

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 712/92 and 799/93

Date of Decision: 5.7.1999

R.H.Dani

Applicant.

In person

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Bawej, Member(A).

- (1) To be referred to the Reporter or not? (C)
- (2) Whether it needs to be circulated to *Nu*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS. 712/92 AND 799/93.

, this the 5th day of July 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

ORIGINAL APPLICATIONS NO: 712/92 and 799/93.

R.H.Dani,
3/11, Girijatmak Sahakari
Grihrachna Sanatha,
Karve Road,
Erandvane,
Pune - 411 004.
(Applicant in person)

...Applicant

Vs.

1. Union of India through
Director General,
Research & Development Organisation,
Ministry of Defence,
Govt. of India.
2. Director General,
Research & Development Organisation,
Ministry of Defence,
B-Wing, Sena Bhavan,
DHQ PO,
New Delhi - 110 0011.
3. Dean & Director,
Institute of Armament Technology,
Girinagar,
Pune - 411 025.
(By Advocate Shri P.M.Pradhan)

...Respondents.

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by the applicants claiming certain reliefs. Respondents have filed reply in both cases. We have heard applicant who appeared in person and Shri P.M.Pradhan counsel for the respondents. We have also perused the lengthy written arguments submitted by the applicant in both the cases.

by

2. It is not necessary to refer the pleadings in detail in both the cases. Most of the facts are admitted and not disputed. The points raised before us are in a very narrow compass hence we will only mention few facts which are necessary for the proper disposal of both the cases.

3. The applicant was working as Scientist 'D' in the office of Defence Research and Development Service [DRDS] under Ministry of Defence. He retired on attaining superannuation on 31.3.1989. The applicant never got his promotion as Scientist 'E' inspite of assessment done for the year 1984 and subsequent years. Though the normal age of retirement of Central Government is 58 years the Government issued an official memorandum dated 24.12.1985 under which the age of retirement was raised to 60 years for officers of Scientist 'E' grade and above. But for officers below grade 'E', like the present applicant, there is a proviso provided that such officers will also retire at the age of 60 years provided they have been promoted within the preceding five years. Since the applicant did not get any promotion within 5 years prior to 31.3.1989 he could not continue up to the age of 60 years. In view of this the applicant is challenging the legality and validity of that proviso. It is also the applicant's case that this proviso has been struck down as ultra vires by the order of the Tribunal dt. 15.9.89 in Gupta's case in T.A.521/86 and therefore the applicant is entitled to continue in service till 60 years.

We have already seen that as per proviso the officer should have got promotion within 5 years prior to attaining the age of 58 years. The applicant's case is that his supersession in the previous orders from 1984-1988 was bad. According to the applicant the assessment committee was headed by one Shri Sampat who was former UPSC Chairman. Therefore he could not have been appointed to act as a Chairman of the assessment board. The applicant also relies on the judgement of the Principal Bench of this Tribunal in Dwivedi's case dated 17.9.1991 in O.A. 2738/90. Therefore his case is that

non-promotion for the last five years was illegal and direction should be given to re-consider his promotion for the last 5 years and if he gets promotion then he will be entitled to retire at the age of 60 years, in view of the O.M. referred to above. This is the substance of the applicant's case in O.A. 712/92. The applicant therefore wants a direction to the respondents to treat the applicant having been in service till he attains the age of 60 years and is entitled for consequential financial benefits.

4. In O.A. 799/93 the applicants grievance is that he was due for promotion to Scientist 'E' in 1994 but he was not granted promotion contraary to rules. According to him during 1984 old rules were prevailing under which UPSC Chairman or Member of the UPSC should be the Chairman of assessment board and that board should hava considered the applicant suitable for promotion. The UPSC considered the case of the applicant and found him not fit for promotion. The aplicant had filed previous O A 175/87 for the identical relief which was disposed of by order dated 24.4.1991. Wherein the Tribunal has expressed the view that the proceedings of the selection committee was not in accordance with law and applicant's non selection for promotion was wrong. But the Tribunal made an observation, that even now the respondents can reconsider case of applicant's promotion. On reconsideration applicant again was found not fit for promotion. Hence he has filed this O.A. seeking a direction for his promotion due in the year 1984 and for consequential reliefs. The aplicant's main stand is that for the purpose of promotion which was due in 1984 a committee should be constituted under Chairmanship of UPSC Chairman or Member and that committee should consider the case of the applicant for promotion.

5. The respondents in both cases have taken number of grounds in opposing the two applications. They have also pleaded that the aplicant's claim is hopelessly barred by limitation and delay. They have also stated that the benefit of subsequent judgement cannot be give to the official who had retired earlier.

6. In the light of the Arguments addresed before us, the two points

which fall for determinaation are:

1. Whether the applicant is entitled for continuing in service for 60 years and entitled to consequential monetary benefits, by directing respondeents to treat him as having continued in service till the age of 60 years?
2. Whether non selection of the applicant for promotion for the year 1984 is bad in law and whether on that ground the applicant can be granted any relief regarding promotion and consequential benefits?

7. Point No.1 :

The subject matter of Point No.1 is the main relief asked for in O.A. 712/92. The question of enhancement of age of retirement is governed by the O.M. dt. 24.12.1985 where it is clearly mentioned that the age of retirement of the Scientific and Technical Personnel of DRDS, all Gr.'E' and above has been enhanced to 60 years subject to the following proviso :

"those in the lower grades for which flexible complementing scheme is applicable shall also retire at the age of 60 years provided they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the preceding 5 years."

Therefore, Officers of 'E' Grade and above are entitled to continue up to 60 years, but those below Gr.'E' are entitled to the same benefit provided they have acquired the last promotion within 5 years before attaining the age of 58 years.

Applicant has two contentions to claim this relief. His first contention is that this proviso is illegal and invalid and it has already been declared as ultra vires by a Bench of this Tribunal in Gupta's case by Judgment dt. 15.9.1989 in T.A. 521/86. The other submission is that even if this rule is valid applicant is entitled to continue up to 60 years provided he gets his promotion and he further submitted that in this case

denial of promotion to the applicant is illegal and invalid since the committee which considered the case of applicant for promotion was incompetent.

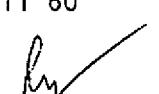
Taking the second contention first, we find that this applicant's challenge to his supersession or non-promotion is wholly irrelevant for deciding the question of the retirement age. It was argued that the committee was headed by Mr. Sampat and since he was a former UPSC Chairman he could not have been appointed to head the Committee and therefore all the committee proceedings are void and therefore, non-selection of applicant for promotion by that committee is liable to be struck down. The applicant also placed reliance on a decision of the Principal Bench in Dwivedi's case decided on 17.9.1991 in O.A. 2738/90. In our view, we need not go into the question of the non-promotion of the applicant for the purpose of getting benefit of enhancement of retirement age. In our view, that question is wholly irrelevant since that question arises under the proviso mentioned above and the proviso itself has now been struck down and therefore we need not go into that question whether under the proviso the applicant has secured promotion or not. When the proviso itself has been struck down by this Tribunal in Gupta's case and that judgment has been upheld by the Supreme Court, The question of considering the validity or invalidity of the promotion of applicant is wholly irrelevant for the purpose of deciding the question of age of retirement. Hence we are not going into that question at all.

8. Taking the first point now whether the applicant would be entitled to the benefit of 60 years and this Tribunal can extend that benefit when the proviso itself has been struck down by this Tribunal. It is true when the proviso itself has been struck down all Scientific Officers irrespective of the grade are entitled to continue up to 60 years. Therefore, the applicant may be right in a way to say that he should be entitled to continue till 60 years, but question is whether this Tribunal can grant that relief at this stage.

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The applicant has already retired on superannuation on 31.3.1989. He did not approach this Tribunal before his retirement or immediately after his retirement to get a direction that he must be allowed to continue till 60 years of age. He has filed the present O.A. in 1992, 3 years after his retirement. Can we grant this relief to the applicant when he has approached this Tribunal belatedly 3 years after the cause of action arose in his favour. The applicant knew that he is going to be retired on 31.3.1989. He did actually retire on 31.3.1989. Therefore, the cause of action arose for the applicant on 31.3.1989 when he retired from service. In fact, the department has issued him a letter dt. 27.3.1989, which is at page 15 of the paper book, that applicant would retire w.e.f. 31.3.1989. As soon as the applicant received this letter or on 31.3.1989 the applicant could have moved this Tribunal questioning the validity of this order. He cannot approach this Tribunal after a long delay of 3 years from the date of cause of action.

9. Under section 21 of the Administrative Tribunals Act, 1985, a Government Official has to approach this Tribunal within one year from the date of cause of action. In fact, in a case of this type the applicant could have approached this Tribunal even before 31.3.1989 and could have prayed for interim order to continue him in service even after 31.3.1989 until he attains the age of 60 years, the applicant took no steps, but he comes to this Tribunal three years after the date of his retirement. He does not give any explanation in the OA for this delay and he does not even file an application for condonation of delay by giving reasons. Major allegations in the OA even after amendment is about non-granting of promotions to the applicant by committee headed by Sampat and then about challenging the validity of the committee. When the proviso itself has been struck down by the Tribunal the question of non-promotion of the applicant is not at all relevant. Whether the applicant gets promotion or not, he would be entitled to continue till 60 years if the proviso is illegal and invalid.



10. The only reason offered by the applicant is that the proviso was struck down by this Tribunal in Gupta's case and therefore he can approach this Tribunal subsequently. Even then the Judgment in Gupta's case is dt. 15.9.1989 and applicant has filed this OA in 1992. Mere sending representations or repeated representations will not save or arrest running of limitation. Therefore, the fact that applicant went on sending letters to Government seeking the benefit of the Judgment in Gupta's case is also not relevant since those representations will not save limitations unless it is a case of statutory appeal.

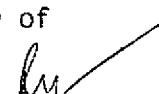
11. The applicant relied on a Judgment of the Hyderabad Bench of this Tribunal which he has filed at page 143 of the paper book, which is the judgment dt. 17.2.97 in OA 893/96, filed by one S.R.Ram Chander. It is true that in that case the Tribunal extended the benefit of Judgment of Gupta's case to Ram Chander and held that he is deemed to have continued in service up to sixty years. But, a perusal of the facts of the case show that Ram Chander approached the Tribunal even before the date of his superannuation. His date of superannuation was 31.7.1996, he filed that OA one week earlier and even sought an interim relief for a direction to continue beyond 31.7.1996 till he attains 60 years or till disposal of the O.A. But the Tribunal did not grant that interim relief, but made an order that his proposed retirement on 31.7.1996 shall be subject to the final order and by order dt.17.2.97 the Tribunal allowed the application and extended the benefit of the judgment of Gupta's case to him and held that he is deemed to have continued till 60 years. There was no question of delay on the part of Ram Chander in filing the O.A. He filed the OA even prior to the date of superannuation. Hence present applicant who has approached this Tribunal 3 years after his retirement cannot get the benefit from Ram Chander's case.

Then applicant has produced two decisions of this Tribunal where this Tribunal gave reliefs to some other parties on the basis of submission made by

the respondents counsel that the applicants in those cases would be given the benefit of 60 years. The question of delay or limitation was neither raised nor decided in those cases.

12. On the other hand, the point is squarely covered by a decision of the Principal Bench of this Tribunal dt. 18.9.1992 in OAs 950/92 and 956/92 (which is at page 50 of the paper book) where identical question arose for consideration before the Principal Bench. There also the two applicants had filed the case in 1992 seeking age of retirement at 60 years and relied on the Judgment of this Tribunal in Gupta's case and also on the ground that non-promotion by committee headed by Sampat was void by relying on Dwivedi's case. The Tribunal went into the question of limitation and delay in detail and referred to many decisions of the Supreme Court and came to the conclusion that relief cannot be extended to a party in view of a subsequent judgment which has come after the expiry of limitation in favour of the applicant. Hence both the OAs came to be dismissed only on the question of limitation. We are in respectful agreement with the reasoning of the Principal Bench of the Tribunal in the common Judgment in those two cases.

The learned counsel for the respondents also placed before us an unreported Judgment of the Principal Bench dt. 20.11.1997 in OA 2703/97 in the case of Shanta Gautam (KM) Vs. Union of India. The Hon'ble Chairman has passed a speaking order. There also the applicant wanted the relief that she must be deemed to have continued upto 60 years in view of decisions of the Supreme Court in Gupta's case. We have already seen that in Gupta's case this Tribunal struck down the proviso mentioned above and this order was confirmed by the Supreme Court and on that basis the applicant Shanta Gautam in that case wanted identical relief. Among other grounds, the Tribunal also rejected the claim of the applicant on the ground that a subsequent judgment cannot give retrospective operation and applied to persons who had retired prior to the date of the Judgment. This is what the Bench has observed in para 9 of



the unreported judgment as follows :

"We may also add that according to us, in such matters like the present one, the decisions of the Supreme Court are prospective and not retrospective in operation. The applicant had retired on the date of filing her earlier O.A. No.1756/93 and, therefore, the decisions of the Supreme Court in Civil Appeal No. 4488/90 dt. 20.11.1996 cannot be given retrospective effect in her case."

From the facts, we find that Shanta Gautam had retired on 31.5.93. She filed the O.A. in 1997 claiming that on the basis of the Judgment of the Supreme Court which confirmed the judgment of the Tribunal in Gupta's case she would be entitled to continue up to 60 years. The Division Bench rejected that contention.

13. We may notice few decisions of the Supreme Court on the point viz. on the question that a party is not entitled to any relief if the claim is barred by limitation, delay and laches.

In 1996(2) SCC (L&S) 1488 the Supreme Court has expressed its views on the question of limitation under section 21 of the Administrative Tribunals Act, 1985. From the facts we gather that many teachers from Karnataka had obtained LTC benefit without actually making the travel. Then Government issued orders for recovering the amounts from those persons. Some of the teachers approached the Tribunal on the ground that the government has no power to order recovery and the Tribunal quashed those orders. Some teachers who had slept over their rights came to the Tribunal after coming to know of the order passed by the Tribunal in the previous case. On that ground they sought condonation of delay. The Tribunal condoned the delay, the State of Karnataka carried the matter in appeal. The Supreme Court observed that a party has to approach the Tribunal within a period of one year from the date of cause of action as mentioned in sec. 21 of the limitation act and he cannot come to the Tribunal long after cause of action only on the ground that there

is subsequent judgment which supports his case on merits. The Supreme Court held that subsequent ^{order} in some other case will not give cause of action for a party to approach the Tribunal. Accordingly, the appeal was allowed and the order of the Tribunal was set aside.

Similarly, the applicant retired on 31.3.1989 and he could have approached this Tribunal within one year from that date, he cannot come to this Tribunal because subsequent to his retirement there is a Judgment of the Tribunal in Gupta's case and even then he took two and half years more to approach this Tribunal.

At one stage, applicant contended that the order of retirement is illegal and void order based on proviso which is void in law and based on non-promotion due to the proceedings of committee headed by Sampat which are void in nature and therefore void order can be challenged at any time. The reply to this contention may be found in the observation of the Supreme Court in a case reported in 1991(17) ATC 2871 State of Punjab & Ors. Vs. Gurudev Singh ^{where} the Supreme Court has observed that even a void order has to be challenged within the period of limitation. The Supreme Court has further pointed out that the order passed in the case affected the service of the official including non-payment of salary. Similarly, in the present case the retirement order has dis-continued the service of the applicant and dis-continued his payment of salary from 1.4.1989 and therefore applicant should have immediately rushed to this Tribunal within one year from the date of cause of action. We may also make useful reference to the decision of the Apex Court in Bhoop Singh reported in 1992(2) SLJ (SC)103. It appears some Constables went on strike at Delhi. Their services came to be terminated. Some of them approached Courts or Tribunals and got reinstatement. Then after few years one of them Bhoop Singh approached the Tribunal and his application was dismissed on the ground of limitation and his appeal was dismissed by the Supreme Court. The Supreme Court has observed that the argument before Supreme Court was that when most of the Constables have been reinstated by

Court orders and on the basis of those judgments Bhoop Singh also deserves to be reinstated. The Supreme Court rejected this argument since he has approached the Court after long lapse of time. It is observed that inordinate and un-explained delay or laches is by itself a ground to refuse the relief, irrespective of the merit of his claim.

Similarly, the applicant has a good case on merits, but he has come to this Tribunal three years after his retirement and therefore we cannot grant him the relief due to limitation, delay and laches.

The last decision on the point to be noticed is Rathod's case reported in AIR 1990 SC 10. In that case the Constitution Bench of the Supreme Court has observed that an order has to be challenged within the period of limitation and the period of commences from the date of cause of action. If a statutory appeal is provided, then the cause of action commences from the date of the Appellate Order. The Supreme Court has made it further clear in para 20 of the reported judgment that this principle will not be applicable when the remedy availed of has not been provided by law. The Supreme Court further observes that repeated unsuccessful representations not provided by law cannot extend limitation. It is therefore, seen that a party cannot come to Court on the basis of a subsequent judgment which may be in his favour on merits, but he cannot get the benefit if he approaches the Tribunal after the period of limitation.

We have already seen how the applicant has approached the Tribunal three years after the cause of action though he had only one year period of limitation to approach this Tribunal under section 21 of the Administrative Tribunals Act.

As rightly argued on behalf of the respondents, the claim of the applicant is almost like a money claim. If we now hold that retirement on 31.3.1989 was illegal, then the applicant will be entitled to salary and allowances for a period of two years. If we give such Judgment, then on the

basis of this Judgment hundreds of officers who have retired can also wake up and apply to the Tribunal to grant them the similar relief so that they can get salary and allowances for two years which will be a heavy burden on State exchequer. Particularly, when the claim is in the nature of a money claim or to get monetary benefit, it cannot be allowed after the period of limitation.

For the above reasons, we are construed to hold that applicant cannot be given the benefit of enhancement of age of superannuation up to 60 years under the 1985 OM in view of his approaching this Tribunal long after his retirement. Point No.1 answered accordingly.

14. Point No.2 :

The subject matter of this Point No.2 is the prayer in the second case viz. O.A. 799/92.

The applicant's case is that for the year 1984 he was not found fit for promotion and his juniors came to be promoted. His grievance is that the committee which considered the question of promotion from Scientist 'D' to Scientist 'E' was not constituted as per the rules prevailing at that time. Upto the year 1984 the then rules provided that the committee should be headed by UPSC Chairman or UPSC Member. But, in 1985, the Rules were amended and UPSC was not associated with the Committee. But, as far as considering promotion for the year 1984 a non UPSC committee took the decision, but as per the rules in force in 1984 it should have been a committee headed by UPSC Member or Chairman. It was therefore argued by the applicant that since the non-promotion for the year 1984 was decided by an incompetent committee and the whole proceedings are void and therefore direction may be given to re-consider his case for promotion for the year 1984 by a proper committee as per rules.

There is no dispute that as per the rules in force in 1984 the committee should have been headed by UPSC Chairman or Member. This O.A. is filed in 1993. The question is whether the question of promotion for the year

1984 can be now directed to be done in the year 1999 in the OA filed in 1993, particularly, ^{where} since applicant has retired from service on superannuation on 31.3.1989.

Three things are coming in the way of the applicant for granting the relief. One is principles res judicata, second is delay and the third is the retirement of the applicant in 1989.

15. Taking up the first point viz. res judicata, we find that the applicant filed earlier OA ⁱⁿ the identical promotion about his supersession for the year 1984. The earlier OA was OA No.175/87 and identical relief was asked for in that OA. Same argument was addressed before the Tribunal that the committee which decided the question of promotion was not properly constituted as per the 1994 Rules. The Tribunal disposed of the OA by order dt. 24.4.1991 which is at page 22 of the paper book. In fact the Tribunal accepted the applicant's contention that the Constitution of the committee was bad and it was not as per rules. Even after holding that the applicants supersession was decided by an incompetent committee, still the Tribunal did not grant any relief to the applicant and what is more, the application was dismissed. Even after holding that the Constitution of the committee was illegal, it had been observed as follows :

"But the relief as claimed by him cannot be granted not only because of the time factor, but also because he has attained the age of superannuation".

That was a case where the OA was filed in 1987 challenging non-promotion for the year 1984. Therefore, the OA had been filed three years after the cause of action. The Tribunal observed that in view of the time factor relief cannot be granted. If that is the position in respect of an OA filed in 1987, nothing more need be said to grant similar prayer in the present OA filed in 1993. If the Tribunal declined to grant identical relief in the previous OA on the ground of limitation, how can the applicant ask the same relief in the

present OA filed in 1993. When a similar prayer has been refused by the Tribunal on the previous occasion it cannot be granted in a subsequent OA and therefore the present OA is barred by principles of res judicata.

Still the Tribunal made an observation in the order that since justice has not been done to the applicant, it is left open to the Government on its own to re-consider the matter if the government feels it can even now grant him notional promotion. Therefore, while declining to interfere and declining to grant any relief in the OA a mere observation was made that it is open to the government suo moto reconsider and grant any relief to the applicant. In the operative portion of the order it is made clear that the OA was dismissed.

The applicant filed a Contempt Petition in that case on the ground that the government has not reconsidered his case and they are not granting him promotion. A Division Bench of this Tribunal rejected the Contempt Petition by order dt. 21.6.1993, which is at page 41 of the paper book stating that there was no order in favour of the applicant and against the department and therefore question of dis-obedience of the order inviting action in contempt does not arise.

If once we reach to the conclusion that the OA has been dismissed and no relief was granted in the previous OA, the applicant in the present OA cannot again ask for similar prayer regarding his promotion for the year 1984 and therefore we hold that the present OA is barred by principles of res judicata. The fact that on applicant's representations the government re-considered and again rejected the claim of the applicant is not relevant. The subsequent rejection will not give a fresh cause of action since as per the observation of the Tribunal, the government was told to re-consider the matter on its own and grant relief if finds that the applicant deserves it.

It does not give any fresh cause of action to the applicant to approach this Tribunal.

16. Now, on the second point mentioned above viz. question of delay, we are now in 1999, the OA was filed in 1993, the point for issue is whether the applicant was suitable for promotion in 1984 or not. Applicant has since retired. In these circumstances, no relief can be granted in view of long lapse of time between the cause of action viz. non-promotion in 1984 and on the date of the OA and as on to day. Therefore, delay also comes in the way of the applicant in granting any relief. While discussing Point No.1 we have already given detailed reasons how even a meritorious claim fails if it is barred by limitation, delay and laches.

17. Then, the other point which comes in the way of the applicant is, his retirement in 1989. According to the Rules in force in 1983-84 which were placed before us by the applicant at the time of argument, the promotion can be granted by the committee after assessing the performance of the officer on the basis of service record and interview. Even if we accept the argument of the applicant, the best we can do is to set aside the order of rejecting the claim of the applicant for promotion and give a direction to the respondents to constitute a proper committee under 1984 Rules and decide the claim of the applicant for promotion for the year 1984. The question is whether we can grant this relief, even if we accept the entire applicant's case, in view of the applicant's retirement in 1989.

As per rules, the committee has to scrutinise the service record and then conduct an interview and then decide whether an officer is fit or unfit for promotion. Even if a regular committee is now constituted how can they conduct the interview of the applicant in 1999 to decide whether he was fit for promotion in 1984 or not. If the applicant was in service, the matter is different. When the applicant has retired from service about 10 years back, how can the committee that may be appointed now interview an officer who

retired about 10 years back to find out his suitability for promotion about 5 years prior to his retirement. Therefore, in view of the subsequent event of applicant's retirement in 1989, about four years prior to the filing of this application, the direction for constituting a fresh committee and consider the claim of the applicant for promotion cannot be granted since interview is one of the criteria for deciding the question of promotion.

18. The submission of the applicant is that the committee has discretion to exempt interview and grant promotion on the basis of record. This Court cannot give a direction to the committee to exercise the discretion and grant promotion to the applicant.

We will illustrate this point. In all Recruitment Rules, there will be provision for qualification, age and experience. But in every Recruitment Rules there is a provision that Government may relax any or all of the conditions. Though the Government has such power, a Court or Tribunal cannot give a direction to the Government to exercise that power and relax a particular condition either regarding age or qualification or experience etc. Therefore, even in the present rules the Committee has discretion to exempt personal interview. The Tribunal cannot give a direction to the committee to grant exemption to the applicant from interview and then grant him promotion on the basis of service record.

Hence, taking any view of the matter, we find the relief sought for by the applicant cannot be granted.

19. We may also observe that in view of the observation of the Tribunal in the previous order the government took up the matter for re-consideration and also called upon applicant to furnish his bio-data and option of subject, but the applicant never cooperated with the administration. That is how, even after re-consideration the committee rejected the request of the applicant for promotion.

For the reasons mentioned above, we answer Point No.2 in the negative.