of twin test of reasonable classification. Therefore the action of the respondents has to be declared as arbitrary, discriminatory and violative of Art. 14 and 16 of the Constitution of India.

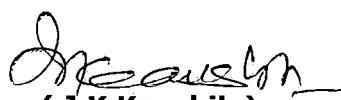



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10. As regards the entitlement of the applicant and other benefits are concerned, the same has been amplified in the order dated 11.07.2001, Annex. A/3, which is also marked as part of the record of this case and therefore, we do not find that there is any necessity for fresh discussion on the same.

11. In the premises, the O.A is allowed and the date of promotion of the applicant to the post of HS. Gr. II is preponed as 15.10.84 from 13.11.86 for all intend and purposes. The applicant shall be entitled to all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.


 (M K Misra)
 Administrative Member


 (J K Kaushik)
 Judicial Member.

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